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CLERK OF COURT OF APPEALS  
OF WISCONSIN

STATE OF WISCONSIN  
APPELLATE COURT  
District IV

APPEAL NO. 2018AP002221

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State of Wisconsin ex rel. Jacob Sell,

Petitioner-Appellant

vs.

Judge Daniel Key  
Clerk Cindy Jepsen,

Respondents-~~Respondents.~~

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FROM AN ORDER DENYING PORTIONS OF A PETITION FOR  
WRIT OF MANDAMUS IN VERNON COUNTY CIRCUIT COURT,  
JUDGE DARCY JO ROOD PRESIDING

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BRIEF OF APPELLANT-PETITIONER

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STATE OF WISCONSIN  
APPELLATE COURT

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APPEAL NO. 2018AP002221

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Jacob Sell,  
Petitioner-Appellant

vs

Judge Daniel Key  
Clerk Cindy Jefsen,  
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**ISSUES PRESENTED**

1 - Judges must not have the appearance of bias to avoid any violation of due process. **Wisconsin statute 757.19** is the public's protection against such potential violations. Jacob Sell, as defendant in the original municipal court case, was being made to stand before a judge with a clear and documented appearance of bias, a judge who had acted with the appearance of bias when he issued an illegal arrest warrant the same day Mr. Sell requested a hearing in a case which involved the mother of Sell's daughter who was one of Judge Key's clients. This violates Mr. Sell's constitutionally protected right to a fair and unbiased arbiter which offends due process.

Did the circuit court err when it ruled it is in the municipal judge's discretion whether to disqualify himself or not in the face of such an obvious appearance of bias?

2 - Having an informed and effective citizenry requires open access to records. When this information pertains directly to documents filed by a records requester in court proceedings affecting him this access should be just as necessary if not more so **Wisconsin statute 19.31** declares it the

State's policy that ***“persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.”*** Wis. Stat. 19.37 allows citizens to seek remedy by mandamus for violations of open records law

Considering Wisconsin's Open Records statute, did the judge err when she ruled “there is no statute or authority requiring the municipal clerk to provide a litigant with copies of the documents he filed, so mandamus does not lie”?

### **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

Neither oral argument nor publication seem warranted in this case.

### **STATEMENT OF FACTS**

1 – The petitioner was issued 6 citations for ordinance violations by the Village of La Farge in November 2016. The petitioner moved for a substitute judge in Hidden Valleys Municipal Court. Daniel Key was appointed as substitute judge. The petitioner, Jacob Sell, presented a Motion to Disqualify Judge to the court via mail citing the fact that Daniel Key was attorney for Robyn Spector, the mother of Sell's daughter, with whom he had an ongoing and highly contentious paternity case. Sell pointed out that this created the appearance of bias as described in Wis. Stat. 757.19.

2 – Sell's Motion to Disqualify Judge was never heard and a filed copy was not returned as requested in writing.

3 – Daniel Key went on to make a default judgment against Sell for not appearing at trial in March 2017. Jacob Sell immediately moved the court for a new hearing citing a documented medical emergency. Judge Key ruled to deny the motion without hearing. Key still had not heard the Motion to Disqualify Judge.

4 – On August 1, 2017 Jacob Sell moved the circuit court in Vernon County for a hearing in his ongoing paternity case with Robyn Spector. On the same day Sell made his request in the case against Daniel Key's client,

August 1, Daniel Key acting as judge in the Hidden Valleys Municipal court issued a warrant for Sell's arrest for non-payment of \$1300 in fines from the citations 9 months earlier in November 2016 and sentenced him to 26 days in jail

The warrant did not state what statute Sell was being arrested under nor did it provide for an allocution or indigency hearing prior to sentencing which make it constitutionally insufficient and illegal Jacob Sell was arrested on the warrant on August 6, 2017.

5 – In August 2017, while incarcerated, Jacob Sell sent a second Motion to Disqualify Judge and a Motion to Quash Warrant to Hidden Valleys Municipal Court.

6 – Jacob Sell went on to leave several messages requesting the records of Cindy Jefson on the Hidden Valley Municipal Court answering machine Sell received no response from the Cindy Jefson, clerk of the Hidden Valleys Municipal Court

7 – This led to Jacob Sell filing a Petition for Writ of Mandamus with the circuit court in Vernon County, Judge Darcy Jo Rood presiding, in May 2018 asking the circuit court to compel the municipal judge to address his Motion to Disqualify Judge, Motion for Relief from Judgment and Motion to Quash Warrant (Vernon County circuit court case 18CV49) The petition further asked the circuit court to compel the municipal clerk, Cindy Jefson, to provide copies of file stamped motions the petitioner had filed with her

8 – In response to the Petition for Writ of Mandamus, Judge Rood ruled that a Motion to Disqualify requires a discretionary act by a judge and therefore mandamus would be improper.

She further ruled that “there is no statute or authority requiring the municipal clerk to provide a litigant with copies of the documents he filed, so mandamus does not lie.”

The court did rule that the municipal court had an unequivocal duty to hold a hearing on the Motion for Relief from Judgment if the filing requirements are met and ordered Mr. Sell to submit a proposed Writ of Mandamus consistent with the court's findings

## ARGUMENT

### **1 – The circuit court erred when it ruled a Motion to Disqualify is a discretionary act and not subject to mandamus.**

When a judge has an obvious appearance of bias he has a statutory duty under **Wis. Stat. 757.19** to disqualify himself. His failure to do so violates the defendant's due process. This is exacerbated when the judge goes on to act in a biased manner as Judge Daniel Key did when he issued an illegal arrest warrant for Mr. Sell based on 9 month old fines on the very day Mr. Sell requested a hearing in a case involving the mother of Sell's daughter, one of Judge Key's clients. Judge Key went on to ignore Mr. Sell's Motion for Relief from Judgment further depriving Mr. Sell of due process and further acting in a biased manner.

Since Judge Key set no hearing and made no ruling on Sell's Motion to Disqualify it cannot be said that he exercised any act of discretion as no decision is stated nor does he explain any position by the court.

### **2 – The circuit court erred when it ruled that there is no statute requiring the municipal clerk to provide a litigant with copies of the documents he filed.**

It is remarkable that a clerk of any court would fail to provide a litigant with copies of file stamped documents when requested. It would seem strange to any attorney to have to appeal to the Open Records law to get documents he filed with a court's clerk but, in fact, it may be that no law other than the Open Records law requires the clerk to provide those documents.

A person requesting records from a record holder should not have to use any specific language to obtain those records as long as the request is clear and the record holder has the records in question. This is not a matter of cost but the clerk simply failing to respond at all. Open records violations can be remedied by mandamus.

**Wis. Stat. 19.37** reads, "*If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars      and*

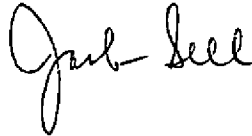
*(a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate "*

### CONCLUSION

Wherefore, the appellant, Jacob Sell, requests this Court overturn the circuit court's ruling denying portions of his Petition for Writ of Mandamus.

Dated this 29th day of July, 2019.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jacob Sell". The signature is written in black ink and is positioned to the right of the text "Respectfully submitted,".

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**CERTIFICATION OF FORM AND LENGTH**

"I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 1473 words."

Date: 29 July 19

  
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Signature

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APPENDIX TO BRIEF OF APPELLANT-PETITIONER

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