IN THE SUPREME COURT OF MISSISSIPPI

No._____

ROBERT SULLIVANT JR.
Petitioner/Defendant

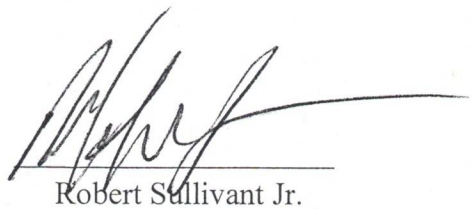
vs.

ROBERT SULLIVANT SR.
Respondent/Plaintiff

CERTIFICATE OF INTERESTED PERSONS

I, Robert Sullivant Jr., hereby certify that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Robert Sullivant Jr, Petitioner/Defendant
2. Robert Sullivant Sr, Respondent/Plaintiff
3. Swayze Alford, Counsel for Respondent/Plaintiff
4. Kayla Ware, Counsel for Respondent/Plaintiff
5. Evelyn Stevens, third-party co-defendant to counterclaims.
6. James Justice Esq., attorney for Evelyn Stevens.
7. Freeland Martz PLLC., attorney(s) for Dr. Frank Perkins



Robert Sullivant Jr.
Petitioner/Defendant, Pro Se

RELATED CASES

Pursuant to Miss. R. App. P. 5(b), the following cases present the same, or similar issues as the Petitioner raises in his appeal.

Winder v. State, 640 So. 2d 893 (Miss. 1994).

In response to the trial Judge offering testimony as to disputed facts, which favored the State, the Court declared that: "I would also hold inadmissible the unsworn testimony of a trial judge, *sua sponte,* from the bench. When a judge makes statements into the record to be taken as evidence for one side or the other, he immediately becomes incompetent to preside as judge. A judge may not testify before himself. Any evidence that the prosecution offers must be the prosecution's evidence from a competent witness subject to strenuous cross-examination. That is not the case when the trial judge testifies."

Avery v. State, 119 So. 3d 317 (Miss. 2013).

After Petitioner Avery's trial and conviction in this matter, he discovered that the trial judge may have communicated improperly with Kim Watts, a juror, and thus sought a hearing on the matter. At the beginning of the hearing, in the presence of the anticipated witnesses, the judge announced that he would testify as to the facts surrounding his alleged communication with Kim Watts. Avery asked that the witnesses be sequestered. The judge denied the request and stated that "I'm going to testify as to what I understand happened, or I'll put on the record what I understood happened. And if they feel like there's anything different, then they—you know, you could ask them about it." Avery's counsel *yet again* protested the failure to sequester the witnesses, noting that the judge's testifying, particularly because he was the judge, could influence the other witnesses' testimony. The judge responded: "I've got a pretty clear memory about what happened, and I'm quite certain that I—there's nothing I did placed any influence on any juror, and I just think this is much ado about nothing, and I frankly resent it. But I will testify to the truthfulness of it." The judge went on to testify as to his version of the events, with all other witnesses present.

The judge did not offer to subject himself to examination by the attorneys.

While this issue was not raised in this appeal, Justice King's opinion on this matter is still relevant and authoritative. Justice King states that he "notes the troubling ethical issues surrounding a judge presiding over a proceeding at which he is a witness and in which he has personal knowledge of the disputed facts. Code of Judicial Conduct Canon 3E(1)(a) & (d)(iv); *see also Brashier v. State*, 197 Miss. 237, 20 So.2d 65 (1944). The failure of the judge to *sua sponte* recuse himself from presiding over the hearing on Avery's post-trial motions appears problematic. However, neither party raises this issue, thus, I decline to address it."

Schmidt v. Bermudez, 5 So. 3d 1064 (Miss. 2009)

This case also parallels the current matter regarding impartiality and discourteousness to a litigant. As from the Court's preliminary statement:

> "We wish to emphasize at the outset that today's opinion should not be read as an infringement on a trial judge's authority and responsibility to control his or her courtroom. Nor should it be read as an attempt to discourage trial judges from taking reasonable actions to ensure fairness, such as asking questions of witnesses. As appellate judges, we perform our duties far from the smoke and fire of the courtroom battles faced daily by trial judges. Thus, we owe substantial discretion to their decisions, particularly when they encounter difficult attorneys and witnesses. However, as with all things of this world, **there are limits**.
>
> Of a trial judge's numerous duties, the one which overshadows all others; the one which must be closely guarded and carefully protected, is the duty to ensure that all litigants receive a fair trial before an impartial tribunal. Every rule of professional and judicial conduct is aimed directly at that goal.
>
> During the trial of this custody dispute, **the chancellor took over the questioning of the defendant**. **Unhappy with her answer to one of his questions, the chancellor informed the defendant that she had "diarrhea of the mouth."** Because of this, and other abusive and inappropriate conduct, we conclude that the defendant did not receive a fair trial before an impartial tribunal, and we remand for a new trial before a different chancellor on all issues."

The Court in *Schmidt* also noted that the Chancellor's repeated accusations that the Petitioners were lying "were clearly improper", and as is the case here, the court also found that "As the preceding excerpts show, **the chancellor insulted and badgered Schmidt repeatedly during her cross-examination, before she had even had a chance to present her case**. **Oftentimes, when Schmidt attempted to give simple answers to questions from the court, such as that she signed her divorce agreement with Bermudez because she was afraid, the chancellor rejected her answer and asked her to explain further.**"

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INTRODUCTION AND STATEMENT OF THE REASONS WHY LEAVE TO APPEAL SHOULD BE GRANTED

The Petitioner's *Motion to Recuse* Judge Whitwell was premised on several incidents that have occurred throughout the course of litigation that do more than give the mere appearance of impropriety. They in fact show an undeniable impartiality towards the Petitioner's opposition. Many of Judge Whitwell's comments and actions were undeniably out of line with the Code of Judicial Ethics, and his bias against the Petitioner is evident on its face. Even Judge Whitwell's Order denying the Petitioner's Motion to Recuse adopts a harsh and inflammatory tone towards the Petitioner, and also openly insults him in several areas.

Judge Whitwell's Order also makes provably false assertions and designed to excuse and/or justify the actions that deprived the Petitioner of his procedural rights. He makes demonstrably false allegations towards the Petitioner of being "negligent", "flagrant", "inflammatory", and having "a total disregard for common sense". (See *Order* pg.89). He also utilizes an old cliché about pro se clients being "idiots" and "fools" in his Order, apparently just to highlight his disdain for said litigants in his courtroom and just how ignorant he thinks they are. (*Id*. pg.92).

The Petitioner did not come forth with a *Motion to Recuse* Judge Whitwell because he disagreed with his decisions, because the case is emotional, or because he is frustrated. The Petitioner brought the *Motion to Recuse* after Judge Whitwell chose to repeatedly badger the Petitioner in open court, infer multiple times that he was lying to the court, refuse to apply appropriate Mississippi Law that would have ended the case months, if not years ago, and allowing the opposing counsel to call witnesses on a false premise while lying to the court about the nature of said witness's testimony.

Judge Whitwell has allowed this case to descend into complete chaos. Opposing counsel has been allowed to overtly violate this court's orders and the parties' stipulations, suborn perjury of a witness, and misappropriate the funds of the parties in this case to the point where this Petitioner had to draft a *Temporary Restraining Order* before opposing counsel would reconcile the funds. Since the Court never took action to discipline counsel for the above actions, Petitioner attempted to address these matters through a *Motion to Disqualify* opposing counsel. However, the court refused to hear this motion because it was concerned with counsel's reputation in the presence of members of the public. The court than determined that it would not

hear the Petitioner's *Motion to Disqualify* until the Bar Association produced a report related to his Bar Complaint. (*Transcript*; May 5, 2023, pg.7:lns. 2-4).This decision is inexplicable.

On top of all this, Judge Whitwell testified as to an event that he alleges he witnessed between the two parties in the underlying case. His recall of this event is not accurate whatsoever and is adamantly disputed by the Petitioner. (*Id* *pg.6; Aff. Of RSJ. ¶ ¶ 4-19). However, Judge Whitwell took his own recollection as undisputed fact and used it to conclude certain facts that are also undeniably false, namely, that the Petitioner and his father do not have a loving relationship (*Id*); and then ultimately denied the Petitioner conservatorship over his father based on the Judges own factual and character testimony, which the opposing party took great benefit from. To justify this decision, Judge Whitwell stated to the petitioner that "I'm the judge of what the statements are and whether or not I believe them or the credibility of them, and that is my job and responsibility." (*Transcripts*; July 7, 2023, pg.15:lns. 25-29). This explanation essentially says that Judge Whitwell is allowed to offer disputed facts into the record based on his own observations, and then make a credibility ruling as to himself. No doubt that Judge Whitwell will always find his own version of events to be credible and factual, and that to this end the Petitioner stands no chance.

Judge Whitwell appointed a conservator to the Petitioner's father on the basis of perjured testimony from an expert witness and allowed his father to draft a new Will on this same basis. (*Order Denying Recusal;* pg.89). To be clear, the underlying case involves the Petitioner, who is the son of the Respondent, who has suffered from Dementia for several years, and who also has Major Vascular Neurocognitive Disorder. (See *Exhibit 1*). This decision from Judge Whitwell to appoint a third-party conservator and to allow the Respondent to craft a new Will on the basis of known perjured testimony warrants his recusal on its own. There is transparent elder abuse per Miss. Code Ann. §§ 43-47-1 through 43-47-1, taking place right in front of the Judges' eyes and he is not only ignoring it, but also facilitating it.

This Court should also accept review because Judge Whitwell does not explain or justify the allegations of the Petitioner in his *Order Denying Recusal*. Judge Whitwell's Order in this regard consisted of even further unwarranted and unsubstantiated personal attacks on the Petitioner, as well as questionable and outright false statements. A review of Judge Whitwell's Order will demonstrate that his negative opinion of the Petitioner is not difficult to discern and that he does not even try to hide his animus towards the Petitioner.

Judge Whitwell's animus towards the Petitioner is also evidenced by *Exhibit 2*, which shows that Judge Whitwell's clerk would not provide his order denying recusal to the petitioner for four days following its entry. Knowing that the Petitioner only has 14 days to appeal this order, Judge Whitwell's office spent 4 of those days failing to provide the petitioner a copy of the order, while all other parties (and a non-party) to the action had been provided a copy of this order. This Petitioner did not receive a copy of the Order Denying Recusal until **July 21st, 2023**. (*Id*.; Aff. Of RSJ, ¶ 24). For this reason, this appeal has been timely filed.

Judge Whitwell's continued presence in this matter in adverse to the interests of justice, it places the judiciary into disrepute, and there is a strong appearance, if not a guarantee, that Judge Whitwell's objectivity has been unquestionably compromised and that he is no longer suitable to hear this case. He has accused the Petitioner of lying, refuses to apply Mississippi Code favorable to the Petitioner, and lied in open court and in his Order denying recusal when he states that "Dr. Perkins' report contains information related to the testamentary capacity [of the Respondent]." It does not, and this false premise was the sole basis for allowing the testimony that ultimately cost the Petitioner conservatorship over his own father and allowed his mentally incapacity father, who has a history of being a victim to financial scams, to create a whole new Will.

STATEMENT OF FACTS, PROCEDURAL HISTORY, AND STATUS OF THE CASE

The Respondent brought the underlying action to this appeal on October 25th, 2021, alleging thirteen (13) counts against the Petitioner. These charges are premised on a series of financial transactions involving the two parties from a joint account they held together. This joint account was used to deposit the proceeds from the sale of a home that was jointly owned by both parties.

Of the $230,000 of **joint funds** that the plaintiff transferred, while no doubt acting under the pernicious influence of Evelyn Stevens, his "sitter", into his personal account, 50% belonged exclusively to the Petitioner.

For many years up to this point, Respondent had been displaying mental deficiencies that excluded him from making any coherent financial decisions without assistance. He has over drafted his Regions Bank accounts, succumbed to thousands of dollars in mail scams, has failed to pay mortgage payments in 18 months, failed to file or pay 2020- and 2021-income tax, and

substantially ran up credit cards that the petitioner had paid down for him. Recently, the Respondent has squandered $59k of court ordered frozen funds to buy Ms. Stevens a pick-up truck, and through mail scams. This type of pernicious and destructive activity prompted the petitioner using the Power of Attorney, as well as rights arising under certain joint accounts, to take steps to preserve his father's funds.

On June 9th, 2021, the petitioner did in fact resecure the $230,000. He then promptly transferred $50,000 into the plaintiff's T.D. Ameri Trade account, paid the plaintiff's mortgage, and restored his car insurance which had lapsed. He also transferred $5,000 back to the joint account at Regions Bank to pay the usual household expenses

Despite all of the foregoing, including the glaring the fact that the Petitioner was well within his legal rights to complete these transactions, the Plaintiff filed this action charging 13 different counts of violating his duty per the Power of Attorney. The Petitioner answered with counterclaims on December 9, 2021.

It should be noted per evidence already in the record and through depositions, it was Evelyn Stevens that located attorney Swayze Alford, made the first appointment, and sat in on client attorney conversations that led to the malicious underlying lawsuit. Also, it was Ms. Stevens that took the Respondent to attorney Jay Westfall's office to revoke the POA the day after they withdrew the joint funds.

Throughout the year 2022, the parties conducted discovery and pretrial motioning, and subjected the Respondent to two IMEs pursuant to the Mississippi GAP Act. In 2023, several hearings have been conducted in this matter. The first was on January 12, 2023 and was regarding the Respondent's *Motion to Set Aside Default*. The second was on January 25, 2023 and was regarding the Petitioner's *Motion for Summary Judgement*. The last hearing to take place was on May 9th, 2023, and this hearing was related to several motions, including: (1) *Plaintiff's Motion for Trial Setting*, (2) *Plaintiff's Motion for Partial Disbursement*, (3) *Plaintiff's Motion to Appoint Conservator*, (4) *Plaintiff's Request for Permission for Robert Sullivant, Sr. to Execute Will*, (5) *Defendant's Objection to Plaintiff's Request for Trial Setting*, (6) *Defendant's Cross-Motion to Continue Trial*, (7) *Defendant's Motion to Disqualify Mr. Alford and Counsel for Plaintiff*, (8) *(JR's) Petition for Emergency Appointment of Conservator of Robert Sullivant, Sr*. The transcripts related to each of these hearings are attached and referenced.

Dr. Frank Perkins was appointed per Miss. R. Civ. Proc. 35, by stipulation and court order to conduct an IME on the Respondent to determine his need for a conservator. Dr. Perkins was not appointed to examine the Respondent for "testamentary capacity" and no mention of such an exam or results is found anywhere is his report. (*See* Exhibit 1). Despite numerous attempts, Dr. Perkins refused to agree to allow the Petitioner to depose him about his findings. This is also despite the fact that the Petitioner has an evidentiary right to dispose this expert witness. (MRE 706(b)(2)). The Petitioner ended up having to issue a subpoena to Dr. Perkins. However, Dr. Perkins remarkably responded to the subpoena by employing a separate attorney who then filed a *Motion to Quash* the subpoena despite never filing an appearance. (*See* Exhibit 5). Judge Whitwell allowed this motion to be set without the customary agreed order from both parties for August 30, 2023 in Pittsboro. A day and place that the defendant was unable to attend.

On April 28, 2023, the Petitioner added third-party defendant Evelyn Stevens to the matter, alleging undue influence and fraud. Ms. Stevens answered the Complaint on July 5, 2023. The parties in the underlying case have no further hearings on the calendar until August 30, 2023, when the Court will hear Dr. Perkins' *Motion to Quash*.

Judge Whitwell not only incorrectly asserts at the July 7 hearing and in his Order, that "testamentary capacity" information is in the report from Dr. Perkins, but he also insults the Petitioner by calling him "negligent", for allegedly not reading the report on the basis of this false assertion. (*Order Denying Recusal*; pg.90). After the Petitioner lost every motion on this day, he began inquiring as to potentially seeking recusal. The Petitioner sought and received transcripts from the hearing and was able to review them, reference them with Mississippi Law, and determine that a motion to recuse would be the proper course of action at that time. (Aff. Of RSJ, ¶ 40). The Petitioner filed his *Motion to Recuse* on June 21, 2023.

No trial date has been scheduled, and this petition has been **timely filed, pursuant to MRAP 48(B)** within 14-days of the Petitioner finally receiving the Order denying recusal from the clerk, which was on **July 21st, 2023**, well after all other parties and non-parties were sent a copy. (Ex. 2, pg. 5; Aff. Of RSJ, ¶ 25)

STATEMENT OF THE QUESTIONS PRESENTED

I. Did Judge Whitwell Abuse his Discretion in Denying the Petitioner's *Motion to Recuse*?

ARGUMENT AND AUTHORITIES

1. Judge Whitwell Did Testify as to Disputed Facts in Favor of the Respondent.

A hearing in this matter was conducted on May 9, 2023, to dispose of several issues. One of which was the conservatorship of Robert Sullivant Sr. At the hearing, prior to hearing arguments from either side or the calling of any witnesses, Judge Whitwell denied the Petitioner conservatorship over his father and instead gave it to the Clerk, Sherry Wall. (*Transcript*; May 9, 2023; pg.6:lns. 8-20). The primary basis for Judge Whitwell's decision is stated in the story he testifies to at the hearing on May 9, 2023, regarding what he allegedly witnessed in Holly Springs. (See pg. 8, lines 6-23).

This story is unequivocally false and never happened. (*See* Aff. Off RSJ, ¶¶ 4-19). The Petitioner and his father actually have a wonderful relationship, spending weekends together, searching for homes, getting lunch, and catching up with each other. Judge Whitwell recites this version of events as undisputed fact when they are far from such. Allegedly this is Judge Whitwell's own observation and allegedly his own presentation of disputed evidence and certainly qualifies as "testimony", yet Judge Whitwell does not see it that way. (Aff of RSJ, ¶¶ 15-19) Judge Whitwell then takes his own testimony and uses it to determine that "there is no closeness of relationship [between petitioner and his father], to allow me to appoint you as conservator." (*Transcript*; pg.6:lns. 16-20).

This testimony by Judge Whitwell was highly prejudicial to the Petitioner and the inference that the Petitioner and his father have "no closeness of relationship", is improper, incorrect, and based on disputed facts.

2. Judge Whitwell has Failed to Admonish Opposing Counsel for Numerous Illicit Actions but Admonished the Petitioner in Open Court for a Harmless Error.

Mr. Alford has been allowed, without any admonishment whatsoever, to misappropriate client funds, to not file an answer in this case for over a year, to intentionally withhold discovery, and to allow a third-party access to SR's bank accounts and the parties joint funds, and to allow his client to be scammed and to write check to scammers, which the Court admits it was/is aware of. A $41,000 truck was also purchased with these funds and Mr. Alford repeatedly failed to reconcile the accounts. (*See* Exs. 3 & 4) In response, this court did nothing.

Mr. Alford has violated court orders, including the order to hold the parties' funds in trust, and has been shown to be persistently dishonest with JR and the Court, and the Court does nothing. (*Id.*, See also; *Transcripts*; Jan. 9, 2023, pg.10:lns 12-18).). Cannon 3(D)(2) states that

"A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action." This court has taken no action against Mr. Alford, not even an admonishment, yet has chastised the petitioner on the record for a harmless error. Ironically, Mr. Alford's counsel, Jim Wyly of Gulfport, argues numerous times in response to the Bar Complaint that his client could not have done anything unethical, because "the Judge has never admonished him." Mr. Alford is now relying on the cooperation of Judge Whitwell in order to deceive the Bar Association and escape responsibility for his highly unethical behavior. Judge Whitwell has more than obliged by maliciously contributing to an echo chamber of character attacks by inappropriately referring to the Petitioner as "frustrated", "emotional", "upset", and "inflamed", and not to mention "lacking common sense". Judge Whitwell's entire *Order Denying Recusal* is nothing more than a false narrative regarding the petitioner's motives and feelings being paraded as a defense to his allegations.

Not only has the court failed to admonish Mr. Alford, but Your Honor has also provided excuses for his behavior and has stated on the record that "he didn't think Mr. Alford just moved those funds on a whim to some bank account." (*Transcript*: Jan. 12, 2023, pg. 39:lns. 2-4). However, this is exactly what Mr. Alford did and he admits to doing it. (*Id.,* *pg. 51:lns. 12-18).

Judge Whitwell allowed opposing counsel to misappropriate client funds, and when his client started predicably writing checks to scammers and making frivolous purchases, opposing counsel then reconciled the account with his own money (comingling personal funds). All of this, according to Judge Whitwell, is no problem at all. However, when the petitioner simply attempted to file a "proposed order" as an exhibit to his response to motion to set aside default, Judge Whitwell took several minutes out of a hearing to embarrass and admonish him on the record. (*Id*., *pgs. 42-43).

In very telling fashion, when opposing counsel spent time during this same hearing explaining on the record that *he misappropriated client funds and failed to hold the parties' funds in a trust account*, which is a highly egregious violation of the standards of ethics and an act that could affect the bar license of opposing counsel, Judge Whitwell's immediate response upon completion of this sordid explanation was, "Alright, let's see if there's anything else." (*Id.*, *52:lns. 4-6).

This laid-back attitude towards opposing counsel's violations can also be easily found in his *Order Denying Recusal* (pg. 82), when he states that counsel "did not get a second order for depositing the money (in a non-trust account)", that opposing counsel "allowed [respondent'] to "spend some of the money", and that the money used to purchase a $41,000 truck form the account was "returned" and "the truck was sold." Essentially, these massive violations committed by opposing counsel and directly related to the misappropriation of client funds are worthy of nothing more than a shoulder shrug from Judge Whitwell, who also yet again tries to bail out Mr. Alford by stating that the money was "mistakenly spent but was all put back upon Mr. Alford being made aware of the spending". (*Id*., pg. 85). Judge Whitwell is not being honest with this statement, as proven by *Exhibit 3*, which shows that Mr. Alford was aware of the spending for months and refused to reconcile the account until a TRO was drafted by the Petitioner, and right before the court was set to hear the *Motion to Disqualify* Mr. Alford. (See also Aff. Of RSJ, ¶¶ 3—38).

Judge Whitwell also admonished this petitioner for taking money out of the parties joint account, despite replacing it promptly, by stating that:

> "It's kind of like the 51,000 when you [petitioner] paid it back after the lawsuit. When I was US Attorney, I prosecuted some very influential people, who decided at the last minute they would write us a check and pay it into the state auditor to see if they couldn't get around being prosecuted. And the fact that you paid the money after the fact doesn't fly. You committed the offense already before, before it happened." (*Transcript*; Jan. 25, 2023, pg. 17:lns. 12-18)

For reasons that can only be related to bias and impartiality, Judge Whitwell refuses to apply this standard to opposing counsel, who did allow the misappropriation of ~~client~~ funds, but was excused on the grounds that "the money was all put back…" by writing a check. It is difficult to discern without the presence of impartiality, how the petitioner's actions are likened to a criminal offense by the Judge, while opposing counsel's much more egregious actions are dismissed entirely.

It is also worth noting that Judge Whitwell, in his *Order Denying Recusal*, points out the myriad of motion practice that has taken place with the Petitioner acting pro se, and this is the only example of the petitioner misunderstanding a rule or directive *anywhere within the record* of these numerous motions and responses back and forth. Judge Whitwell also tells the Petitioner, on the record, that he has "done **a doggone good job** of filing what you've filed."

(*Transcript*; Jan. 12, 2023, pg. 35:lns. 1-5), contradicting any assertion he makes now through his *Order* that the petitioner refuses to follow, or "lacks understanding of the rules". (*Order* pg. 92).

3. Judge Whitwell Refused to Hear Petitioner's Motion to Disqualify Attorney for the Respondent, on the Sole Basis on Public Presence

The trial Judge in this matter has not treated the litigants equally. Due to the actions, ethical violations, and general malfeasance from Mr. Alford in this case, a *Motion to Disqualify* him from this case was filed by JR. This Motion was set to be heard on May 9th, 2023. However, Your Honor refused to hear the Motion on that day, citing public presence and the fact that the "Bar Association will deal with it". (*Transcript*; May 9, 2023, pg. 7)

Cannon 3(B)(2) states that "A judge shall not be swayed by partisan interests, ***public clamor, or fear of criticism***." In this case, Your Honor refused to hear a motion related to the disqualification of counsel on the sole basis of *potential* "public clamor". A judge is to be faithful to the law and to ignore outside influences. *Mississippi Comm'n on Jud. Perf. v. Sanders,* 749 So. 2d 1062,1070 (Miss. 1999).

Protecting the reputation of Mr. Alford is not only not a reason to deny a motion, but it is also strong evidence of bias in favor of Mr. Alford and shows that Your Honor has clearly taken a side and is not impartial. Further, Judge Whitwell's explanation for this in his *Order Denying Recusal* is wholly insufficient and hardly provides an innocent explanation.

Judge Whitwell explains in his Order that the *Motion to Disqualify* was "premature", because a bar complaint was filed first and so "it is proper for the Bar to take it up first." (*Order Denying Recusal*; pg. 84). This does not make sense and Judge Whitwell does not explain how a *Motion to Disqualify* filed in the Chancery Court is at all dependent on the outcome of a Bar investigation. It is not the Bar Association's responsibility, nor do they have the authority or jurisdiction, to decide a *Motion to Disqualify*, or any other motion for that matter. Judge Whitwell also attempts to claim that the Petitioner's *Motion to Disqualify* and the Bar Complaint are the exact same thing, when he states in his Order that "the Court is not going to hear the Bar Complaint." (*Id*). This Petitioner did not ask the court to hear a bar complaint, it asked it to hear a *Motion to Disqualify*, which the court refused to do on the sole basis of "public presence". Unbelievably, he then also claims that his decision not to hear the motion was based on his desire "to remain impartial and unbiased and ruling on Motions ***as prescribed by law***." (*Id*).

The logic offered by Judge Whitwell here would mean that any litigant who files a Motion to Disqualify Counsel, must also file a Bar Complaint in order to assist the court on disposing of the Motion, and the Bar association must complete its investigation before the court will rule. Obviously, this is not workable or practical, especially when considering that not all actions that warrant disqualification would necessarily warrant a Bar Complaint as well. This is a glaring misapplication of law and a refusal of Judge Whitwell to adjudicate Motions that are in front of him for the sole reason of protecting the reputation of opposing counsel. In fact, in discussing why he refused to hear this Motion, Judge Whitwell confusingly asserts that hearing a motion to disqualify counsel "would be like me telling somebody their guilty until proven – they're innocent until proven guilty." (*Transcript*; May 9, 2023, pg. 7:lns. 13-16). This is illogical and shows abuse of discretion in favor of Mr. Alford.

It is unclear how Judge Whitwell conflates these two entirely unrelated legal principles and uses a presumption of innocence applied to criminal defendants, to refuse to hear a motion to disqualify counsel in civil proceedings.

4. Judge Whitwell Refuses to Adhere to Mississippi Law and Apply Appropriate Law to the Underlying Case

The Respondent's entire case in this matter is premised on Mississippi Code Title 87, Ch.3; §87-3-113, and on the language of the parties' POA, both of which read as follows:

> As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is **conclusive proof** of the non-revocation or nontermination of the power at that time.

JR has submitted numerous affidavits to the court stating exactly this, yet Your Honor continues to ignore this law and the language that said affidavits are "***conclusive proof***"; by arguing on behalf of the Plaintiff in a way that misapplies the law in a manner favorable to the Respondent.

At the hearing on January 25, 2023, Judge Whitwell was aware of and in possession of, sworn affidavits from the Petitioner stating that he was never notified of the revocation of the parties' POA. (See Ex. 6). Despite this, Judge Whitwell refuse to apply the law and refuses to accept the Petitioner's sworn affidavit as "conclusive proof", despite this very clear direction stated unambiguously in Miss. Code Title 87, Ch.3; §87-3-113.

Instead of properly applying the foregoing code, which would foreclose on most, if not all of the respondent's claim, Judge Whitwell proceeded to attempt to bully the Petitioner into admitting that he went to the Region's Bank in Batesville and admitting that that is where he was notified that the POA had been revoked. (*Transcript*s; Jan. 25, 2023, pgs. 7-10). Judge Whitwell infers that the Petitioner is lying by reminding him that he is under oath and then badgering him about "going to the bank in Batesville". At least three times during the court's interrogation of the petitioner did Judge Whitwell repeat the question, receiving the same answer each time, and each time retorting back with inferences that the petitioner was lying. (*Id*). During this exchange and throughout the entirety of this case, Judge Whitwell intentionally ignores Miss. Code Title 87, Ch.3; §87-3-113, for the sole purpose of keeping the respondent's claims alive in the underlying case.

Judge Whitwell's explanation for this decision in his *Order Denying Recusal* is to state that this is an emotional case, and that the petitioner simply "feels aggrieved." This passive attitude completely ignoring Mississippi law and standards of judicial conduct is pervasive throughout Judge Whitwell's Order. Judge Whitwell also accuses the petitioner of making "highly inflammatory personal attacks on the court", (pg. 86), without pointing to a single instance where this occurred. Filing a *Motion to Recuse* is hardly "a highly inflammatory personal attack on the court", and the fact that Judge Whitwell would characterize one as such, highlights his disdain for the petitioner in this matter and his inability to control his temperament and not take things personally. This is an inaccurate and irresponsible mischaracterization of the petitioner's actions in this case.

Finally, Judge Whitwell's deliberate ignorance of Mississippi Code is demonstrated even in his Order, when he declares that "[Petitioner] is offended that the Court is not taking his Affidavits as "conclusive proof' and that this Court argues on behalf of Plaintiff." (*Id*).

Here, Judge Whitwell essentially states that the petitioner is offended because Judge Whitwell refuses to follow the law. To this point, Judge Whitwell would be correct. However, it is noteworthy that in his Order, Judge Whitwell refers to the term "conclusive proof" as if these are the *Petitioner's chosen words*. They are not. The term "conclusive proof" is written into Miss. Code Title 87, Ch.3; §87-3-113, this was not by accident, and Judge Whitwell knows, or should know this fact. It has also been pointed out to him by the petitioner, as he admits, multiple times throughout this case.

5. Judge Whitwell Repeatedly Inferred that the Petitioner was Lying to Him During Questioning

The aforementioned line of questioning, related to whether or not the POA was in fact revoked by law, is further evidence of the impartiality and bias of Judge Whitwell in this case. There is no way to interpret the exchange at the hearing on January 25, 2023, as anything other than the Court inferring that the petitioner is a liar, and the Judge attempting to argue on behalf of the Respondent. (*Transcript*s; Jan. 25, 2023, pgs. 7-10). It also presents the question, where did the Judge gain this knowledge that Mr. Alford's case was contingent on, if no evidence of it is in the record? Also, why did the Judge interrogate the defendant on the false knowledge with out any foundation or precedent for the interrogation?

The court simply refuses to accept the petitioner's statement that he never went to Region's Bank in Batesville, and was thus, never informed of the revocation of power of attorney. Judge Whitwell's strong pushback during this line of questioning was not only inappropriate, but it also begs the question as to why Judge Whitwell pushed back so forcefully on this issue and why he refused to apply the appropriate Mississippi Law. It is clear from this exchange that Judge Whitwell overtly favors the respondent and will use his authority as Judge to shut down iron clad legal arguments in order to keep the respondent's case alive.

6. Judge Whitwell's Explanation Regarding the Petitioner's Allegations of Ex-Parte Communications with the Respondent is Contradictory

At a hearing on this matter on January 25, 2023, Judge Whitwell, on his own fruition, raised an issue related to JR placing a personal PIN on the TD Ameritrade account in question. He then accuses of JR of keeping a PIN on the account to prevent the plaintiff from accessing it without any evidence to support the accusation. (*Transcript*; pgs. 11-12). This line of questioning from Your Honor had to have come directly from Mr. Alford during an ex-parte communication, else Your Honor pulled this allegation from thin air. There is no mention anywhere in the parties' briefings on a PIN number.

On July 7, 2023, a hearing was held related to the Motion to Recuse. At this hearing, Judge Whitwell was defiant, insulting, and contradictory. First, Judge Whitwell instructs the Petitioner that he has "a lot of feelings that are not proper in this case", a prejudicial comment to which the petitioner promptly objected. (*Transcript*; pg. 16:lns. 10-12).

Next, Judge Whitwell attempts to explain how he got the idea of a PIN number without speaking to opposing counsel. (*Id*. *pgs. 34-37).

In response to this explanation, first, the word "PIN" is not in the record 4 times, as Judge Whitwell asserts. It is nowhere in the record. Second, this explanation is not believable; that a sitting Judge does has never heard the word "credentials". Third, Judge Whitwell asserts in his *Order* that he mistakenly used the acronym PIN (personal identification number), for the term's "username" and "password". There is a massive difference between a PIN, and a "username and password", and Judge Whitwell knows this.. The allegations related to a "PIN" came directly from opposing counsel and the distinction between these different terms is not insignificant. Judge Whitwell's choice of verbiage may have been indeliberate, but it was not a mistake. It was originated by the Respondent and communicated to Judge Whitwell, and contrary to Judge Whitwell's assertion in his *Order*, the standard for recusal is not "clear and convincing proof" of impropriety, it is the *appearance* of such.

7. Judge Whitwell was not Truthful in his Order Denying the Petitioner's Motion to Recuse

The report of Dr. Perkins is attached hereto. (*See*. Ex. 1).What the court will immediately note, is that there is no mention anywhere of "testamentary capacity", nor is there any evidence of any examination related to such. However, in his *Order*, Judge Whitwell repeats multiple times that "testamentary capacity is in the report" (*See* pgs. 89-90). It is not, and this is not debatable. Knowing that this information was not in the report, Judge Whitwell still asserted that it was, allowed testimony on this false premise, and then ruled against the petitioner based on this testimony. This is the height of impropriety.

Not only that, but he also accuses the petitioner of being "negligent" for not reviewing the report, and unbelievably states that "It was obvious [petitioner] had not read the report previously to the hearing and [respondent had]." (*Id*). There are no words for this allegation.

If anybody negligently failed to read the report, it was Judge Whitwell, as he states numerous times that "both parties had equal access to the report", and "the report addressed testamentary capacity." (*Id*). Again, it does not, and this statement from Judge Whitwell can be characterized as nothing less than a flat out lie crafted to allow prejudicial testimony that would damage the petitioner and benefit the Respondent.

II. REASONS TO GRANT INTERLOCUTORY APPEAL

The Petitioner has demonstrated that Judge Whitwell is not suitable to hear this case. His impartiality can be easily and justifiably thrown into question, and the appearance of impropriety and bias in fully present. Judge Whitwell has ruled against the petitioner time and time again, and often on the basis of misapplied law and outright dishonestly. Judge Whitwell actively aided opposing counsel by perpetuating the lie that "testamentary capacity" was in the IME report of Dr. Perkins. He continues to perpetuate this false claim in his Order denying recusal.

Judge Whitwell has also refused to hear the Petitioner's *Motion to Disqualify* on the sole basis of public presence, testified as a witness against the Petitioner and as to disputed facts, and relied on his own disputed testimony to rule against the Petitioner. Judge Whitwell than gave contradictory explanations as to how he came to the theory of a PIN being placed on the account and spent most of his Order denying recusal insulting the petitioner and dismissing his claims as being emotional and baseless. The entire language and tone of Judge Whitwell's Order is evidence of animus towards the petitioner.

Judge Whitwell's *Order* includes the quote that "a lawyer who represents himself has a fool for a client and an idiot for a lawyer". He then says that he "is not calling [petitioner] a fool or an idiot." (*See* pg. 92). However, this is exactly what he is doing. Judge Whitwell could not even get through his order without overtly demonstrating his disdain for pro se litigants (such as the petitioner), by using a quote that is commonly utilized to demean and insult pro se litigants and for no other purpose. Judge Whitwell qualifying this statement by adding that he is simply illustrating "the difficulty a lawyer has when he is trying to represent himself", is not persuasive. There are a myriad of other ways to say that a self-represented litigant faces challenges without calling them an "idiots" and "fools". Remarkably, in the next sentence, Judge Whitwell states that "these personal attacks by [respondent] on the court are an illustration of [petitioner] needing to hire counsel to fully represent him." These statements are nothing short of outright admissions that pro se litigants, especially this petitioner, are not taken seriously by Judge Whitwell. It is in fact Judge Whitwell who is engaging in personal attacks through his *Order*, by stating without any reference, that the petitioner "has a total disregard for common sense" (pg. 89), "attempted to use inflammatory accusations for his own negligence", that the "[petitioner] does not know the rules or refuses to follow them", that the "[petitioner's own actions and pleadings speak for themselves", (pg. 91), and that "JR *would* assert that this is harmless error", (pg. 85, and in reference to the proposed order, insinuating disdain for the petitioner.)

Judge Whitwell also attempts to dismiss the Petitioner's *Motion to Recuse* on the grounds that (in his opinion), it is untimely. Judge Whitwell states in his Order that the Petitioner had 30 days from the date of the May 9, 2023, hearing, to file his Motion to recuse; and that it was not filed until June 21st, 2023, which is 12-days late. This takes for granted that this 30-day "waiver of recusal" is to be applied on an ad hoc basis, and there are multiple factors that Judge Whitwell fails to consider here. (See *Ryals v. Pigott*, 580 So. 2d 1140, 1175 n.1 (Miss. 1991); discussing the "flexibility of the waiver principle").

This argument by Judge Whitwell also fails to consider "[t]he responsibility of a member of this Court to honor that personal mandate to disqualify himself continues throughout the life of a case, even in situations in which a motion for recusal has been previously denied." *Hyundai Motor Am. v. Applewhite*, 319 So. 3d 987 (Miss. 2021). The court in *Hyundai Motor Am. v. Applewhite* also notably **emphasized** that "proof of actual bias need not exist to warrant recusal, so long as the **appearance of impartiality** is present." *Id*.

Judge Whitwell also fails to consider that his clerk took an additional four days to send the petitioner a copy of his order, despite immediately sending it out to all other parties, and even non-parties. (Ex. 2; *See also* Aff. Of RSJ, ¶¶ 20-24).

There is no question that the "appearance of impropriety" is present in this case and that Judge Whitwell's objectivity has been compromised. Judge Whitwell has repeatedly smeared the petitioner's character in open court and through his order, has lied about the contents of evidence in order to support opposing counsel's position (as well as his), and refuses to apply Mississippi Law that would essentially end this case as it relates to the Respondent's claims. His rulings and attitude towards the Petitioner are not only damaging to the reputation of the Bar, but they are also damaging to the parties, the public, and their perception of the judiciary in Mississippi.

Dated: August 1st, 2023

/s/_____
Robert Sullivant Jr.
Petitioner/Defendant/Third-Party Plaintiff

CERTIFICATION

I, Robert Sullivant Jr, hereby certify that on August 1, 2023, I served a copy of the foregoing papers and all attachments referenced therein to the below counsel of record via US Mail:

Swayze Alford, Esq. (MSB #8642)
Kayla Ware, Esq. (MSB #104241)
Post Office Drawer 1820
Oxford, Mississippi 38655
(662) 234-2025 phone
(662) 234-2198 facsimile
Attorneys For Plaintiff and
Third-Party Defendant
Robert Sullivant Sr.

_____

James B. Justice, PLLC
996 Tyler Avenue
Post Office Box 1550 Oxford, MS 38655
Phone: (662) 202-7740
Fax: (877) 680-3234
jamesbjustice@gmail.com
Attorney for Third-Party Defendant
Mary H. "Evelyn" Stevens

_____

To the Honorable Judge Robert Q. Whitwell at:
P.O. Box 1240
Oxford, MS 38655
Chancery Court of Lafayette County

Dated: August 1, 2023.

/s/_____

Robert Sullivant Jr.
1062 Crawford Cir.
Oxford, MS 98366
robert@steelandbarn.com
(512) 739-9915

Exhibit 1

MEDICAL AFFIDAVIT

Please complete this form to the best of your knowledge and ability.

Today's Date: 1/27/2023	Referring Court: Lafayette

EXAMINER INFORMATION

Examiner's Last Name: Perkins First: Frank	Middle: N	Specialty: Psychiatry
Hospital / Medical Group Affiliation: Precise Forensic Services, PLLC	Years Practicing: 7	State of Licensure: MS
Address: 3531 Lakeland Drive, Suite 1060 Flowood, MS 39232	Designation: M.D. ☑ D.O. ☐ N.P. ☐ P.A. ☐ Ph.D. ☐	

§§ 93-20-305 & 407

Professional evaluation

The chancery court must conduct a hearing to determine whether a guardian/conservator is needed for the respondent. Before the hearing, the court, in its discretion, may appoint a guardian ad litem to look after the interest of the person in question; the guardian ad litem must be present at the hearing and present the interests of the respondent.

The chancery judge shall be the judge of the number and character of the witnesses and proof to be presented, except that the proof must include certificates made after a personal examination of the respondent by the following professionals, each of whom shall make in writing a certificate of the results of that examination to be filed with the clerk of the court and become a part of the record of the case, two (2) licensed physicians; or one (1) licensed physician and either one (1) licensed psychologist, nurse practitioner, or physician's assistant.

The personal examination may occur face-to-face or via telemedicine, but any telemedicine examination must be made using an audio-visual connection by a physician licensed in this state and as defined in Section 83-9-351. A nurse practitioner or physician assistant conducting an examination shall not also be in a collaborative or supervisory relationship, as the law may otherwise require, with the physician conducting the examination. A professional conducting an examination under this section may also be called to testify at the hearing.

§ 93-20-301

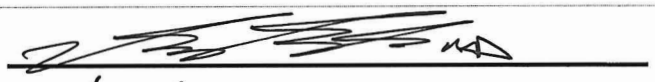
Basis for appointment of guardian

The court may appoint a guardian for an adult when the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the adult is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services or technological assistance; or the adult is found to be a person with mental illness or a person with an intellectual disability as defined in Section 41-21-61 who is also incapable of taking care of his or her person.

§ 93-20-401

Basis for appointment of conservator

The court may appoint a conservator for the property or financial affairs of an adult if the court finds by clear and convincing evidence that the adult is unable to manage property or financial affairs because of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services or technological assistance; the adult is missing, detained, incarcerated, or unable to return to the United States.

Signature	
Date	1/27/2023

PATIENT INFORMATION

Patient's Last Name: Sullivant First: Robert	M: Burnell	Marital Status: Divorced

Is this the patient's legal name?	If not, what is his / her legal name?	Former name:	Birth date:	Age:	Sex:
☑ Yes ☐ No			11/19/1933	89	☑ M ☐ F

Address: 100 Azaela Drive Apt 153 Oxford, MS 38655

Have you treated this patient in the past for his / her medical needs, whether related or unrelated to this exam?	☐ Yes ☑ No	If yes, indicate the dates and circumstances within the last year, and / or reference if you have been the patient's personal physician for a period of time and the time frame:		
Did a friend or family member accompany the patient during your examination?	☐ Yes ☑ No	Name / Relationship to Patient: Phone Number:	Is this the patient's primary caretaker?	☐ Yes ☐ No

If the above named individual is not the patient's primary caretaker, who is? (Name / Phone / Relationship to Patient):

EVALUATION

MEDICAL HISTORY – Physical

Has the patient experienced	Physical Impairments or Chronic Pain:	☑ YES ☐ NO ☐ UNKNOWN
	Chronic Diseases or Illnesses:	☑ YES ☐ NO ☐ UNKNOWN
	Surgery within the past year	☐ YES ☑ NO ☐ UNKNOWN
Are there any physical limitations affecting the patient's	Activities of Daily Living	☑ YES ☐ NO ☐ UNKNOWN
	Cognitive / Memory Abilities	☑ YES ☐ NO ☐ UNKNOWN
In the last six months, has the patient had:	Hospitalizations	☐ YES ☑ NO ☐ UNKNOWN
	Therapy or Treatment	☐ YES ☑ NO ☐ UNKNOWN
	Psychological or Psychiatric Testing	☐ YES ☑ NO ☐ UNKNOWN

Patient's Current Condition / Status of Physical Illnesses:

Mr. Sullivant appears to have stable impairments in mobility requiring a walker and chronic medical condition of hypertension which he takes medications for.

History of Substance Abuse / Use ☑ Denies Substance Use ☐ Prescribed Medications Only

Drug(s) of Choice and Age of Onset:

Has the Patient Previously Sought Addiction Treatment? ☐ Yes ☐ No

Patterns of Substance Use / Abuse

How Much:

How Often:

Methods of Use: ☐ Oral ☐ Snort ☐ Inject ☐ Insert ☐ Inhale

☐ Other: _____

MEDICAL HISTORY – Mental

Previous Psychiatric Issues:

Patient denies any past psychiatric issues.

Do these psychiatric / mental illnesses affect the patient's ability to take care of him / herself? ☑ Yes ☐ No

Does the patient suffer from a developmental and / or intellectual disability? ☐ Yes ☑ No

Previous In-Patient or Out-Patient Psychiatric Treatment (with dates and location):

Patient denies and past inpatient or outpatient psychiatric treatment.

Does the Patient Indicate Homicidal Ideation or Behavior?	☐ Yes ☑ No	Does the Patient Indicate Suicidal Ideation or Behavior?	☐ Yes ☑ No

Describe Other Counseling and / or Therapeutic Experiences:

None known

Set forth the results of any tests which bear on the issue of incapacity and date of test (attach results if necessary):

MOCA (1/17/2023) - 20/30, Clock Drawing Impaired, Trail A 73 seconds, Trail B 300 sec (did not complete)

Traumatic Event Exposure / History
(Where applicable, identify type and date of event):

- ☐ Serious Accidents: _____
- ☐ Natural Disaster: _____
- ☐ Witness to Traumatic Event: _____
- ☐ Sexual Assault: _____
- ☐ Physical Assault: _____
- ☐ Childhood Molestation: _____
- ☐ Close Family / Friend Murdered: _____
- ☐ Homelessness: _____
- ☐ Victim of Stalking / Bullying: _____
- ☑ N / A
- ☐ Other (Specify): _____

Social / Cultural History
(Note / Describe Relationships as Appropriate):

Parents:	☐ Close ☐ Amicable ☐ Estranged ☑ Other: Deceased
Spouse / Partner:	☐ Close ☐ Amicable ☐ Estranged ☑ Other: Deceased
Children:	☐ Close ☐ Amicable ☑ Estranged ☐ Other:
Siblings:	☐ Close ☐ Amicable ☐ Estranged ☑ Other: N/A
Other Family:	☑ Close ☐ Amicable ☐ Estranged ☐ Other:
Friends / Colleagues:	☑ Close ☐ Amicable ☐ Estranged ☐ Other:

Indication of Functional Limitations (Check Major Life Areas Affected)	☐ Basic Living Skills (eating, bathing, dressing, etc.)
	☑ Instrumental Living Skills (maintaining a home, managing money, local travel, taking medications, etc.)
	☑ Social Functioning (ability to function within the family, vocational or educational settings, other social contexts)
Does the patient have the mental or physical capacity to effectively manage his / her property?	☐ Yes ☑ No ☐ Undetermined
Does the patient have the mental or physical capacity to make necessary daily living and health care decisions?	☐ Yes ☑ No ☐ Undetermined

Initial Behavioral Observations	Speech	☑ Appropriate ☐ Slowed ☐ Mechanical ☐ Rapid ☐ Other: _____
	Behavior	☑ Appropriate ☐ Withdrawn ☐ Bizarre ☐ Volatile ☐ Other: _____
	Appearance	☑ Appropriate ☐ Disheveled ☐ Unclean ☐ Inappropriately Dressed ☐ Other: _____
	Mood	☑ Appropriate ☐ Manic ☐ Depressed ☐ Labile ☐ Irritable ☐ Other: _____
	Affect	☑ Appropriate ☐ Flat ☐ Labile ☐ Other: _____
	Oriented To	☑ Place ☑ Time ☑ Person ☑ Situation ☐ Other: _____
	Thought Content	☑ Appropriate ☐ Incoherent ☐ Obsessive ☐ Other: _____
	Memory	☐ Appropriate ☐ Repressed ☑ Confused ☑ Other: Impaired in Short Term and Long Term
	Judgment / Insight	☐ Appropriate ☑ Impaired ☐ Suicidal ☐ Homicidal ☐ Other: _____

Comments on Mental / Physical Health: Mr. Sullivant's presentation is most consistent with a Major Vascular Neurocognitive Disorder without Behavioral Disturbance. This is evidenced by impairments in memory, language, and visiospatial/executive function as demonstrated in testing and clinical impression during his interview. He has an awareness and ability to voice his wishes and needs but due to his impaired cognitive function does not have the capacity to consistently execute those wishes and needs. There are lucid intervals in his illness that enable him to inform those assisting with his affairs of his wishes, but due to the nature of his illness he cannot consistently provide that direction nor appropriately engage or execute contracts. He will be best served by a neutral, independent conservator to manage his finances with his direction and a family member or concerned party who he is agreeable with helping to manage his person.

SUMMARY / RECOMMENDATION

This Evaluation was Conducted (Check all that Apply):	☑ In Person ☐ Via Audiovisual Telemedicine ☐ At Hospital / Medical Office ☐ At the Patient's Residence ☐ Other: _____	
	If via Telemedicine, who assisted you with the evaluation? (Name, Designation)	Your Mississippi License Number: 25109

Diagnosis	Did you perform a physical exam on the patient? ☐ Yes ☑ No	Did any concerns result from the physical exam? ☐ Yes: _____ ☐ No ☐ N/A	
	Based on the foregoing evaluation:	☑ I DO ☐ I DO NOT	believe this patient is a person incapable of managing his / her own person under § 93-20-301 or financial affairs under §93-20-401, and is in need of a Guardian and / or Conservator (check all that apply): ☐ Guardian (Person) ☐ Conservator (Financial Affairs) ☑ Both
		I find that the patient is in need of treatment	☐ Temporarily ☑ Permanently ☐ Other: _____
	I recommend the Court require re-evaluation in:	☐ 60 days ☐ 6 months ☐ 1 year ☑ N/A ☐ Other: _____	

Summary of Diagnosis: Major Vascular Neurocognitive Disorder without Behavioral Disturbance

I, Frank Perkins, MD, the above named examiner, certify that this patient's **examination** was completed on (date) 01/17/2023 at (time) 1400, and that this **evaluation** and **recommendation** was completed on (date) 01/27/2023 at (time) 1500.

I hereby certify that that the facts stated above, and the information contained in this report, are true to the best of my knowledge and belief.

	Signature	
	Printed Name	Frank Perkins MD
	Date	1/27/2023

Exhibit 2

Gmail

Robert Sullivant <robert@steelandbarn.com>

Motion to recuse

Robert Sullivant <robert@steelandbarn.com> Thu, Jul 20, 2023 at 3:59 PM
To: Samantha Weathersbee <SWeathersbee@lafayettecoms.com>

Samantha,

I just received correspondence from Hale Freeland that refers and quotes Judge Whitwell's decision to deny motion to recuse.

I have yet to receive such a decision.

Please confirm if a decision has or has not been made.

Thank you,

Robert Sullivant

Gmail

Robert Sullivant <robert@steelandbarn.com>

Motion to recuse

Samantha Weathersbee <SWeathersbee@lafayettecoms.com> Thu, Jul 20, 2023 at 4:19 PM
To: Robert Sullivant <robert@steelandbarn.com>

A decision has been made. It was filed Monday.

Sent from my iPhone

> On Jul 20, 2023, at 3:59 PM, Robert Sullivant <robert@steelandbarn.com> wrote:
>
>
[Quoted text hidden]

Gmail

Robert Sullivant <robert@steelandbarn.com>

Motion to recuse

Robert Sullivant <robert@steelandbarn.com> Thu, Jul 20, 2023 at 4:21 PM
To: Samantha Weathersbee <SWeathersbee@lafayettecoms.com>

Samantha,

Would you be kind enough to send it to me?
[Quoted text hidden]

Gmail

Robert Sullivant <robert@steelandbarn.com>

Order on Ore Tenus Motion by Defendant

Samantha Weathersbee <SWeathersbee@lafayettecoms.com> Tue, Jul 11, 2023 at 4:19 PM
To: Robert Sullivant <robert@steelandbarn.com>
Cc: Swayze Alford <salford@swayzealfordlaw.com>, "waltdavis@dunbardavis.com" <waltdavis@dunbardavis.com>

All:

Attached is an Order entered yesterday by Judge Whitwell on JR's Ore Tenus Motion last Friday in Court. The clerk's office brought it to the Court's attention today that pro se litigants are not on MEC and I am supplying the Order in this email to JR.

As always, let me know if you have any questions.

Best,

Samantha

-----Original Message-----
From:
Sent: Tuesday, July 11, 2023 5:38 PM
To: Samantha Weathersbee <SWeathersbee@lafayettecoms.com>
Subject: Scanned image from MX-M266N

Reply to: scanner@lafayettecoms.com <scanner@lafayettecoms.com> Device Name: scanner@lafayettecoms.com
Device Model: MX-M266N
Location: Not Set

File Format: PDF (Medium)
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.
Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.
Adobe(R)Reader(R) can be downloaded from the following URL:
Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries.

http://www.adobe.com/

scanner@lafayettecoms.com_20230711_163747.pdf
686K

4

Gmail

Robert Sullivant <robert@steelandbarn.com>

Motion to recuse

Samantha Weathersbee <SWeathersbee@lafayettecoms.com> Fri, Jul 21, 2023 at 12:57 PM
To: Robert Sullivant <robert@steelandbarn.com>

Sure, here it is.

[Quoted text hidden]

order on motion for recusal - sullivant.pdf
4586K

Exhibit 3

Gmail

Robert Sullivant <robert@steelandbarn.com>

Rebuttal to Response to Motion for DQ

Swayze Alford <salford@swayzealfordlaw.com> Fri, May 5, 2023 at 1:03 PM
To: Robert Sullivant <robert@steelandbarn.com>, Samantha Weathersbee <SWeathersbee@lafayettecoms.com>
Cc: Lacey Whitaker <lacey@swayzealfordlaw.com>

Samantha,

After receiving Mr. Sullivant Jr.'s rebuttal, I went back and reviewed the FNB Oxford records that were provided to me and I see the Mrs. Stevens was added to both accounts. There were four signature cards and I overlooked one of them. His response also indicated that I had not reconciled the account. I will request the statements from the bank.

Sincerely,

Swayze Alford, Esq.

Swayze Alford Attorney At Law

Post Office Box 1820

1221 Madison Avenue

Oxford, Mississippi 38655

(662) 234-2025 phone

(662) 234-2198 fax

swayzealford.com

[Quoted text hidden]

Gmail **Robert Sullivant <robert@steelandbarn.com>**

Re: Motion for TRO

3 messages

Swayze Alford <salford@swayzealfordlaw.com> Mon, Dec 12, 2022 at 2:21 PM
To: Robert Sullivant <robert@steelandbarn.com>

Robert,
When I got the records on Friday from you I intended to propose that the account be frozen. I know what it looks like but I did discuss it with Brad before I deposited it into the bank account. I really thought that I should try to earn some interest on the money for your dad. I should have entered an agreed order and that was my mistake. I would have tended to it today and I guess I may have to but I have mostly been laid up.

I really would like to talk to you if you would agree. I have really only tried to help your dad. It was important to me to try to get you together. Please let me know if you will talk. Thanks.
Swayze

Sent from my iPhone

> On Dec 12, 2022, at 1:56 PM, Robert Sullivant <robert@steelandbarn.com> wrote:
>
> Swayze,
>
> Sorry to hear you had to have surgery and laid up. Hope you are feeling better.
>
> SInce the exhibits were 100 pages, I will have to get the filed copies tomorrow, but I wanted you to have them ASAP.
>
> Thanks,
> Robert

Robert Sullivant <robert@steelandbarn.com> Mon, Dec 12, 2022 at 2:29 PM
To: Swayze Alford <salford@swayzealfordlaw.com>

I will call your cell later. Let's just say I was extremely upset, and started the motion shortly after I got the docs and did not finish until 1 PM today.

I immediately sent you an email. Please read the emails between Brad and I that are exhibits.
[Quoted text hidden]

Swayze Alford <salford@swayzealfordlaw.com> Mon, Dec 12, 2022 at 2:32 PM
To: Robert Sullivant <robert@steelandbarn.com>

I understand you being upset. I am upset with myself. I should have followed up with an order. I really want this to be right for your dad.

Sent from my iPhone

On Dec 12, 2022, at 2:29 PM, Robert Sullivant <robert@steelandbarn.com> wrote:

[Quoted text hidden]

Exhibit 4

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR., PLAINTIFF

V.

ROBERT SULLIVANT, JR., DEFENDANT

FILED
STATE OF MISSISSIPPI
LAFAYETTE COUNTY
2022 NOV 30 A 11:02
CHANCERY CLERK
BY DC

CIVIL ACTION NO. 2021-612 (W)

SUBPOENA DUCES TECUM

TO: **FNB Oxford Bank**
Attention: Legal Department
101 Courthouse Square
Oxford, MS 38655

YOU ARE HEARBY COMMANDED by the authority of the above Court and pursuant to Rule 45 of the Mississippi Rules of Civil Procedure to produce as evidence the records requested below, within ten (10) days after service of this Subpoena, in the above-styled and numbered action.

The records to be produced are as follows:

> **The documents executed in the opening of any account including loans by Robert B. Sullivant, Sr. The documents executed to add additional persons to any of the accounts of the above named. All monthly statements of any account of the above named, including images of cleared checks and deposits, from the date of May 1, 2021.**

This Subpoena Duces Tecum may be satisfied by scanning and emailing true, correct and organized copies of above requested documents within ten (10) days to email of Robert B. Sullivant, Jr., robert@steelandbarn.com, who shall bear the reasonable cost the production, organization, and emailing of said documents. Documents may be mailed to the below "Submitted by:" address.

This you shall in no wise omit under the penalty, prescribed by law; herein fail not, and you then and there this writ.

Given under my hand and seal of this court and issued the 21st day of November, 2022.

CHANCERY COURT LAFAYETTE COUNTY, MS

SHERRY J. WALL, Chancery Clerk
Lafayette County, Mississippi

BY: Tina Johnson D.C.

1

1

SCANNED

FNB OXFORD

12/09/2022

Robert B. Sullivant, Jr.
1002 Crawford Circle
Oxford, MS 38655

Dear ***Robert Sullivant***,

RE: Subpoena Duces Tecum Cause No. ***2021-612(W)***

I am enclosing the documents requested by the above referenced subpoena and Affidavit of Records Custodian. The fee for the enclosed documents is $***90.00*** which may be remitted to my attention.

Should you have any questions, you may reach me at 662-234-2821.

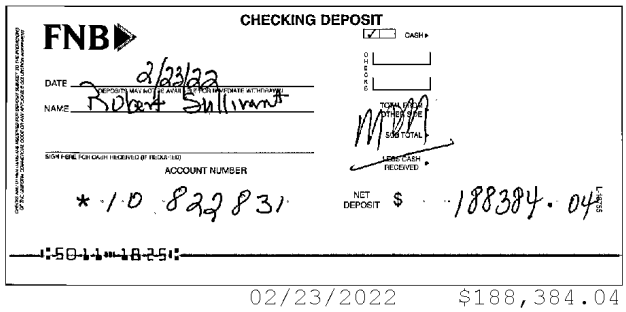
Sincerely,

Misty Fiew
SVP, Compliance/Risk

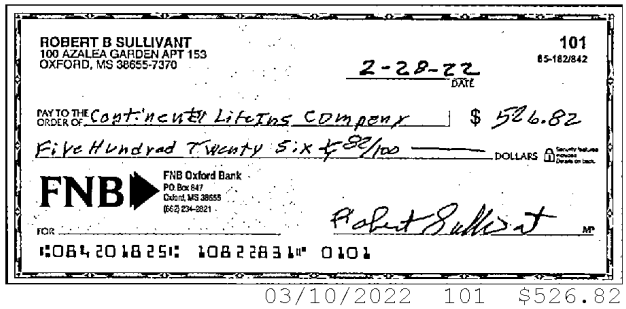
Enclosures

2

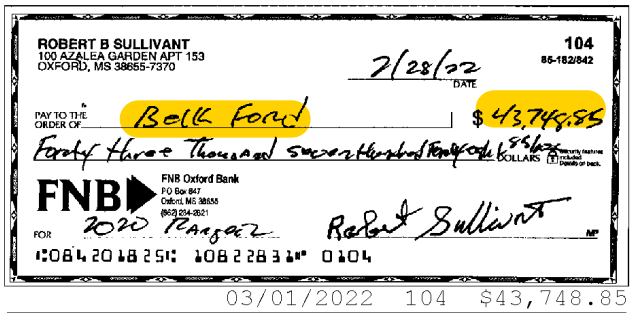
ROBERT B SULLIVANT


CHECKING DEPOSIT
FNB
DATE 2/23/22
NAME Robert Sullivant
ACCOUNT NUMBER
*10822831
NET DEPOSIT $ 188384.04
:084201825: 108228316

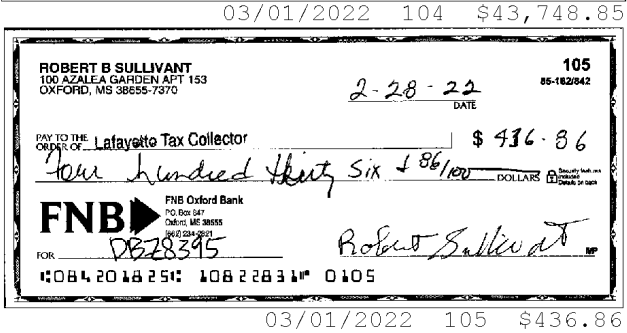
02/23/2022 $188,384.04


ROBERT B SULLIVANT
100 AZALEA GARDEN APT 153
OXFORD, MS 38655-7370
101
65-182/842
DATE 2-28-22
PAY TO THE ORDER OF Contingent Liteins Company $ 526.82
Five Hundred Twenty Six & 82/100 DOLLARS
FNB Oxford Bank
PO Box 847
Oxford, MS 38655
(662) 234-2821
FOR
Robert Sullivant
:084201825: 108228316 0101

03/10/2022 101 $526.82


ROBERT B SULLIVANT
100 AZALEA GARDEN APT 153
OXFORD, MS 38655-7370
104
65-182/842
DATE 2/28/22
PAY TO THE ORDER OF Bell Ford $ 43,748.85
Forty Three Thousand Seven Hundred Forty Eight & 85/100 DOLLARS
FNB Oxford Bank
PO Box 847
Oxford, MS 38655
(662) 234-2821
FOR 2020 Ranger
Robert Sullivant
:084201825: 108228316 0104

03/01/2022 104 $43,748.85


ROBERT B SULLIVANT
100 AZALEA GARDEN APT 153
OXFORD, MS 38655-7370
105
65-182/842
DATE 2-28-22
PAY TO THE ORDER OF Lafayette Tax Collector $ 436.86
Four Hundred Thirty Six & 86/100 DOLLARS
FNB Oxford Bank
PO Box 847
Oxford, MS 38655
(662) 234-2821
FOR DB28395
Robert Sullivant
:084201825: 108228316 0105

03/01/2022 105 $436.86

Exhibit 5

FREELAND MARTZ
ATTORNEYS

J. Hale Freeland
Admitted in MO, MS, & TN
hale@freelandmartz.com

Our File No. 02587

June 8, 2023

Via Hand Delivery

Hon. Sherry J. Wall, Clerk
Lafayette County Chancery Court
300 N. Lamar Blvd.
Oxford, MS 38655

RE: Robert Sullivant Sr. v. Robert Sullivant Jr.
Cause No. 2021-612 (W)

Dear Sherry:

Enclosed please find a *Motion to Quash* related to the above-referenced cause. Please file it in the Court's records and provide to us a filed-stamped copy.

Thank you for your assistance with this matter.

Sincerely,

FREELAND MARTZ, PLLC

J. Hale Freeland

Enclosure

cc: Dr. Frank Perkins *via email*
Swayze Alford Esq. *via email*
Robert Sullivant Jr. *via email*

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT SR. — **PLAINTIFF**

v.

ROBERT SULLIVANT JR. — **DEFENDANT**

CAUSE NO. 2021-CV-612 (W)

ROBERT SULLIVANT JR. — **THIRD PARTY PLAINTIFF**

v.

ROBERT SULLIVANT SR. and EVELYN STEVENS — **THIRD PARTY CO-DEFENDANTS**

MOTION TO QUASH

COMES NOW Dr. Frank Perkins, Forensic Psychiatrist, by and through his attorney, and moves to quash the subpoena duces tecum served upon him to appear on June 22 and produce documents relating to his examination, notes, and procedures utilized in examining Robert Sullivant Sr. In support thereof, Dr Perkins would show:

1. Dr. Perkins maintains an active practice in which he has staff privileges in facilities in and around the Jackson, Mississippi, metro area; Vicksburg, Mississippi; and the Mississippi Gulf Coast. The movant did not inquire regarding Dr. Perkins' availability for this time and date insofar as staff and treatment schedule.

2. Dr. Perkins has already testified in open court regarding this matter.

3. The Notice states that Dr. Perkins is going to be deposed related to the following matters: "your (Dr. Perkins) medical examination of Plaintiff Robert Sullivant, Sr., and your conclusions, your court testimony on these matters and any other matters relevant to the claims of any of the parties in this action."

4. The court has already entered two orders; one entered on May 17, 2023, in which the court found Robert Sullivant incapable of managing his affairs and appointing Sherry Wall as his conservator, and an order of May 18, 2023, holding that Mr. Sullivant had the testamentary capacity to execute a will for his estate. Robert Sullivant Jr. was present when the motion related to those orders was heard and took the opportunity to question Dr. Perkins at that time. Those issues having been decided by the court, there is no reason to conduct discovery related to the issues the court has already decided.

5. Dr. Perkins is willing to testify so long as this deposition does not interfere with patient care, that he be compensated for his time invested in preparation for, travel to, and attendance at the deposition. His hourly rate is $600.00 with the time to prepare being two hours and the time for the deposition two hours. His hourly rate for travel time is $200 per hour. Accordingly, Dr, Perkins' fee to take his deposition is $4,000.00 for preparation, attendance, and travel.

6. According to Miss R. Civ. P 26 (C)(E) (i), before Dr. Perkins is required to appear, "the court shall require that the party seeking discovery taking the deposition of an opposing party's expert who has been specially retained or employed to present expert testimony at trial to pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(4)(A)(ii) and (b)(4)(B) giving deposition testimony and a reasonable fee for up to two hours actually spent preparing for such deposition. In re Rules of Civil Procedure (Miss. 2019).

7. Robert Sullivant Jr. has not tendered Dr. Perkins' fee to take his deposition, a prerequisite for taking Dr. Perkins' deposition, nor has he inquired what those fees would be.

8. Robert Sullivant Jr. is also requesting that Dr. Perkins produce notes and documentation that could considered work product between attorney and client and as

such protected from disclosure. In addition, some of the information could be subject to a medical privilege, as the issue has been waived due to the nature of this proceeding. As a result, Dr. Perkins asked for instructions from Robert Sullivant Jr. with regards to inquiry and production of work product and the medical privilege as well as instructions from the court concerning the scope of relevant information that he can disclose by production of documents and through his testimony.

WHEREFORE, premises considered, the plaintiff asks the court to quash the subpoena, which failed to comply with the Mississippi Rules of Civil Procedure, and requests further instruction from Robert Sullivan Sr. and his counsel and this court regarding disclosure of documents and information subject to work production protection and Robert Sullivant Sr.'s medical privilege.

J. HALE FREELAND

J. Hale Freeland, Esq., MSB No. 5525
FREELAND MARTZ PLLC
302 Enterprise Dr., Suite A
Oxford, Mississippi 38655
(662) 234-1711
hale@freelandsmartz.com

CERTIFICATE OF SERVICE

I, J. Hale Freeland, attorney for Dr. Frank Perkins, hereby certify that I have on this date sent a true and complete copy of the above and foregoing *Motion to Quash* by electronic mail to the following:

Swayze Alford Esq.
Attorney at Law
salford@swayzealfordlaw.com

Robert Sullivant Jr.
robert@steelandbarn.com

This, the 8th day of June, 2023.

J. HALE FREELAND

Exhibit 6

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR., PLAINTIFF

V. **CIVIL ACTION NO. 2021-612 (W)**

ROBERT SULLIVANT, JR., DEFENDANT

AFFIDAVIT IN SUPPORT OF SUMMARY JUDGMENT

LAFAYETTE COUNTY, MISSISSIPPI

I, ROBERT SULLIVANT JR, attest that I am the Defendant in the above-referenced matter, and that in regards to such matter, I hereby declare the following under penalty of perjury:

1. I was legally granted Power of Attorney over the Plaintiff's (my Father) estate and finances on July 12th, 2017.
2. On May 5, 2021, Sullivant, SR. and Sullivant, JR. agreed to deposit the proceeds from the sale of the "farmhouse," amounting to $230,000, into a joint account to be used for another house, after the sale of the house located in Oxford, Mississippi.
3. 50% of these funds belong exclusively to me.
4. The power of attorney was revoked by the Plaintiff unexpectedly and without notice on May 20th, 2021.
5. I was never notified of the revocation.
6. Prior to this revocation, according to the Plaintiff, Sullivant SR opened a new account and transferred $230,000 from the joint account to his own, without informing me.
7. My Father has engaged in risky, irresponsible, and dangerous financial behavior including; over drafting accounts, thousands of dollars in mail scams, failure to pay the last 18 months of mortgage payments on his house, failure to file or pay 2020 and 2021 income tax, substantially running up credit cards that I had paid down for him, hiring a driver for no purpose, allowing one auto insurance policy to lapse and allowing another to nearly lapse, responding to phone scams and closing a bank account without addressing any auto-pays. He gave away $75,000 of farm equipment jointly owned

by me to my three cousins Calvin Vick, Sam Vick, and Josh Vick. At the time of the $230,000 transfer, SR was in process of buying a house with Evelyn Stevens.

8. I took action by reversing the subject transaction as I was operating in my Father's best interest and under the assumption of power of attorney, which he revoked *after* I transferred the funds. I also took action to reverse this transaction because 50% of the funds he transferred belonged exclusively to me.

9. After reversing this transaction, I promptly placed $50,000.00 in my father's individual TD AmeriTrade account, paid $6,000.00 on his credit card, and moved another $5,000.00 into the joint checking account with my father and continued to pay his mortgage and utility bills.

10. I assert that after I transferred the $230,000 legally using my power of attorney from his Regions Bank individual account, to each of our individual TDAmeritrade accounts, that SR stated to me emphatically that he transferred the money from our joint Regions account to his own individual account because that money was not mine.

11. As such, the Plaintiff's assertion paragraph 9 of their Complaint, that I have taken my father's money "for my own personal benefit" is absolutely untrue, absurd, and insulting, and they have not provided a scintilla of evidence of this since filing their complaint.

12. Evelyn Stevens, who claims to be talking care of the plaintiff, has blocked my phone number from her and Plaintiff's phone. She has been accepting expensive gifts from my father, and is taking mutual control over some of his financial accounts. Ms. Stevens is not being paid and is not reporting any of these gifts for tax purposes. She has changed the relationship from employer-employee to something more serious. She is taking full advantage of the Plaintiff and his decapacitated and diminishing mental state.

13. According to the Plaintiff's discovery responses and Complaint,, on May 19th, 2021, Plaintiff (illegally) transferred all $230,000 from the sale of the house to his own personal account. The power of attorney was revoked the *very next day* on May 20th, 2021. I was never made aware of the revocation and even had I been, upon significant information and belief, my Father was not cognitively capable of revoking that agreement.

14. The Plaintiff has not made any attempts to prove his claims through the request of discovery or by any other method. Attorney Alford has also failed to file an Answer to the counterclaims which were filed against the Plaintiff almost exactly **12 months ago**, and he is currently refusing to turn over requested discovery or to even conference. Mr. Alford has been intentionally evasive in this matter.

15. My father's mental health is deteriorating and he is currently under the auspices of people who are clearly taking advantage of him. The Plaintiff's claims in this action are untenable and unsustainable, and there are no issues of fact that remain regarding their claims. This lawsuit was nothing more than an abuse of process and a malicious attempt to take advantage of a mentally unstable and elderly man and extract him financially. Also, this lawsuit was a preemptive attack to prevent his son from becoming his conservator and receiving protection of Section 401(2)(b)(i) of the Mississippi Guardianship and Conservatorship Act.

16. Finally, I had absolutely no notice or knowledge that the Plaintiff had revoked the power of attorney at the time I reversed the transaction. The Plaintiff has failed to offer any evidence or argument that he did in fact notify me and this failure forecloses on each and every claim stated in the Complaint.

17. Pursuant to Title 87, Ch. 3, § 87-1-113 of the Mississippi Code; this lack of any notice or knowledge of revocation makes the subject transaction of the Plaintiff's Complaint, (where I reversed the withdrawal he made), completely within my legal authority, and to prevent him from buying a house with the funds. It is unambiguous within the statute that lack of notice of revocation absolves the Attorney and is in fact "conclusive proof" of *non-revocation* and *non-termination*. This fact in also clearly stated in the Power of Attorney submitted with the Plaintiff's Complaint.

18. As a result of the foregoing, Summary Judgement in this matter against the Plaintiff and in favor of the Defendant is appropriate.

DATED: December 8, 2022.

/s/

Robert Sullivant Jr.

This 8th day of December 2022

Gloria Nicks

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 102962
GLORIA NICKS
Commission Expires
July 30, 2024
LAFAYETTE COUNTY

CERTIFICATE OF SERVICE

I do hereby certify that on November 25, 2022 I have served by hand delivery and/or email a true and correct copy of the above and foregoing document to:

Swayze Alford
1221 Madison Avenue
Oxford, MS 38655
Attorneys for Plaintiff Robert Sullivant, Sr.

Robert Sullivant, Jr., *Pro Se*

Exhibit 7

AFFIDAVIT OF ROBERT SULLIVANT JR. IN SUPPORT OF HIS REQUEST FOR INTERLOCUTORY APPEAL

1. I am the Defendant and Third-Party Plaintiff in the underlying case.

2. This affidavit is written upon my own personal knowledge and experience.

3. This Affidavit is being presented in order to refute and correct the numerous contradictory statements and false assertions of fact that that have been made by Judge Whitwell both on the record throughout the proceedings, and in his Order denying recusal, which have inarguably prejudiced this Petitioner, including in the course of this appeal.

4. On **January 22, 2023**, in Marshall County Chancery Courthouse (Holly Springs) the court was to hear the *Motion to Set Aside Default*. It was the only business on the docket.

5. I entered the courtroom that day and in the first row of the gallery section sat behind the counselor's table on the right side of the court room. I prepared my notes for my argument that day.

6. Mr. Alford came into the court room moments before court was to commence. At that time, I noticed no one else in the court room except for court personnel. I concluded that my motion was the only business for the court that day. Mr. Alford had taken the left side counselor's table. I decided to move up to the right counselor's table and organize my reference materials, as it was minutes from time for court to commence.

7. To my surprise my father and his sitter, Evleyn Stevens came into the court room and sat a behind Mr. Alford in the gallery area. I was not expecting them to drive to Holly Springs to watch the motion hearing. Immediately after they were seated the Judge entered the court room, and we all rose.

8. At no time did my father get up, move to or sit with Mr. Alford's counselor's table inside the bar area. He remained the entire time seated next to Ms. Stevens in the gallery area and **at least 30 feet** from where I was seated inside the bar at the right counselor's table.

9. After the hearing was over, and Judge Whitwell rendered his decision granting the motion to set aside default, the Judge told us off the record that he was to have back surgery soon and may be out for a while. The judge then got up, we all rose, and the Judge left the bench for his chamber.

10. At that time, I gathered and organized my documents and prepared to leave. As I walked through the bar swinging partition I walked toward my father to speak to him.

11. I approached my father. It was taking him a while to get up and stand as he needs assistance. Ms. Stevens, and Mr. Alford were assisting him getting up slowly and speaking to him about what had just transpired in the hearing. I was standing less then two feet behind Mr. Alford in aisle of the pews waiting politely to speak to my father.

12. Ms. Stevens and Mr. Alford ignored me, and seemed focused on getting my father up, and explaining what had happened in court. I did not feel comfortable speaking to my father in that close proximity of Mr. Alford and Ms. Stevens since they were seemed to be intentionally ignoring me and speaking to my father. I decided to go outside the court room and wait to talk to my father.

13. My father never came out of the court room as waited, but Mr. Alford did. Mr. Alford saw me waiting outside the courtroom and spoke to me as he walked to the courthouse door to leave. He said Dr. Perkins had volunteered to travel to Oxford to examine my father and that Dr. Perkins was not going to charge for travel time.

14. I concluded that Ms. Stevens and my father must have exited another door, so I went out to the parking lot to look for them and my father's car. Although I waited a few minutes outside in front of the courthouse, I did not see my father or his car.

15. The judge was not in the court room when my father initially entered the court room. The Judge was not in the court room after court had been adjourned. The Judge was not in court room as I gathered my documents and walked over to where my father was seated. I never saw the Judge come back into the courtroom after court was adjourned.

16. If the Judge would have re seated himself instead of walking out the Judge's door back to his chamber after we all rose as court was adjourned as Judges do, the Judge would have seen me attempt to speak to my father. The same fact would be the case if the Judge had walked back into the courtroom and looked down upon the courtroom.

17. At the hearing on **May 9th, 2023**, in Oxford, the Judge testified (*Transcript*-Pg.6:ln 11)

> "And after the hearing was over [in Holly Springs], you sat there while Mr. Sullivant [Sr.] got up and left the room. You never even spoke to him. You never went over and hugged him. You did nothing."

18. On the **July 7th, 2023** hearing, the Judge again testified (*Transcript*-Pg 37:ln 26)

> "I watched as your dad was sitting at the table right there and you were right here. You weren't five feet from him. He is sitting there alone by himself. He wasn't blocked by anybody at that time."

19. I reiterate my statement of ¶ 8 (*Id)*. That is my father never sat at the counselor's table that the Judge is referring to in ¶ 18. He sat with Ms. Stevens in the gallery until after the Judge left the courtroom. Before and during the hearing I was never within 30 feet of my father. My father was on the other side of Ms. Stevens from the aisle.

20. **On July 7th** Samantha Weathersby, Judge Whitwell's clerk, states she is aware that pro se litigants are not on the MEC system, so she has to email me decisions filed by the Judge. (*See* Ex. 2 pg.4).

21. **On July 20th** at 3:59PM I send Samantha Weathersby email stating that I had learned that an opinion denying recusal had been published, but I had not received it. (*Id*., pg.1).

22. **On July 20th** at 4:19PM Samantha Weathersby confirms from her I-phone a decision had been filed on July 17th. Samantha does not attach the filed decision to the reply. She does not comment if she intends to ever send me the Judge's decision that was filed on July 17. (*Id*., pg.2)

23. **On July 20th** at 4:21PM, I send Samantha Weathersby email requesting a copy of the decision. (*Id*., pg.3).

24. **On July 21st** at 12:57PM sends me an email of which the decision was attached. (*Id.*, pg.4).

25. As to the hearing in Holly Springs in response to testimony to by Judge Whitwell… After the hearing, I went directly from my chair to where my father was still sitting and waited patiently as Mr. Alford and MS Stevens helped him get up. Per my observation the judge was not in the courtroom after court was adjourned, so he would not have been able to observe me, or my father leave the courtroom.

26. At pg.81 of the *Order Denying Recusal*, in regard to the statement by the Judge that "Mr. Alford argued that he and Mr. Golmon had been in negotiations regarding settlement. Mr. Alford also wanted to protect SR's interests by putting the money in an interest-bearing account where it could benefit his client by earning money, which Mr. Golmon agreed. Otherwise, it would be sitting in Mr. Alford's trust account not earning any interest. The subject money is approximately $400,000.00 and would earn some interest."

27. I state there were not any settlement negotiations going on. There is no evidence that this happened. I am not familiar with these facts being in the record. I did not authorize Mr. Golman to agree to an amendment of the original order, or to deposit the funds anywhere but Mr. Alford's

account, I never authorized Mr. Golman to conduct settlement negotiations. Mr. Golman never told me that Mr. Alford had violated the order by depositing the money into the name of SR..

28. On pg.39:ln 7 of the Default hearing transcript, the judge states there was negotiations going on at the time Mr. Alford violated the court order by not depositing the funds in his trust account. He also states "taking Ms. Steven's deposition was going". I cannot find any record of negotiations as the Judge quoted. The action of deposing Ms. Steven's was initiated by me, when Mr. Alford stated to me that her name was on the truck, much later (October, 2022).

29. Mr. Golman and I met at his office on March 28, 2022, and we discussed the risk to SR's assets due to scammers. Mr. Golman never stated that Mr. Alford had wanted to or did put the land sale proceeds into an interest-bearing account in SR's name. He never mentioned that Mr. Alford wanted to amend the order or that he had agreed to amending the order. He never mentioned that he agreed to put the land proceeds in a different account than the one specified in the order.

30. On pg.82 of his *Order Denying Recusal*, the Judge states "that when [Mr. Alford] found out about [the truck purchase], the truck was sold, and the money spent was returned to the account."

31. The Truck was purchased on **February 28, 2022**. (*See* Ex. 4).

32. On **December 12th, 2022**, at a meeting at his office, Mr. Alford told me that he had advised my father to wait to buy the truck, but that he purchased it anyway. In this same meeting Mr. Alford said he would sell the truck to help repay the lost client funds.

33. The Judge, in his *Order* on pg.27, fails to mention that it took Mr. Alford **10 months** after he found out about the truck to sell the truck. The Judge did not state that Mr. Alford did not decide to sell the truck until I held Mr. Alford accountable for the lost client funds. (*See* Ex. 3).

34. Mr. Alford never reconciled the bank account that he had been court ordered to hold on a monthly basis. (*See* Ex. 4; Petitioner forced to subpoena records).

35. After the TRO was executed Mr. Alford still never reconciled the account, and my father continued to write checks to scam organizations and place a third-party, Evelyn Stevens, on the accounts. (*See* Ex. 3 pg.1). Mr. Alford did reconcile the account immediately before the *Motion to Disqualify* him for not reconciling was to be heard.

36. The truck was sold in **December 2022**, and the proceeds deposited into the account that same month.

37. On **October 26th, 2022**, in a meeting with Swayze Alford at his office, he stated that Evelyn Steven's name was on the truck.

38. Judge Whitwell states in pg. 81 of his *Order*, that "*as soon as Mr. Alford knew about the truck*, the truck was sold, and the proceeds put in bank." This cannot be true, as Mr. Alford knew the truck had been purchased for Evelyn Stevens with land sale proceeds since SR purchased the truck. Judge Whitwell's claim here is provably false.

39. Judge Whitwell's rant against me for "filing a proposed order" was and is without any merit or truth. (*Order* pg. 85). I never stated to the deputy clerk that I wanted a document styled as a proposed order to be signed by the Judge. I misunderstood the court rules pertaining to Order of Default. The statement by the judge in his decision that "JR would assert that he was trying to get the Proposed Order in the Record and he thought that is how he was to go about it." is false. I absolutely was not trying to get a proposed order signed. I did not assert that, nor is that fact in the record.

40. **As to the timeliness** of the *Motion to Recuse* as addressed by Judge Whitwell, I did not promptly receive the transcripts from the **May 9, 2023** hearing, and then I spent a week negotiating with Mr. Alford on the wording on the orders resulting from the May 9 hearings. About that time, I was considering a date for a trial. At this time, I had also concluded that given many statements and actions by the judge that I would not get a fair trial, even if Mr. Alford has not a scintilla of evidence or a word of Mississippi Code to rest his case on. I recalled that the Judge had preconceived assumptions that were all untrue and were exactly Mr. Alford's faulty defense. I recalled the time that the Judge out of no where falsely accused me of putting my PIN on my father's TDAmeritrade account. Not only did I not no what the Judge was referring to, but it was something I did not do. I went back to the transcripts and filings and could not find a reference to me putting a PIN on my father's account. I found many other statements by the Judge that were not in the record, and all unfavorable to me, and they were exactly Mr. Alford's faulty arguments against me. At this time, I concluded if I had an unbiased Judge that this matter would not even survive the discovery process. I researched the recusal process and concluded that I had enough cause for recusal. This was early to mid-June. I than got to work immediately on a motion for recusal and filed it on **June 25th, 2023**.

41. Judge Whitwell stated in his *Order* (pg.85) that "Jr would assert that he was trying to get the *Proposed Order* in the *Record* and thought that is how he would do it."

42. The above reference episode in the Record occurred at to pg.39:ln 27 thru pg.43:ln 11 of the January 12, 2023, hearing to set aside default.

43. On page 87 of the Order, the Judge states:

> "There was discussion that Mr. Driskell (attorney for JR at the time) had availability in July of 2022 and Mr. Alford would not agree to a setting then. This Court stated, "I may not have been available", only because the month of July has a holiday and the annual Mississippi Bar Convention that is an entire weeklong. That eats up 6 days of this Court's already busy calendar."

44. Per the email from Mr. Driskell to Mr. Alford in requesting a reasonable date to have the hearing regarding a the much-delayed issue of striking the report of Dr. Hobbs, the month of dates submitted were taken from the Judges published calendar, *so none of them would have been in conflict with the bar convention*, per Judge Whitwell's Order.

45. I committed no action that hindered SR's legal team from accessing any accounts using any "PIN". I acted in good faith and responded to Mr. Golman's request to set up credentials, which I was under no obligation to do.

46. Per request of Mr. Golman, I did create new credentials for SR to access his account. I tested the credentials before remitting them to Mr. Golman.

47. I did not put my PIN on the account, as the Judge accused me of doing. Putting my PIN on the account is nonsensical statement. Putting my PIN on the account is not an option provided by TDAmeritrade.

48. It is common knowledge that most financial institutions require a two-factor authorization to login for the first time from a new device. The two-factor authorization usually requires that a randomly one-time generated PIN is sent to a smart phone number that is on file by the institution. Then the user would enter the PIN that was sent to their smartphone into the login webpage, then access by the institution would be granted. I have no control over this process, if it did happen. Also, I will state I never received a two-factor authorization PIN to my smartphone, as I do recall entering SR's known cell number into the profile page as I set up the new credentials.

49. Judge Whitwell testifies at the **January 25th, 2023** hearing on Summary Judgement – (Pg.1:ln 22)

> "That's his allegation in his answer and affidavit. It also says that you only put $50,000.00 in the Ameritrade, and you put it in your name with your PIN -- you put it in his name, but you had your PIN on it. He couldn't get into it because you kept the PIN to open the account; is that not right?"

50. The above action of putting my PIN on the account that the Judge testifies to in ¶49 that I did is false and can NOT be found anywhere in the record.

51. I assert that there is not a reference anywhere in the record of a PIN, but the Judge did falsely accuse me by stating “It also says you put it your name with your PIN”. The Judge, without evidence or reason, did make an error in his fact finding, misquoted the record, and falsely accused me of an illicit action I did not commit.

Dated: August 1, 2023

/s/_____
Robert Sullivant Jr.

Sworn to and subscribed before me this the 1st day of August 2023.

My Commission Expires: _____

Notary Public