

FILED
02-11-2020
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 18-CV-3122

JAMES FETZER, et al.,

Defendant.

**PROFESSOR FETZER'S RESPONSE TO
PLAINTIFF'S MOTION TO SHOW CAUSE**

Leonard Pozner brings to the Court's attention that his confidential video deposition and the confidential written transcript of his deposition were made publicly available in late December of 2019. Although Professor Fetzer did not authorize, direct or know that the video and transcript of Mr. Pozner's deposition would be made public, he was the source of the deposition that was later made publicly accessible by Alison Maynard. He accordingly assumes responsibility for the breach that occurred but has taken measures to avoid a repeat of this occurrence.

Professor Fetzer implemented remedial measures to prevent future disclosures. In the first instance, he immediately requested that Ms. Maynard discontinue the posting of Mr. Pozner's deposition immediately upon learning of the December disclosure. Professor Fetzer also has requested that Ms. Maynard destroy or delete Mr. Pozner's deposition in any format accessible to her. Professor Fetzer, through his attorney, has also requested that Ms. Maynard provide an affidavit affirming that she has complied with Professor Fetzer's request.

Arrangements to receive such an affidavit are in progress, and Ms. Maynard's affidavit is expected shortly. Finally, Professor Fetzer himself has deleted and/or destroyed any access to Mr. Pozner's deposition, in any format, to which he has access and control. Counsel will then be the only repository of Mr. Pozner's deposition, in any format, available to Professor Fetzer.

Professor Fetzer does dispute some details of Mr. Pozner's charges against him. First, Mr. Pozner incorrectly surmises that Professor Fetzer misrepresented in prior testimony that he did not possess a copy of the written transcript of Mr. Pozner's deposition when he testified on September 13, 2019. In fact, as he explains in his affidavit submitted herewith, Professor Fetzer did not himself have the written transcript of Mr. Pozner until later obtaining a copy at the request of Attorney Bolton.

Second, Mr. Pozner posits that Professor Fetzer and his counsel previously misrepresented to the Court that Ms. Maynard had deleted the video deposition of Mr. Pozner. Again, as detailed in the accompanying affidavits of Professor Fetzer and Attorney Bolton, the information conveyed to the Court truthfully related what they had been told and believed to be true. Ms. Maynard apparently later learned that she still had access to the video deposition in stored electronic backup, but that information was not known by Professor Fetzer or Attorney Bolton until after the posting in December of 2019.

Professor Fetzer did provide a copy of Mr. Pozner's written deposition transcript to Ms. Maynard on or about October 27, 2019. He did so without knowledge or expectation that Ms. Maynard might later make the deposition publicly available and he has taken immediate remedial action in the event.

Professor Fetzer, through his counsel, has now attempted to assure that Mr. Pozner's deposition will not again be made public in the future. In fact, Professor Fetzer himself no longer has access to either the video or written transcript of Mr. Pozner's deposition.

Dated this 11th day of February, 2020.

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