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IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

**MOTION OF INQUIRY and PETITION
PURSUANT TO
RECUSAL AND DISQUALIFICATION**

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I. NEW FACTS ARISING – AVAILABILITY OF HEARING DOCUMENTS

1. On August 18, 2021, Plaintiff Robert P. Bauchwitz in the above captioned case filed a Motion of Inquiry regarding the relationship between the trial court judge, Edward M. Marsico, and former Pennsylvania State Legislator Ronald S. Marsico. (Attached as Exhibit A.)
2. The basis for the Motion of Inquiry of August 18, 2021, was that the Surgical Weight Loss program of the Hershey Medical Center, of which the opposing party, Ann M. Rogers, is the Director, appears to have been involved in lobbying a person sharing the surname of the trial judge. That person was Ronald Marsico, who until 2018, had been a Pennsylvania State legislator. (Motion of Inquiry of August 2021 at point 3, p.2).
3. By Order of August 31, 2021, Judge Marsico responded to the aforementioned motion that Ronald Marsico was his “cousin”. (Attached as Exhibit B.)
4. The trial judge did not provide the requested actual degree of blood relationship, nor, if related, “the nature of the interaction”.
5. Importantly, however, with respect to this case, it is of note that the trial judge’s cousin, Ronald Marisco, had himself become a judge on the Pennsylvania Court of Judicial Discipline, which is located in the same city as the trial court (Harrisburg, PA). (Motion of Inquiry of August 2021 at point 4, p.2)
6. Not only was Ronald Marsico selected for a position on the Court of Judicial Discipline in 2020, but so too that same year was Superior Court Justice Daniel McCaffery, who would go on in 2022 to become the author of the Superior Court opinion in an appeal from this this case (2017-cv-6699). (Memorandum By McCaffery, J., Filed February 4, 2022, 1499 MDA 2020).
7. The McCaffery opinion affirmed the findings of the divorce master¹ Cindy S. Conley, as upheld by trial judge Marsico. (*Ibid.*)

¹ Now called a “Divorce Hearing Officer”. (<https://www.dauphincounty.gov/government/court-departments/court-administration/divorce-hearing-officer>). Page dated “2022”; last viewed December 29, 2022.

8. Daniel McCaffery is the brother of Seamus McCaffery², a former Justice of the Pennsylvania Supreme Court, which court provided no comment upon petitions by Husband to appeal the McCaffery authored decision. (104 MAL 2022)³

9. Despite the seeming legal requirement for an APL hearing in September 2021 to recalculate levels of APL after four years, which Plaintiff Husband argued was the last date by which the court should have resolved the APL matter (for more detail, see section II.A., following), the court instead issued an order in effect suspending the APL case until resolution of appellate action, citing the need for docket documents to be returned to the civil and domestic relations dockets:

“AND NOW, this 27th day of July, 2021, upon consideration of Plaintiff and Defendant's memoranda of law regarding whether a de novo hearing shall be conducted regarding the termination of alimony pendente lite, it is hereby ORDERED that a de novo hearing in this matter is warranted.

However, **because**, at the request of Plaintiff, **the original domestic relations docket has been forwarded to the Superior Court of Pennsylvania** to address the pending appeal in this matter, a de novo hearing **will** be **scheduled** once the Superior Court has disposed of the matter on appeal and **the domestic relations docket has been returned to this court.**” (Order of July 27, 2021, attached as Exhibit C.)

10. On November 23, 2022, the appellate action in the civil divorce case (2017-cv-6699) came to an end, with the Supreme Court's rejection of Husband's Application for Reargument (Reconsideration).

11. On December 12, 2022, Husband learned that the Superior Court prothonotary's office typically holds docketed documents for 21 days, in order to

² “HARRISBURG, Pa. — ... [Daniel] McCaffrey, 58, was ... elected to a 10-year term on the state Superior Court in 2019. ... A former assistant district attorney in Philadelphia, he ran for district attorney in 2009 and lost in the primary. He also ended a brief candidacy for state attorney general in 2012 before winning a race for a Common Pleas Court judge position in Philadelphia. McCaffrey served in the Army and received his law degree from Temple University. He is the brother of former state Supreme Court Justice Seamus McCaffery, who retired from the court in 2014 after being suspended by his colleagues over allegations of misconduct in office ...” Nov. 18, 2022 (<https://www.inquirer.com/politics/pennsylvania/pennsylvania-supreme-court-race-judge-daniel-mccaffery-candidate-20221118.html>)

³ Documents 1 and 2 at https://healthsci.org/div_appellate_filings/.

provide the requisite 14 days to file additional pleadings⁴, and then a week for pleadings to transit the mail. After that, the Supreme Court releases the docketed documents back to the Superior Court.

12. Consistent with the preceding information, on December 14, 2022, the Superior Court stated that it had returned the docketed documents to the Dauphin civil and domestic relations prothonotaries.⁵ However, no entries of receipt appeared in either Dauphin docket from December 14 – 19, 2022.

13. Husband spoke to several members of the Dauphin civil, domestic relations, Supreme Court, and Superior Court prothonotaries from December 14 – 20 in order to learn why the returned appellate documents were not acknowledged as such in the civil and domestic relations dockets.

14. From the preceding discussions, Husband learned that the civil prothonotary customarily seals Supreme Court filings that are made per curiam, as was the case for Husband's Petition for Allowance of Appeal (PAA) and his Application For Reargument/Reconsideration (AFR). During these discussions, Husband came to believe from several prothonotaries that scanned versions of the documents were kept at the county court level.

15. By December 20-21, 2022, two orders labeled "generic" and dated December 19, 2022, appeared on the docket of the Dauphin County Domestic Relations Office.

16. Husband again made contacts with domestic relations personnel on December 21, 2022, in order to learn the contents of the "generic" orders, which he presumed would relate to resumption of the suspended APL matter.

17. However, Husband subsequently learned that these two "generic" orders, dated December 19, 2022, reflected only the Supreme Court decisions on the PAA and AFR filings. Thus, documents had been received by the Dauphin County

⁴ As had occurred after the filing of an order by the Supreme Court concerning Husband's Petition for Allowance of Appeal: during the subsequent two weeks, Husband filed his Application For Reargument/Reconsideration. (Documents 1 and 2 at https://healthsci.org/div_appellate_filings/).

⁵ A Superior Court docket entry dated Dec 14, 2022 states that the docketed documents were "Remitted to lower court or agency" on that date.

Domestic Relations Office from the Superior Court on December 15, 2022, but nothing appeared in the docket as far as Husband could tell until the generic orders appeared on or about December 20, 2022.

18. During the various discussions mentioned in the preceding with domestic relations staff concerning docketing procedures and the contents of the “generic” orders of December 19, 2022, Husband came to believe that Dauphin County prothonotaries, in particular those associated with the domestic relations office, **do not send all the documents** which had been placed in the relevant docket to the Superior Court when an appeal was filed.

19. Instead, of the two paper filings requested by Dauphin County prothonotaries, the domestic relations docketing office would keep one, or a paper copy of one, and only send one paper version, designated the “original”, to the Superior Court. They use this procedure in order to have paper copies on hand in case any phone calls or “something else came up” which needed reference to such documents.

20. Also of note, the domestic relations office apparently does not, in any routine fashion, send photographs or other original evidence to the Superior Court.

21. The aforementioned findings **raise new questions about the truth of document availability** as implied by the trial court in its order of July 27, 2021, and the need to effectively suspend hearings for over a year due to the purported inaccessibility of docketed documents.

22. If the docketed documents would have been available to the trial court, then such findings would greatly increase concerns as to whether Husband has been afforded his due process rights to a fair and impartial tribunal before Judge Edward M. Marsico.

II. PRIOR PROCEDURAL DUE PROCESS CONCERNS RAISED

23. Three of the most significant, but not exclusive⁶, due process concerns in this case have involved 1) the handling of alimony pendite lite (APL) and related matters, in particular equitable distribution (ED), which preceded the now questioned suspension of the APL hearing, discussed above, 2) the unwillingness to hold an evidentiary hearing on a transcript matter remanded from the Superior Court, and 3) the taking of Husband's property rights, also without hearing to address the legality of the actions taken by a divorce master.

24. **Pennsylvania law defines required elements of procedural due process:**

"Recently, we confirmed procedural due process requires not only adequate notice and an opportunity to be heard, but also '**the chance to defend oneself before a fair and impartial tribunal** having jurisdiction over the case.' *S.T. v. R.W.*, 192 A.3d 1155 (Pa. Super. Ct. 2018)" (AFR at pp. 14-15)

25. Similarly, RULE 2.6 of the Judicial Code of Conduct deals with "Ensuring the Right to Be Heard":

(A) A judge **shall** accord to every person or entity who has a legal interest in a proceeding, or that person or entity's lawyer, the right to be heard according to law.

COMMENT:

[1] **The right to be heard is an essential component of a fair and impartial system of justice.** Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

A. ALIMONY PENDITE LITE AND EQUITABLE DISTRIBUTION REVERSALS AND SUA SPONTE ACTS BEFORE HEARINGS

26. On December 26, 2017, an order for alimony pendite lite (APL) was issued by a Support Officer of the Dauphin County Domestic Relations Office (DRO).

27. APL payments were awarded to Husband based on a state formula which took into account the relative incomes of each litigant.

28. On March 13, 2020, divorce master Cindy S. Conley issued a report of her recommendations for equitable distribution of marital assets (among other matters). (See companion docket 2017-cv-6699.)

⁶ Husband believes that major discovery rights were similarly denied him. However, those will not be further addressed in this filing. (For additional information, see the Appellant's Brief and his Appellant's Reply Brief, both of September 7, 2020, in 1499 MDA 2020; also found as documents 3 and 4 at https://healthsci.org/div_appellate_filings/.)

29. On April 29, 2020, Husband filed his exceptions to the master's report and recommendations, including specifically the equitable distribution. (2017-cv-6699)
30. On May 18, 2020, Wife filed a petition to terminate APL based on claims that it had been Husband that had delayed the proceedings in order to benefit from APL.⁷
31. On May 21, 2020, a hearing was granted Wife on her request to terminate APL.⁸
32. A hearing on the APL matter, among other matters excepted, was held on August 6, 2020.
33. On October 9, 2020, Wife's request to terminate APL was denied without reason supplied in an Opinion released on that date.
34. A decree in divorce was entered in the above captioned case on October 28, 2020.
35. On November 5, 2020, APL was terminated by the trial court as of October 28, 2020, again without explanation.
36. On November 25, 2020, Husband's counsel filed a demand for a de novo hearing to reestablish APL.⁹
37. On December 8, 2020, Wife filed a Petition to Terminate or Suspend Alimony Pendite Lite (APL).
38. On January 4, 2021, Husband filed a Response with Declaration to Wife's Petition to Terminate or Suspend APL.
39. On February 25, 2021, the trial court issued an order denying Wife's December 8, 2020, Motion to Terminate or Suspend APL. No reasoning was supplied with the order.

⁷ Husband, in turn, has repeatedly countered with evidence that it was Wife and her counsel who had repeatedly not disclosed over \$1 million in assets, thereby greatly delaying the case and increasing the costs. Husband termed the claims of Wife's counsel, James R. Demmel, in this matter "**a fundamental deception**". (Appellant's Reply Brief pp.15-18; RR.0154a-0157a). These claims and counter-claims further go to the gross mishandling of discovery generally in the divorce and support actions.

⁸ The order was signed by Judge Royce L. Morris. All other orders mentioned in this motion were signed by Judge Edward M. Marsico, unless specifically noted otherwise.

⁹ Also on November 25, 2020, a notice of appeal with the Superior Court was filed by Husband concerning economic and other matters in the companion case, 2017-dv-6699.

40. On March 17, 2021, Wife filed a Motion for Reconsideration (MFR) of her prior Motion to Terminate or Suspend APL of December 8, 2020.

In her MFR, Wife repeated, verbatim, the same claims against which specific, written testimony had been filed by Husband on January 4, 2021. (See Husband's point-by-point rebuttal at Section B, pages 2 – 7 in his Response and Second Declaration of March 30, 2021, incorporated by reference here as if reproduced in full.)

41. In her MFR of March 17, Wife also added a new claim, namely that Husband was "not incurring counsel fees to pursue his appeal to the Superior Court."

This claim was presented without citation to a single verifiable source of information. As a matter of law, Husband and his counsel asserted that Title 231, Rule 1910.19 concerning "Support. Modification. Termination. Guidelines as Substantial Change in Circumstances. Overpayments", deals with termination of support and states that:

(a) A petition for modification or termination of an existing support order **shall specifically aver the material and substantial change in circumstances upon which the petition is based.**" (231 Pa. Code § 1910.19)"

42. Upon receiving Wife's MFR by mail on March 25, 2021, Husband immediately wrote a response in which he laid out his legal expenses since the start of his appeal, as well as his specific concerns about Wife's pattern of repeatedly filing baseless and vexatious claims in the support case and in the companion divorce action (2017- cv-6699).

43. Specifically, in his Response of March 30, 2021, Husband noted that Wife through her counsel asserted at point 28 that:

"Plaintiff is capable of meeting his own reasonable needs without APL, since Plaintiff has an earning capacity, has very few monthly living expenses and is **not incurring counsel fees to pursue his appeal** to the Superior Court".

44. No evidence whatsoever was presented on the record for these novel (and false) claims of Wife. In fact, Husband had been incurring very substantial counsel fees in support of his filings with the Superior Court.

45. On April 1, 2021, Husband filed his Response to Wife's MFR with substantial, detailed evidentiary support and legal analysis, including a Second Declaration 24 pages in length that specified his income and expenses. This filing was made 13 days after Wife's MFR had been filed.

46. It was further noted that the Superior Court of Pennsylvania has been consistent in ruling that APL is not only meant to cover living expenses, but also litigation costs:

"APL is based on the need of one party to have equal financial resources to pursue a divorce proceeding when, in theory, the other party has major assets which are the financial sinews of domestic warfare." *DeMasi v. DeMasi*, 408 Pa. Super. 414, 420 (Pa. Super. Ct. 1991).

47. Furthermore, *DeMasi* also emphasizes, as Husband and his counsel have noted several times in the court record at significant financial cost to Husband, that APL continues through the end of appeals:

"if an appeal is pending on matters of equitable distribution, despite the entry of the decree, APL will continue throughout the appeal process *and any remand* until a final Order has been entered." *DeMasi v. DeMasi*, 408 Pa. Super. 414, 421 (Pa. Super. Ct. 1991)

48. On March 24, 2021, just 7 days (5 business days) after Wife's MFR filing, and before Husband could file his response, the trial court entered an order terminating APL.

49. Thus, APL payments received by Husband were terminated **before any response had been heard from Husband, contrary to the requirements of law.** (Dauphin County, PA Local "RULE 208.3(b)).

50. Specifically, with respect to legal requirement that Husband be given an opportunity to respond to a contested motion prior to an order by the trial court in favor of the movant, Wife, Husband noted in his Response and Second Declaration of March 30, 2021:

"Of particular note, **without ever issuing a show cause rule or any other deadline to respond**, and **within five [business] days of the March 17, 2021 filing of Wife's Motion to Reconsider**, this trial court apparently acted in Wife's favor by suspending APL. ... Husband only received written notice of the Motion to Reconsider in the mail on March 25, 2021. Husband further notes that it is his belief that he should have been given up to 20 days

to respond to a contested filing such as Wife's Motion to Reconsider, absent a Show Cause Rule or similar order that would alter the deadline:

Dauphin County, PA Local "RULE 208.3(b) -- CONTESTED MOTIONS

(1) In accordance with Dauphin County Local Rule 208.2(d), if a moving party certifies that concurrence has been denied by a party or if a party fails to respond to the inquiry regarding concurrence within a reasonable time, said motion shall be deemed contested.

(2) Any party who fails to concur to the motion and/or the proposed order shall file an original and one copy of a response and a proposed alternative order **within twenty (20) days after service of the motion**, unless the time for filing the response is modified by written agreement of counsel, court order, or enlarged by another local or state rule of court. ...".

51. On April 28, 2021, **without motion from either party**, equitable distribution (ED) transfers were resumed by order of the trial court, despite tacit agreement of Husband with Wife's prior motion to suspend ED until after completion of Husband's appeals, which which the trial court had accepted.

52. On April 9, 2021, Husband had filed his own motion for reconsideration of the order terminating APL of March 24, 2021. (Husband's April 9 MFR).

53. As part of his April 9, 2021 MFR, **Husband noted that he would be prejudiced without APL**. Husband stated that he had in fact been spending substantial APL funds for legal counsel in his appeal. Specifically, Husband wrote in his filing that he had spent \$15,407 between November 1, 2020, and February 28, 2021, in legal fees pursuant to his appeal effort.

54. Furthermore, Husband wrote that in making responses to Wife's repetitive and vexatious APL claims, as well as to related matters in the case, he had spent a further \$10,578.25 in legal fees during the same period. Husband also noted that these were not the total of his expenses on legal counsel for the preceding efforts as, for example, they did not include costs for March 2021, or thereafter.

55. An update to be presented in the upcoming, previously ordered APL case resumption (Order of July 27, 2021) will show that **Husband's total legal costs for 2021 - 2022** (including attorneys, experts, printing, shipping, and filing fees) have now come to **\$49,370.53** (excluding some bills still outstanding or undetermined, such as for December 2022).

56. Of Husband's total legal expenses on this case for 2021-2022, at least **\$33,235.45** has been uncompensated from APL payments, the latter of which came to \$16,135.08 made for the period in 2021 until APL was stopped on March 22, 2021. (See Order of that date; RR.1754a).

57. Also of particular import, Husband has repeatedly stated and demonstrated in filings, and at hearing on June 7, 2021, that there has been no net change in his living expenses since he moved to Wilmington, Delaware in November 2019.

58. Furthermore, Husband's April 1, 2021 Response to Wife's March 17, 2021 Motion to Reconsider, Husband's former counsel noted:

"Assuming, *arguendo*, Husband had received the assets awarded to him in equitable distribution, there would remain a need for APL inasmuch as the vast majority of the assets awarded to Husband are retirement assets."

59. Former counsel's statement comports with the master's note in her report of March 13, 2020 that:

"Husband's income until retirement should be focused on first meeting his needs so that he does not have to raid his retirement accounts until retirement." (Master's Report of March 13, 2020, p. 31)"

60. On April 20, 2021, at 1:07 PM ET, Husband informed his divorce counsel, Darren J. Holst, that due to the termination of APL, he would no longer be able to pay for his services and therefore would proceed pro se:

"As I have long made clear, without APL I can no longer afford to compensate you to prepare for further litigation. Therefore, please also enter today my appearance in your place and ship my files to my home."

B. ABORTION OF HEARING IN PROGRESS WITHOUT EXIGENT JUSTIFICATION

61. **A June 7, 2021 hearing** had been requested as an appeal of right by Husband's former attorney upon the termination of alimony pendite lite (APL) to Husband by order of March 22, 2021.

62. Upon information and belief, Husband understood that the June 7, 2021 hearing would begin at 3:00 PM and continue until no later than 4:30 PM. Husband was of the understanding that no cases would follow his.

63. Husband did not believe that more than one and one-half hours would be necessary for the hearing of June 7, 2021, particularly since there were no apparent complex issues of law or fact (see above), and especially since the opposing party

apparently wished to call no witnesses nor present any special exhibits. For his own case, Husband had only a single expert witness present (and a physician available to testify by telephone). Therefore, Husband believed the time allotted was sufficient.

64. At the June 7, 2021 hearing, opposing counsel objected to Husband's submission of his Physician Verification Form. Husband objected that the opposing party had failed to timely object, with citation to the pertinent law.

65. While Husband's was the last case of the day, and therefore he anticipated a timely conclusion, after opposing counsel objected to his entry of his Physician Verification Form into evidence, Husband was informed that the judge had some other activity arising which required the hearing adjourn (after about forty minutes).

66. There was no statement of any emergency that had arisen, but rather, upon information and belief, a newly arising, nonemergent meeting with a person or persons not involved in litigation before this judge.

67. At the order of the trial court, the parties submitted briefs regarding the facts and law which were to have been asserted at the aborted hearing. ("Memorandum of Law Re Completion of APL Hearing of June 7, 2021").

68. The trial court then issued an order of July 27, 2021 (Exhibit C) which delayed/suspended the APL hearing until after docketed documents purportedly required for such hearing had been returned from the Superior and possibly the Supreme Courts.

69. On August 13, 2021, Husband filed a "Motion To Vacate Order Of July 27, 2021 Delaying APL Decision".

70. As part of his motion to vacate the APL hearing suspension order, Husband demanded an APL hearing on or before September 19, 2021, citing the following law:

"(e) *Guidelines Review*. The guidelines **must** be reviewed at least every four years to ensure that their application determines appropriate support amounts." *In re Order Amending Rules 1910.11*, CIVIL PROCEDURAL RULES No. 687, at *9 (Pa. Dec. 28, 2018)"

71. No response was made to Husband's Motion to Vacate the APL hearing suspension order of July 27, 2021.

72. Therefore, rather providing due process to litigate critical details, such as any actual evidence required from Wife to support a claim under 231 Pa. Code § 1910.19 that Husband was no longer paying attorneys' fees since the time he had appeared "pro se" in the Superior Court as she claimed, the trial court instead showed what appeared to be gross prejudice against Husband by, in effect, taking a "rule before asking questions" approach.¹⁰

73. In other words, a reading of the order of March 4, 2021, suggests that *the mere prospect of ED*, imposed by a judge without hearing, and seemingly against his own prior decision just days earlier, as well as against the prior request and consent of the parties to ED suspension, indicated to Husband a determined intent to rule, not only without due process and adherence to specific law requiring evidence, but also without regard to the ability of the much less wealthy litigant¹¹, Husband, to cover the extremely high costs of legal representation.

C. TRANSCRIPT CORRECTION HEARING ORDER REVERSAL

74. On March 4, 2021, the Superior Court remanded to the trial court the record of 1499 MDA 2020, with an order for the trial court to consider Husband's application for correction of a hearing transcript.

75. On March 22, 2021, the trial court issued an order for Husband to present to the trial court and the court reporter details of the mistakes alleged in the hearing transcript at issue, stating:

"AND NOW, this 22nd day of March, 2021, based upon the March 4, 2021 Order issued by the Superior Court of Pennsylvania, it is hereby **ORDERED** that Defendant, Robert Bauchwitz shall provide, in detail, the mistakes he alleges are contained in the transcript of the divorce hearing in this matter on October 17, 2019. Defendant shall include the page, line and language of the transcript that he disputes. Defendant shall provide this information to chambers, Heather Artz, and opposing counsel within ten (10) days of receipt of this Order. Plaintiff may then have ten (10) days to respond. If the parties

¹⁰ It is notable that the order of March 4, 2021 that cut off APL, without any hearing, the judge only cited a document from Husband's counsel arguing AGAINST terminating APL.

¹¹ Husband's earning capacity had been adjudged 6-fold lower than surgeon Wife's, whose approached one half million dollars per year.

fail to reach an agreement regarding the transcript, **a hearing will be scheduled.**

76. On April 1, 2021, Husband filed a response to the trial court detailing flaws asserted in the hearing transcript at issue, as well as a letter from a National Court Reporters Association Registered Diplomate Reporter (“RDR”) attesting to numerous errors and recommending a complete review of the transcript.

77. On April 19, 2021, the court reporter filed an errata sheet noticing sixteen errors, which was less than one-third of the likely errors specified by Husband and his potential expert witness.

78. On April 28, 2021, nine days after the court reporter’s response, while Husband was preparing a demand for hearing based on disputes of fact, the trial court issued an order taking the court reporter’s errata as a complete and fully corrected accounting. By assuming that the sixteen mistakes conceded by the court reporter represented all the actual errors, the trial court then opined that such errors were not substantive.

79. Thus, while on March 22, 2021, Judge Marsico had issued an order which seemed to provide the due process ordered by the Superior Court through examination of evidence, and if factual dispute remained, hearing, on April 28, 2021, despite the clear language of his prior order of March 22, 2021, Marsico reversed himself and did NOT allow hearing on the disputes in the transcript case.

80. The basis for cutting off a hearing indicated by prior order (as well as thereby denying subpoenas for court reporting data that should have been retained by law (201 Pa. Code § 4016), was challenged by Husband in a subsequent filing to the Superior Court:

“Importantly, the trial court did not take notice that **the court reporter had not addressed most of the issues raised by Appellant**, including several of the most obvious or material of those Instead the trial court concluded that because none of the problems that the court reporter *did* correct seemed “substantive”, the request for hearing and further discovery was denied by order of April 28, 2021, and the remand thereby ended.

FN3: Appellant asserts that **such selective handling of the evidence would be improper in most if not all modern fields of endeavor**, and **cannot represent reasonable discretion.**” (Application For Reconsideration of Original Record Appeal Quashing, 647 MDA 2021; see also link in footnote 3 of this document.)

81. The transcript issue again raises questions of whether this court was willing to provide litigants their procedural due process rights to a fair hearing of the evidence, in this case involving matters of public importance:

“as a matter of oversight of the trial courts more generally, Appellant notes that, regardless of what further disputed issues are raised related to the transcript in 1499 MDA 2020, the same issues have importance in their own right. It might be argued that such matters are at least as important to litigants and others in the public at large as the outcome of a divorce. More specifically, litigants in Pennsylvania, including Appellant, have an expectation of **accurate, verbatim transcripts** of the record proceedings.

For example:

“It is the policy of the [Commonwealth of Pennsylvania] Unified Judicial System to **ensure**” ... “complete and verbatim notes of testimony and transcripts are integral to the official record of court proceedings”. (“Transcript means a certified, written, verbatim record of a proceeding.”) 201 Pa. Code § 4001

“Court reporting personnel who take the notes, record or transcribe a proceeding shall certify that the transcript of proceedings is true and correct”. 201 Pa. Code § 4013.

82. Clearly, Court reporter Artz’s first certification was not true and correct. Such a finding would ordinarily provide support for further discovery of evidence (as subpoenaed) hearing. That this did not in this case, again suggests that some other considerations could be operating on the thought processes of this trial judge.

D. TAKING OF PROPERTY RIGHTS WHILE FAILING TO ADDRESS LAW

83. On February 11, 2020, Plaintiff Wife filed a “Petition for Civil Contempt and Special Relief to Establish Sole Authority to Sell Marital Home”. Wife’s filing was based on Husband having notarized a revocation of a power of attorney (POA). The divorce master had ordered the POA be given by Husband to Wife despite his protestations that:

1) Wife had made seriously false allegations in order to fabricate a basis for excluding Husband from participating the sale of his joint property, and

2) that Wife was persisting in her bad faith insistence on selling the home “as is” without repairs, contrary to recommendations by all real estate agents consulted and against Husband’s financial interests.

84. More specifically, Husband’s POA revocation was a response to Wife’s failure to allow payment to the real estate agent who had made repairs to the home, which ultimately produced tens of thousands of dollars in profit above the “as is” price expected. Of note, Wife insisted on fully sharing in the profits made by those she did not wish to compensate.

85. Two days later, on February 13, 2020, Judge Marsico granted Wife’s petition and awarded her sole authority to sell the marital home without any notice or opportunity for Husband to respond to Wife’s petition. **There was no citation to any law that Husband had violated that would prevent his revoking a POA in the Commonwealth of Pennsylvania.** The only source cited by the trial court was Wife’s petition:

“**AND NOW** this 13th day of February, 2020, in consideration of Plaintiff’s Petition for Civil Contempt and Special Relief to Establish Sole Authority to Sell Marital Home, it is hereby **ORDERED**, as follows:

1. Plaintiff shall have sole and exclusive authority to sell the property located at 324 Candlewyck Lane, Hershey, PA 17033, including the authority to execute, on Defendant’s behalf, any and all documents required to accomplish the sale of the property in accordance with 21 P.S. § 53.¹²
2. Plaintiff’s request for counsel fees she incurred as a result of Defendant’s revocation of the Limited Power of Attorney required by the October 23, 2019 court order is referred to the divorce master, Cindy Conley, Esq., and shall be addressed within the divorce proceedings.

86. With respect to the law, as Husband noted in his appeals:

“IV. Can a “power of attorney” in Pennsylvania be compelled by order, and if so, does such circumstance preclude its revocation by the principal?”

¹² This is the law actually empowering Husband’s loss of property rights by order of court, not the power of attorney law 20 Pa. C.S. CH. 56. There had been no hearing relevant to 21 P.S. § 53. In fact, the fees imposed by the then master because of Husband’s purported contempt were reversed because no hearing had been provided, not only as to the POA law, but presumably under 21 P.S. § 53 either.

... Husband notes that as part of his appeal, he has requested that the Superior Court review whether the trial court committed legal error regarding issues surrounding sale of the marital home. Specifically, Husband asserts here that he has found no basis in Pennsylvania law by which a power of attorney would not require agreement of the principal and, as a consequence, that the principal could not revoke a POA issued by himself were he to conclude that his interests were not being met by his agent thereunder.” (20 Pa. C.S. CH. 56).

FN17: “The POA Husband signed October 31, 2019, states in relevant part that the document was signed “**with full power of substitution and revocation**”. (Appellant’s Reply Brief of September 9, 2021, pp. 22-23.)

87. Furthermore, as indicated at point 2 of the preceding order, Judge Marsico assigned the very person (master Cindy S. Conley) whose decisions and behavior were being appealed, to be the decision-maker in the POA revocation matter.

88. Therefore, with respect to the seeming “contempt” finding of the master against Husband for revoking his POA, a hearing before a fair and impartial tribunal would not logically include a tribunal consisting of the master whose decisions were being appealed. (“procedural due process requires ... ‘the chance to defend oneself before a fair and impartial tribunal.’ *S.T. v. R.W. op.cit.*).

89. The result of the POA revocation issue was that Judge Marsico failed to provide due process to determine not only whether there was any basis in law for the master to uphold a claim by the opposing party that Husband was in contempt for revoking his own POA, but whether the master could even lawfully “order” Husband to sign a “power of attorney” in the first place.¹³

90. Given the severity of the property rights issue which occurred early in the case, it raises a question of how Judge Marisco came to be the motion judge assigned to this matter, given the seeming weekly rotation that had been established to that point. (See Questions in Section VI, below.)

Wife’s due process interests were never denied

¹³ A right to hearing before taking property rights is so fundamental to our jurisprudence as derived from English law, that one of the oldest bases for due process rights originates in Clause 39 of the Magna Carta as it appeared in 1354:

“No man, of what station or condition he be, shall be put out of his lands or tenements nor taken ... without he be brought to answer by due process of law.”

91. In contrast, Husband is unaware of any instance in which Wife's due process rights to be heard, or face a tribunal impartial to her, were not provided by this trial court.

92. On March 10, 2020, Husband filed a Petition for Contempt and Special Relief against Wife for the acts against his interests and those of innocent third parties such as the real estate agent Wife refused to allow to be compensated.

93. In contrast to Husband's experience, Wife was granted a hearing (Order of March 11, 2020 in docket 2017-cv-6699) upon Husband's filing of contempt against her.

94. On May 18, 2020, Wife made her first petition to terminate Husband's APL. Wife was then given a Rule to Show Cause (by motion judge Royce Morris).

95. On May 21, 2020, Husband responded to the Show Cause Rule based on Wife's first APL termination petition of May 18, 2020.

96. Husband noted that Wife's petition to terminate APL was largely based on a cynically fraudulent claim that Husband had "delayed" the proceedings, and thereby should not be "rewarded" with APL. In fact, Wife, through her counsel, James R. Demmel, had continued for six months to withhold disclosure of approximately \$1 million in assets, not declared to the Court by Wife contrary to requirement of law.¹⁴

97. Nevertheless, by Order of July 2, 2020, Judge Marsico granted Wife a hearing on her APL termination petition.

98. Therefore, as problems with due process appear almost exclusively with respect to one party (Husband) and not the other (Wife), Husband believes that there can be no claim that Judge Marisco was incompetent with respect to the to specific legal procedures relevant to due process.

¹⁴ Wife and her counsel continued to resist full and truthful disclosure of financial documents, through October 14,, 2019, when they again noted that they had made further "errors". Nevertheless, the divorce master, Cindy S. Conley, denied extension of discovery despite clear admission that Wife had been noncompliant. Judge Marsico then ruled in favor of Wife, against continuing discovery.

99. Consequently, Husband¹⁵ believes that there are, with near certainty, other factors and influences which could much better explain the differentiated behavior shown by Judge Marsico to the parties.

III. BIASES APPARENT FROM FACTS OF THE CASE

100. Given the relevance of considerations of judicial bias and prejudice, the following definitions are used:

(1) ***“bias***, n. Inclination; prejudice; predilection.” Black’s Law Dictionary, 9th Edition.

(2) ***“prejudice***, n. 1. Damage or detriment to one’s legal rights or claims. 2. A preconceived judgment formed with **little or no factual basis**; a strong bias. Black’s Law Dictionary, 9th Edition.

101. In the preceding section, the events of the case were detailed in order to suggest that there were numerous and significant questions about the way Husband’s rights under law were treated by the trial court, while similar outcomes were not suffered by the opposing party, Wife.

102. The facts of a case can warrant a bias challenge:

(1) “A favorable or unfavorable predisposition can also deserve to be characterized as “bias” or “prejudice” because, **even though it springs from the facts adduced or the events occurring at trial**, it is so extreme as to display clear inability to render fair judgment.” (*Liteky v. United States* 510 U.S. 551 (1994).

(2) “The U.S. Supreme court further explained that where opinions formed by the judge on the basis of facts introduced or event **occurring in the course of the current proceedings display a high degree of “deep-seated favoritism** or antagonism that would make fair judgment impossible” such conduct warrants and supports a bias or partiality challenge. *Id.* at 553.”

103. Above and beyond the numerous due process related issues detailed above, Husband believes that the **abortion of a hearing in progress** on the APL matter,

¹⁵ A cognitive neuroscientist and expert in behavior, as established in the court record.

followed by what now has motivated this filing, the **seemingly false pretense** that the aborted APL hearing could not be resumed due to inavailability of documents to the court, if valid, would provide more than sufficient basis for ordinary reasonable people to conclude that there had very likely been a sustained bias and prejudice against Husband, concomittant with a deep-seated favoritism to Wife.¹⁶

IV. APPEARANCES AND RELATIONS – TRIAL JUDGE’S COUSIN HAD ASSOCIATION WITH OPPOSING PARTY AND IS NOW A JUDGE IN THE SAME CITY

104. There are also implicit biases which can underly the events at trial. These were raised upon receiving answer to the first Motion of Inquiry of August 18, 2021, in which the trial court revealed that a person who had association with Wife was also his relative.

105. In the law, as in behavioral science, it is reasonable to consider the possibility of implied bias, defined in the law as:

“implied bias. Prejudice that is inferred from the experiences or relationships of a judge, juror, or witness, or other person. - Also termed *presumed bias.*” Black’s Law Dictionary, 9th Edition.

106. With respect to the relationships raised in this and the earlier Motion of Inquiry filing of August 16, 2021, it has been noted that a judge has an implicit duty to volunteer information concerning conflicts of interest, regardless of whether a party actually files a motion to recuse:

“Although Petitioners never filed a motion to recuse [Lackawanna County, Pennsylvania Judge Mark] [Ciavarella](#), the hearing facts suggest

¹⁶ Wife was never injured in this case by a court ruling, including not by Husband’s being awarded APL. Wife’s earning capacity was adjudged 600% greater than Husband’s, and APL was then set by state-wide formula. In contrast, the constant challenges and reversals of APL, led to legal charges which effectively deprived Husband of what APL he did receive. Then when APL was completely cut-off without completion of hearing, followed by suspension over long periods of time (2021-2022), Husband was left without full, professional legal representation. All of these acts of the trial court directly undermine the purpose of APL under Pennsylvania law. There was no credible reason that such a wealthy litigant as Wife, who initiated a divorce without notice and under very suspicious circumstances, should have been given such preferential treatment.

that [Ciavarella](#) lacked the ability to undertake the critical self-examination needed to determine his ability to impartially preside over the Joseph case. ... In those cases, [Ciavarella](#) failed to disclose facts which would have assisted a party litigant to evaluate whether a recusal motion was appropriate.”
(*Joseph v. Scranton Times L.P.*, 2009 Pa. LEXIS 1612.)

107. In this case, Husband assists the judge’s duty to volunteer information by presentation of specific questions. (See Section VI and associated Proposed Order, below and attached.)

108. More generally, from the Pennsylvania Code of Judicial Conduct, Rule 2.7:

“A judge shall hear and decide matters assigned to the judge, **except** where the judge has recused himself or herself or when disqualification is **required** by Rule 2.11 or other law. ...

COMMENT: [2] ... there may be instances where a judge is disqualified from presiding over a particular matter or shall recuse himself or herself from doing so. **A judge is disqualified from presiding over a matter when a specified disqualifying fact or circumstance is present. See Rule 2.11.**

The concept of **recusal** envisioned in this Rule overlaps with disqualification. In addition, however, a judge may recuse himself or herself from presiding over a matter **even in the absence of a disqualifying fact or circumstance** where - in the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters - **the judge concludes that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required.** This test differs from the formerly applied common law test of whether “a significant minority of the lay community could reasonably question the court’s impartiality.”

[3] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification or recusal, even if the judge believes there is no proper basis for disqualification or recusal.

109. RULE 2.11 of the Code of Judicial Conduct states the following about disqualification:

(A) A judge **shall disqualify** himself or herself in any proceeding **in which the judge’s impartiality might reasonably be questioned**, including **but not limited to** the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge’s spouse or domestic partner, **or a person within the third degree of relationship** to either of them, or the spouse or domestic partner of such a person is:

- (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
- (b) acting as a lawyer in the proceeding;
- (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or
- (d) likely to be a material witness in the proceeding. ...

COMMENT:

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, **regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.**

[2] A judge's obligation not to hear or decide matters in which disqualification is required **applies regardless of whether a motion to disqualify is filed.**

110. Therefore, it is NOT required that there be any proven influence of a relative within the third degree of relationship. Rather, it is the prospect that an ordinary person, learning of the above events and relationships, would reasonably question the judge's impartiality.

111. With respect to Ronald Marsico, particularly, by way of example:

"[Judge] Conahan's long-standing and public **relationship** with [third party] D'Elia by itself created the appearance of impropriety. D'Elia's reputation may not be factual, but Conahan's association with a person with that kind of reputation and with **the perception that D'Elia had special access to Conahan** created the appearance that does not promote public confidence in the integrity of the court." (*Joseph v. Scranton Times, Ibid.*).

112. In this case, **the "reputation" at issue is one of a cousin, Ronald Marsico, who had been a career politician lobbied by one of the litigants, Ann M. Rogers, M.D.** It is conceivable that Rogers' possible lobbying of Ronald Marsico, if it occurred in this divorce case, was again successful, as it had earlier been in the obesity surgery funding matter. (Motion of Inquiry, August 18, 2021).

113. Furthermore, the same cousin, Ronald Marsico, was himself made a judge in the same city and around the same time that his cousin, trial judge Edward Marsico, became involved in this case, thereby further raising questions about any professional connection to the trial judge.

114. The subliminal test addresses even a hint of subliminal bias from the perspective of an objective disinterested observer:

"The subliminal self might well be difficult to recognize accurately in self-analysis. *Pepsico Inc. v. McMillen* addressed this by stating the recusal test as follows: **"whether an objective disinterested observer fully informed of**

the facts underlying the grounds on which recusal was sought **would entertain significant doubt that justice would be done in this case.**" The judge in *Pepsico* recognized the still-subjective nature of the objective attempt and concluded that **such an observer would admit the doubt.** Looking at both the Code of Judicial Conduct and the process guidelines in *Caperton and Williams v. Pennsylvania*, **the court admitted that even a hint of subliminal bias could put the judicial neutrality at risk.**" (*Schoenberg v. State Farm Ins. Co.*, PICS Case No. 16-1112 (C.P. Lackawanna Aug. 10, 2016.)

115. Apparently, at the very least, investigation by this litigant (Husband) has suggested that there was no basis in fact for the trial judge's assertion in his order of July 27, 2021, which implied that docketed documents would be unavailable for use in a lower court proceeding while "originals" of those documents were at the Superior Court or other appellate level (Supreme Court).

116. Thus, even were there no actual communications with his cousin on this matter, the facts argue towards a sustained and impactful subliminal bias, at the very least, on the thinking of the trial judge.¹⁷

117. Nevertheless, as the trial judge may have just as much right for procedural due process hearing of evidence and explanation as anyone else, Plaintiff-Husband does hereby motion for responses from the trial judge to the questions posed below in Section VI, so that the context of the above concerns may be better appreciated.

V. SUMMARY OF FACTS AND LAW

118. Husband asserts that, as the facts and appearances detailed and alleged above currently stand, such facts and appearances would raise serious concerns among ordinary reasonable people as to the existence of a determined prejudice against Husband by this trial court, whether or not implicitly or explicitly influenced by personal or other connections, and should thereby lead to recusal and/or disqualification of Judge Edward M. Marsico from further involvement in this case.

¹⁷ Cognitive neuroscientists are well aware of the major effects that implicit biases can have on decision making. (<https://www.psych.udel.edu/news/Pages/The-Science-Behind-Bias.aspx>)

119. In summary thereof, the following points of facts claimed and law cited above are provided:

(1) No opportunity was given for hearing on the POA matter which took Husband's property and power of attorney rights.

Instead, the judge returned matter to the adjudicator whose decisions were at issue.

(2) No opportunity was provided for hearing before a second reversal of APL on March 24, 2021. Instead, the trial court issued a *sua sponte* order attempting to create funds by equitable distribution, in place of APL, against prior order, without hearing, and without any determination of the time to receive such funds, were they even to be relevant.

(3) No opportunity was given for hearing in the transcript remand action, despite prior order stating such opportunity would be given.

Instead, Judge Edward Marsico took partial corrections by the court reporter as complete and accurate, without allowing discovery or hearing, including expert testimony, regarding numerous and material issues remaining.

(4) Trial judge Edward Marsico aborted a hearing in progress, with Husband's experts present, for no exigent reason stated. Then, the judge claimed by order that the aborted hearing would be suspended until such time as docketed documents sent for appeal were returned to the trial court prothonotary. The latter order has raised questions, upon initial investigation, as to whether comparable documents would have been available to allow hearing.

(5) The trial judge has a connection to the opposing party via his cousin, which was revealed upon inquiry. The cousin is a judge in the same city as the trial judge.

Furthermore, cousin Ronald S. Marsico was appointed a judge in the same year, 2020¹⁸, as Justice Daniel McCaffery was appointed to the same court.

¹⁸ This was also the same year that Edward M. Marsico became trial judge in the cases at issue here.

Daniel McCaffery was the author of the Superior Court opinion upholding Judge Edward M. Marsico in the companion case 2017-cv-6699.¹⁹

(6) “[P]rocedural due process requires not only adequate notice and an opportunity to be heard, but also ‘the chance to defend oneself before a fair and impartial tribunal ...’” *S.T. v. R.W.*, 192 A.3d 1155 (Pa. Super. Ct. 2018).

(7) Facts of a case can be sufficient to show “inability to render fair judgment” which thereby “warrants and supports a bias or partiality challenge”. (*Liteky v. United States*, 510 U.S. 551 (1994)).

(8) Disqualification is required under Rule 2.11 of the Pennsylvania Code of Judicial Conduct in which “the judge’s impartiality might reasonably be questioned, including but not limited to ... The judge knows ... a person within the third degree of relationship ... who has more than a de minimis interest that could be substantially affected by the proceeding”, which Husband asserts could include the former target of a party’s lobbying.

(9) Recusal is appropriate even in the absence of a disqualifying fact or circumstance when “an objective disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain significant doubt that justice would be done in this case”. (*Schoenberg v. State Farm Ins. Co.*, PICS Case No. 16-1112 (C.P. Lackawanna Aug. 10, 2016.))

VI. QUESTIONS

120. Plaintiff Robert P. Bauchwitz in the above captioned case, and as Defendant in the associated case, 2017-cv-669, motions to the trial court for responses regarding the following questions, all of which apply to the cases docketed as 2017-cv-6699 or 01336-DR-17:

Abortion and suspension of hearing in progress

121. What was the exact basis for aborting the hearing in progress on June 7, 2021?

¹⁹ Appointments such as those of Ronald Marsico and Daniel McCaffery to the Court of Judicial Discipline can be made by the Pennsylvania Supreme Court, upon which Daniel McCaffery’s brother, Seamus McCaffery, sat until 2014.

122. On what did the trial court base its claimed/implied lack of access to necessary docketed documents in its Order of July 27, 2021, which would have prevented hearing of the APL matter until after documents sent to the Superior Court had been returned?

123. Has Judge Edward M. Marsico, or any judge of whom he is aware, ever continued to deal with trial court matters requiring access to docketed case documents, including by holding hearings, while some or all of the case documents had been sent to an appellate or other court?

Relationship with Judge Ronald S. Marsico

124. Has Judge Edward M. Marsico had any discussions generally with his cousin, Judge Ronald S. Marsico, about the judiciary or law?

125. Has Judge Edward M. Marsico had any discussions generally with his cousin, Judge Ronald S. Marsico, about any specific local or state judicial matters?

126. Has Judge Edward M. Marsico had any discussion or communication, directly or indirectly, with his cousin, Ronald S. Marsico, concerning Defendant Ann M. Rogers, M.D. of Hershey, Pennsylvania, her bariatric program's connections with, or attempts to lobby, Ronald S. Marsico, or any aspect of this captioned case or the companion case, 2017-cv-6699?

127. Have there been any publications mentioning the relationship between the cousins Edward M. and Ronald S. Marsico?

Relationship and interactions with opposing party

128. Does Judge Edward M. Marsico have any undeclared connections to Ann M. Rogers, M.D. of the Hershey Medical Center, including personal, her bariatric or any other program, employers (e.g. the Hershey Medical Center), related institutions (e.g. The Pennsylvania State University/Penn State, or Cornell University) or through any other person or entity?

129. Was there any *ex parte* receipt of communications regarding judicial or master assignments, evidence, or claims from attorney for ex-Wife, James R. Demmel?

130. Has Judge Edward M. Marsico ever had communications or notice from anyone regarding Husband's involvement in the federal scientific fraud *qui tam* case,

04-2892 (TJS), Eastern District of Pennsylvania (EDPA), in which Husband had acted as Relator, other than what was written by divorce master Cindy S. Conley in her report of March 13, 2020, or the Superior Court opinion of February 4, 2022, in the associated case?

Assignment of judges

131. Did the Family Court motion rotation from November 15, 2019 – March 24, 2020, inclusively, for case 2017-cv-6699, and as relevant the above captioned case, consist of three Dauphin County judges, John McNally, Royce Morris, and Edward Marsico?

132. If so was the rotation weekly?

133. Was the rotation, whether weekly, monthly, or in some other unit of time, in the order: McNally, Morris, and Marsico?

134. To Judge Edward M. Marsico's knowledge, was any request by any judge made to the Court Administration, President Judge, or any other relevant entity, to alter the motion case rotation in the two cases which are the subject of these questions (2017-cv-6699 or 01336-DR-17)?

135. Was there any communication by this judge, Edward M. Marisco, to the Dauphin Court Administration, President Judge, or any other relevant entity to express a willingness or preference to handle any part of the two associated cases, including trial?

136. Was there any irregular assignment of judges in this case to the knowledge of Judge Edward M. Marsico?

VII. PRAYER FOR RELIEF

Plaintiff-Husband Robert P. Bauchwitz requests that:

137. Judge Edward M. Marsico provide forthright and complete questions to the question posed in the preceding section. (See Proposed Order re Answers to Inquiries, attached.)

138. Judge Edward M. Marsico recognize the requirement under the laws cited above, and any other relevant, to disclose any potentially disqualifying circumstances without being specifically asked by the parties.

139. Judge Edward M. Marsico take note of any duty he may have to transfer the case if the facts alleged and appearances existing are sufficient under relevant laws, including those cited above. From the 3rd Circuit:

“If reasons and facts alleged in the affidavit are sufficient, it is the duty of judge to transfer the case. *Simmons v. United States*, 302 F.2d 71 (3rd Cir. 1962).”

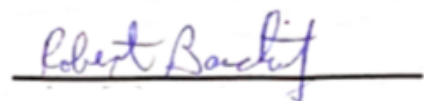
140. That the case status be expeditiously communicated to the parties.

141. In addition, to facilitate resolution of this long-delayed support case, proposed orders restoring APL and, separately, upon such restoration, a second proposed order adjusting APL, are attached.

142. Husband also requests transfer of this case to a new judge, and expresses his interest in the assignment of an out-of-county judge. (See *Joseph v. Scranton Times L.P.*, 2009 Pa. LEXIS 1612; “The Piatt Report”). If the case can be moved, request is made to choose a court between the residences of the two parties, e.g. in Lancaster or Chester Counties.

143. This motion of inquiry and petition pursuant to recusal and disqualification can be taken as a declaration by the below signed Plaintiff, given the presentation of new facts.

Date: 1/2/23

A handwritten signature in blue ink, reading "Robert Bauchwitz", is written over a horizontal line.

Robert P. Bauchwitz

Plaintiff

23 Harlech Drive

Wilmington, DE 19807

dir_amr@luxsci.net

Telephone: (717) 395-6313

pro se

VIII. ATTACHMENTS AND EXHIBITS

<u>exhibit</u>	<u>title</u>	<u>page</u>
-	Proposed Order re Answers to Inquiries	pre-
-	Proposed Order Transferring the Case	pre-
-	Proposed Order Restoring APL	pre-
-	Proposed Order Adjusting APL	pre-
A	Exhibit A – Motion of Inquiry of August 18, 2021	2040a
B	Exhibit B - Order re Relationship of August 31, 2021	2046a+1
C	Exhibit C – APL Suspension Order of July 27, 2021	2046a+2
-	Certificate of Compliance	post
-	Proof of Service	post

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

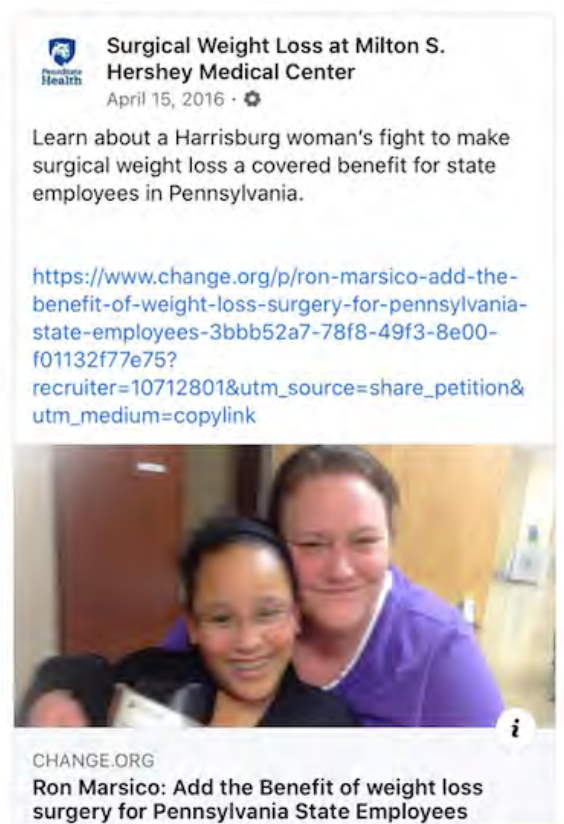
**MOTION OF INQUIRY
 RE
 RELATIONSHIP TO OPPOSING PARTY**

1. Plaintiff Robert P. Bauchwitz in the above captioned case motions to the trial court for responses regarding the relationship between trial court Judge Edward M. Marsico and Pennsylvania State Legislator Ronald (Ron) Marsico.

Background

2. Defendant Ann M. Rogers M.D. of the Penn State Milton S. Hershey Medical Center (Hershey Medical Center) is the Director of the Penn State Surgical Weight Loss Program. (<https://www.pennstatehealth.org/doctors/ann-m-rogers-md> ; last recorded August 1, 2021.)

3. The Surgical Weight Loss program of the Hershey Medical Center appears to have been involved in lobbying former Pennsylvania State legislator Ron Marsico. From a Hershey Medical Center post on Facebook of April 15, 2016:



4. Ron Marsico was a Pennsylvania State Legislator until 2018, including with involvement in some medically related legislation. Since June 2020 he has been a member of the Court of Judicial Discipline of the Commonwealth of Pennsylvania. From the website of the latter:

“Representative Ronald S. Marsico represented the 105th Legislative District in Pennsylvania for 30 years. He was first elected to the state House of Representatives in 1988 and retired in 2018. ... [he] also played an instrumental role in the passage of the Medical Marijuana Act. He authored the first comprehensive bill in the House of Representatives permitting the medicinal use of marijuana, which played an integral role in the development of the legislation which is now law. As part of the House’s Task Force on Medical Marijuana, he was the primary voice advocating for the law through the days of debate on the House floor in March and April 2016. ...”

(Last recorded August 1, 2021 from <https://www.pacourts.us/courts/court-of-judicial-discipline/current-and-historical-list-of-judges/judge-ronald-s-marsico>.)

5. The following information concerning lobbying efforts by Defendant Rogers was found at <https://bariatrictimes.com/samer-mattar-interview-march-2018/>:

“Coverage Offered for Bariatric Surgery on Limited Basis to Pennsylvania State Employees

BT Online Editor | March 1, 2018 ...

"What was the role of the ASMBS in helping Pennsylvania state employees gain this coverage?

Dr. Samer Mattar: This monumental effort was the fruition of relentless efforts, much energy, and provision of resources by numerous components of ASMBS. It is a prime example of what can be achieved through the power of organization and unified sense of purpose.

Our Access To Care committee under the leadership of John Scott, MD, FASMBS, and our Political Action Committee (PAC), under the directorship of John Morton, MD, MPH, FACS, FASMBS, played important and sustained roles in this effort, ... Ann Rogers, MD, FASMBS, and her local team of activists ... doggedly and repeatedly pursued opportunities to meet with state legislators and decision makers and explain the myriad benefits of providing access for our patients." [With font emphasis added.]

6. The lobbying efforts of Dr. Rogers are also mentioned by her employer in similar (or identical) articles published in January 2018 and republished on August 1, 2021:

"She is Pennsylvania's Access to Care representative for the American Society for Metabolic and Bariatric Surgery ...

Over the years, Rogers has met with state and national legislators, the physician general of Pennsylvania and Gov. Tom Wolfe. Each year, she makes presentations to the Pennsylvania Employees Benefit Trust Fund [PEBTF] about the safety, effectiveness and health benefits of weight-loss surgery.”

Questions posed

7. Based on the preceding information, the following inquiry is made:

Is Judge Edward M. Marsico of the Dauphin County Court in Harrisburg, PA related in any way to Ron Marsico, the person who was associated with the Pennsylvania State Legislature in Harrisburg, PA, and who seemingly was being lobbied by those affiliated with the professional interests of Ann M. Rogers M.D. of the Hershey Medical Center located near Harrisburg, PA?

8. If related by kinship, what is the degree of relationship? The following chart shows designations of degree of kinship used in civil law (as reproduced from (https://heirbase.com/degrees_of_kinship_chart/):

10. A proposed order is attached to allow acknowledgment or denial of relationship between Edward M. Marsico and Ron Marsico, and if related by kinship, by what degree.

Robert Barclay

5

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

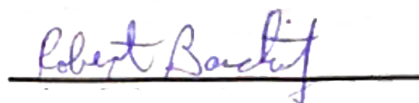
ROBERT P. BAUCHWITZ,
Plaintiff

v.

ANN M. ROGERS,
Defendant)
)
)
)
)
)
)
)
)NO. 01336-DR-17
PACES Case No. 640116732CIVIL ACTION – LAW
IN DIVORCE**CERTIFICATION OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/17/21



Robert P. Bauchwitz
Plaintiff
23 Harlech Drive
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pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ROBERT P. BAUCHWITZ,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

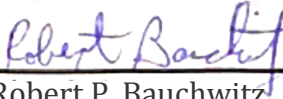
PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the Motion Of Inquiry Re Relationship To Opposing Party upon the persons and in the manner indicated below:

Service and Filing

By First Class Mail to: DOMESTIC RELATIONS SECTION Human Services Building 8 th FL 25 S. Front St. Harrisburg, PA 17101	By First Class Mail to: James R. Demmel, Esquire DEMMEL LAW OFFICE, LLC 1544 Bridge Street New Cumberland, PA 17070
--	--

Date: 8/17/21


 Robert P. Bauchwitz
 Plaintiff
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 Wilmington, DE 19807
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Copies Distributed 8/31/21 **FILE COPY**
P

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,
Plaintiff

NO. 01336-DR-17
PACES Case No. 640116732

v.

ANN M. ROGERS,
Defendant

CIVIL ACTION - LAW
IN SUPPORT

2021 AUG 31 4:11:40
DAUPHIN COUNTY
COMMON PLEAS

ORDER RE RELATIONSHIP

AND NOW, this 30th day of AUGUST, 2021, upon consideration of Plaintiff's Motion of Inquiry re Relationship to Opposing Party, it is hereby **ORDERED** that that the record reflect that trial court Judge Edward M. Marsico has the following relationships to former Pennsylvania State Legislature Representative Ronald Marisco:

business: _____; NONE ☐
 professional: _____; NONE ☐
 personal: _____; NONE ☐
 kinship: Cousin _____; NONE ☐

BY THE COURT

E. M. Marsico

J.

Distribution:

1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com

2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

K3

ROBERT P. BAUCHWITZ,
Plaintiff

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA

Exhibit C

vs.

: NO. 01336 DR 2017

ANN M. ROGERS,

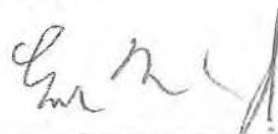
Defendant :

: PACSES. NO. 640116732

ORDER

AND NOW, this 27th day of July, 2021, upon consideration of Plaintiff and Defendant's memoranda of law regarding whether a de novo hearing shall be conducted regarding the termination of *alimony pendente lite*, it is hereby **ORDERED** that a de novo hearing in this matter is warranted. However, because, at the request of Plaintiff, the original domestic relations docket has been forwarded to the Superior Court of Pennsylvania to address the pending appeal in this matter, a de novo hearing will be scheduled once the Superior Court has disposed of the matter on appeal and the domestic relations docket has been returned to this court.

BY THE COURT:



EDWARD M. MARSICO, JR., J.

DISTRIBUTION:

James R. Demmel, Esq. – 1544 Bridge Street, New Cumberland, PA 17070
Robert Bauchwitz – 23 Harlech Drive, Wilmington, DE 19807
Court Administration

July 28, 2021
I hereby certify that the foregoing is a true and correct copy of the original filed. 1336 DR 2017
Matthew R. Krupp
Prothonotary

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

ORDER RE ANSWERS TO INQUIRIES

AND NOW, this _____ day of _____, 2023, upon consideration of Plaintiff's MOTION OF INQUIRY and PETITION PURSUANT TO RECUSAL AND DISQUALIFICATION, it is hereby **ORDERED** that that the record reflect that trial court Judge Edward M. Marsico has made the **WRITTEN ANSWERS**, below and appended, to the Questions found at Section VI of the aforementioned Motion and Petition.

BY THE COURT

J.

Distribution:

1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com

2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

QUESTIONS

1. Plaintiff Robert P. Bauchwitz in the above captioned case, and as Defendant in the associated case, 2017-cv-669, motions to the trial court for responses regarding the following questions, all of which apply to the cases docketed as 2017-cv-6699 or 01336-DR-17:

Abortion and suspension of hearing in progress

2. What was the exact basis for aborting the hearing in progress on June 7, 2021?

Append written (typed) answer if additional room is necessary.

3. On what did the trial court base its claimed/implied lack of access to necessary docketed documents in its Order of July 27, 2021, which would have prevented hearing of the APL matter until after documents sent to the Superior Court had been returned?

Append written (typed) answer if additional room is necessary.

4. Has Judge Edward M. Marsico, or any judge of whom he is aware, ever continued to deal with trial court matters requiring access to docketed case documents, including by holding hearings, while some or all of the case documents had been sent to an appellate or other court?

Circle one: YES/NO.

Relationship with Judge Ronald S. Marsico

5. Has Judge Edward M. Marsico had any discussions generally with his cousin, Judge Ronald S. Marsico, about the judiciary or law?

Circle one: YES/NO.

6. Has Judge Edward M. Marsico had any discussions generally with his cousin, Judge Ronald S. Marsico, about any specific local or state judicial matters?

Circle one: YES/NO.

7. Has Judge Edward M. Marsico had any discussion or communication, directly or indirectly, with his cousin, Ronald S. Marsico, concerning Defendant Ann M. Rogers, M.D. of Hershey, Pennsylvania, her bariatric program's connections with, or attempts to lobby, Ronald S. Marsico, or any aspect of this captioned case or the companion case, 2017-cv-6699?

Circle one: YES/NO.

8. Have there been any publications mentioning the relationship between the cousins Edward M. and Ronald S. Marsico?

Circle one: YES/NO. If yes, list the publications:

Relationship and interactions with opposing party

9. Does Judge Edward M. Marsico have any undeclared connections to Ann M. Rogers, M.D. of the Hershey Medical Center, including personal, her bariatric or any other program, employers (e.g. the Hershey Medical Center), related institutions (e.g. The Pennsylvania State University/Penn State, or Cornell University) or any through any other person or entity?

Circle one: YES/NO. If yes, list the connections.

10. Was there any *ex parte* receipt of communications regarding judicial or master assignments, evidence, or claims from ex-Wife's attorney, James R. Demmel?

Circle one: YES/NO.

11. Has Judge Edward M. Marsico ever had communications or notice from anyone regarding Husband's involvement in the federal scientific fraud qui tam case, 04-2892 (TJS), Eastern District of Pennsylvania (EDPA), in which Husband had acted as Relator, other than what was written by divorce master Cindy S. Conley in her report of March 13, 2020, or the Superior Court opinion of February 4, 2022, in the associated case?

Circle one: YES/NO.

Assignment of judges

12. Did the Family Court motion rotation from November 15, 2019 – March 24, 2020, inclusively, for case 2017-cv-6699, and as relevant the above captioned case, consist of three Dauphin County judges, John McNally, Royce Morris, and Edward Marsico?

Circle one: YES/NO. If no, list the motion judges for each case.

13. If so was the rotation weekly?

Circle one: YES/NO.

14. Was the rotation, whether weekly, monthly, or in some other unit of time, in the order: McNally, Morris, and Marsico?

Circle one: YES/NO. If no, what was the order and/or system by which motion judges were selected?

15. To Judge Edward M. Marsico's knowledge, was any request by any judge made to the Court Administration, President Judge, or any other relevant entity, to alter the motion case rotation in the two cases which are the subject of these questions (2017-cv-6699 or 01336-DR-17)?

Circle one: YES/NO.

16. Was there any communication by this judge, Edward M. Marisco, to the Dauphin Court Administration, President Judge, or any other relevant entity to express a willingness or preference to handle any part of the two associated cases, including trial?

Circle one: YES/NO.

17. Was there any irregular assignment of judges in this case to the knowledge of Judge Edward M. Marsico?

Circle one: YES/NO. If yes, what was the nature of the irregularity.

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

ORDER RE RECUSAL/DISQUALIFICATION

AND NOW, this _____ day of _____, 2023, upon consideration of Plaintiff's MOTION OF INQUIRY and PETITION PURSUANT TO RECUSAL AND DISQUALIFICATION, it is hereby **ORDERED** that trial judge Edward M. Marsico will be **RECUSED/DISQUALIFIED** from further involvement in the above captioned case and its companion Dauphin County case 2017-cv-6699.

BY THE COURT

J.

Distribution:

- 1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com
- 2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

ORDER REINSTATING ALIMONY PENDITE LITE

AND NOW, this _____ day of _____, 2023, upon consideration of the Plaintiff's MOTION OF INQUIRY and PETITION PURSUANT TO RECUSAL AND DISQUALIFICATION, this Court's orders of March 21 and 24, 2021, which collectively terminated the then existing *alimony pendite lite* order, are hereby **VACATED**, and the *alimony pendite lite* order of December 26, 2017, is hereby **REINSTATED** effective March 22, 2021.

BY THE COURT

J.

Distribution:

- 1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com
- 2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

ORDER ADJUSTING ALIMONY PENDITE LITE

AND NOW, this _____ day of _____, 2023, upon consideration of the Plaintiff's MOTION OF INQUIRY and PETITION PURSUANT TO RECUSAL AND DISQUALIFICATION, and in light of the accompanying order REINSTATING APL, this Court hereby **ORDERS** the **ADJUSTMENT**, by Dauphin County Domestic Relations, of the amount of the *alimony pendite lite* originally ordered in this case on December 26, 2017, in accordance with Pa.R.C.P. 1910.16-5(e), and the relevant financial data as of September 19, 2021.

BY THE COURT

J.

Distribution:

- 1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com
- 2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,

Plaintiff

v.

ANN M. ROGERS,

Defendant

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NO. 01336-DR-17

PACES Case No. 640116732

CIVIL ACTION – LAW

IN DIVORCE

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 1/2/23



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pro se

ROBERT P. BAUCHWITZ,)	
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v.)	
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ANN M. ROGERS,)	CIVIL ACTION – LAW
Defendant)	IN SUPPORT

By First Class Mail to: DOMESTIC RELATIONS SECTION Human Services Building 8 th FL 25 S. Front St. Harrisburg, PA 17101	By First Class Mail to: James R. Demmel, Esquire DEMMEL LAW OFFICE, LLC 1544 Bridge Street New Cumberland, PA 17070
--	--


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IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,
Plaintiff

v.

ANN M. ROGERS,
Defendant

NO. 01336-DR-17
PACES Case No. 640116732

CIVIL ACTION - LAW
IN SUPPORT

**MOTION OF INQUIRY and PETITION
PURSUANT TO
RECUSAL AND DISQUALIFICATION**

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DAUPHIN COUNTY