

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Ruth Adjartey, Ismail Abdelhamed, Vesta)
Ballou, Mildred Collins, Jackeline)
Cucufate, Marjorie Evans, Matthew)
Griffin, Gerard Hughes, Donna Mejias-)
Berrios, Janet Montgomery, Elizabeth)
Norris, Luciano Oliveira, Mychelyne)
Oliveira, Susan Osborne, Daniel)
Peristere, Christy Raymond, Caitlin)
Ryals, John Schumacher, Myron Swanston)
Petitioner-Appellants)

Docket No. SJC-12380

v.)

Worcester Housing Court,)
Original Respondent-Appellee,)
Santander Bank, Midfirst Bank,)
Nationstar Mortgage LLC, MRH Sub1LLC,)
Freddie Mac, Fannie Mae, U.S. Bank N.A.)
As Trustee Of J.P. MorganAcquisition)
Trust 2006-WMC3, LisaY. Barron, HSBC)
Bank USA N.A. As Trustee For Nomura)
Asset Acceptance Corporation Mortgage)
Pass Through Certificates Series)
2005-AR3, HSBCBank USA N.A. As Trustee)
On Behalf Of Fremont Home Loan Trust)
2006-CMortgage-Backed Certificates)
Series2006-C, Savers Co-Operative Bank,)
Deutsche Bank National Trust Co.Trustee)
For Ameriquest Mortgage Securities Inc.)
Asset-Backed PassThrough Certificates)
Series 2003-13,US Bank N.A. As Trustee)
For Bear Stearns Asset Backed Securities)
Trust 2004-Ac4, U.S. Bank TrustN.A.)
Trustee Of Volt 2012-NP11Asset Holdings)
Trust)
Respondents-Appellees)

Christine Hilton, Ruth Adjartey, Ismail)
Abdelhamed, Vesta Ballou, Lori Cairns,)
Jackeline Cucufate, Marjorie Evans,)
Gerard Hughes, Maria Navedo, Patricia)

John Schumacher, Jean Atkinson, Edna)
Austell, Annette Bent, Steven Bourassa,)
Samantha Farrar, Patricia Ferreira)
Bonilla, Kelly Johnson, Felix Kangaru,)
Heather Kozac, Cheryl Leblanc, Philippe)
Leblanc, William Marks, Deb Mccarthy,) Docket # SJC-12406
Keith Mckenzie, Paulette McKenzie,)
Miranda Morgan, Joseph Nuzzolilo,)
Cynthia O'Gara, Mychelyne Oliveira,)
Susan Osborne, Thomas Saxe, Al Solitro,)
Sherry Stanley, Myron Swanston, Stefani)
Tubert, Tracey Tobin, Cynthia White,)
Nunciata Sullivan, Lila Ortiz, Carl)
Rellstab, Carey Souda, Patricia O'Dell,)
Linda Potter, Brian Potter, Jasmine)
Alvarez,)
Petitioner/Intervenor-Appellants)
vs.)
))
Worcester Housing Court,)
Respondent-Appellee,)
_____)

Motion to Modify Decision to Address Petitioners' Substantive
Rights as Pro Se Litigants, and as Members of the Worcester
Anti-Foreclosure Team

NOW COMES Petitioner Susan Osborne and respectfully moves this
Honorable Court, pursuant to MRAP Rule 27¹ to modify its decision
in the above-captioned case to make clear that members of the
Worcester Anti-Foreclosure Team ("WAFT") and all those similarly

¹ Petitioner timely (given request for enlargement) requests
modification of this Honorable Court's decisions of April 10,
2019 in *Adjartey* and *Hilton v.* under MRAP Rule 27: "Motion for
reconsideration or modification of decision Within 14 days after
the date of the decision of the appellate court, any party to an
appeal may file a motion for reconsideration or modification of
decision unless the time is shortened or enlarged by order. It
shall state with particularity the points of law or fact which
it is contended the court has overlooked or misapprehended and
shall contain such argument in support of the motion as the
movant desires to present."

situated, have substantive rights to non-discriminatory treatment in the Central Division of the Housing Court Department ("WHC") "on the bases of their pro se status, and of their membership in WAFT."² See relief below before the Conclusion.

WAFT members are not lawyers. Nor, except in the rare case when one of us can retain an attorney for Limited Assistance Representation (LAR), do we have attorneys. So our participation in WAFT, and thus our mutual assistance in analyzing our case documents and the applicable law, learning Summary Process procedure, drafting our briefs, and prepping for oral argument, constitute our sole fighting chance to access justice and vindicate our rights as against an exceedingly powerful industry that is always represented by at least one attorney, and sometimes by two or three.

In this connection, this Court in *Hilton* made crystal clear that pro se litigants such as we are "free to work informally with one another and with other non-attorneys to help them understand how to navigate their way through summary process cases."³ This ruling is most welcome.

This Court did not, however, address the intertwined issues of the "disparate treatment" to which the Housing Court has

² Christine Hilton, et al., v. Central Division of the Housing Court, SJC-12406, April 10, 2019 ("Hilton") and, as relevant, Ruth Adjartey, et al, v. Central Division of the Housing Court, SJC-12380, April 10, 2019 ("Adjartey")

³ Hilton, fn. 6.

subjected us "on the basis of [our] pro se status and [our] membership in WAFT."⁴ These issues are intertwined because it is our pro se status that makes our participation in WAFT essential to vindicating our constitutional due process rights to our property, that is, our homes. The WHC has discriminated against us, and continues to do so, on one of these bases or the other. Under both, we have substantive rights to equal treatment in Massachusetts courts. If the WHC accorded us this, we would never have gone to the immense effort, over the years that it has taken us, to bring our respective pro se actions in the nature of Mandamus before this Court.

All Massachusetts Litigants, Pro Se or not, Have a Right to the Impartial Administration of Justice

Massachusetts Constitution preamble of 1780 provides "for an impartial interpretation" of the laws. As to the foreclosure of mortgages on Commonwealth residents' homes, it is worth noting what our Constitution's Declaration of Rights, Article XXIX, provides (all emphases in this brief supplied):

"It is essential to the preservation of the rights of every individual, his life, liberty, **property**, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit."

⁴ Hilton, at 2. Notably, WAFT and the other four Massachusetts bank tenants' associations are apparently the only organizations that reach out to those facing foreclosure to inform them that they have rights, and what those rights are. While apparently the logical agency to inform those being foreclosed of their rights, the Attorney General's Office does not do so.

Each pro se litigant counts as "every individual." Thus, the WHC's refusal to credit pro se litigants' citations of applicable Supreme Judicial Court (SJC) precedent, almost uniformly our experience,⁵ runs roughshod over our rights under the Massachusetts Constitution. Further, in our experience, in the WHC we are fighting what the evidence (even just the suite of documents in the Registry of Deeds filed with the invalid Foreclosure Deed) indicates are multiply void, that is, legally non-existent, foreclosures of the mortgages on our homes.⁶ See also *Swanston*, in which Chief Judge Horan first granted B. Swanston's three motions to dismiss; then five weeks later reopened the cases, with no motion by or notice to either party; did not hold a hearing; then, without explanation, entered judgment for the plaintiff and against Swanston, saying on the docket "after hearing." See Affidavit of Grace Ross, Attachment A, at para. 15. All such behavior by the WHC violates our constitutional rights to the impartial administration of justice, in aid of our constitutional rights to our property.

Property rights (Article I of its Declaration of Rights,

⁵ Cf. *FNMA v. Palmaccio*, Docket #15H85SP003109 cited in the brief by Schumacher (and in his reconsideration) given her 78 SJC decision citations – all without effect under Chief Judge Horan.

⁶ See, e.g., *U.S. Bank Nat'l Ass'n, trustee, v. Ibanez*, 458 Mass. 637 (2011) (foreclosure void unless foreclosing entity holds mortgage); *Eaton v. FNMA, et al.*, 462 Mass. 569 (2012) (to be mortgagee with jurisdiction and authority to foreclose, foreclosing entity must hold borrower's promissory note or act for holder).

"Part the First") and their protection is no afterthought in our Constitution (Article X⁷). Article XI is to the same effect:

"Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character."

So is Article XII. As well, it guarantees our right to a jury trial in each of our post-"foreclosure" eviction cases:

"And every subject shall have a right to produce all proofs, that may be favorable to him; ..., and to be fully heard in his defense by himself, or his council [sic] at his election. And no subject shall be ... deprived of his property, or deprived of his ... estate, but by the judgment of his peers, or the law of the land."

Thus, forbidding a defendant WAFT member to argue a point or to introduce evidence explicitly because of WAFT membership⁸, or on the ground that s/he "had no standing" to do so,⁹ deprived that member wrongly¹⁰ of the "right to produce all proofs..." So did depriving a WAFT member of her jury trial because she was in intensive care at the time of a pre-trial conference;¹¹ or threatening a blind defendant with a jury trial in the afternoon

⁷ Foreclosure by auction sale is by far the most prevalent form of foreclosure in Massachusetts. So Article X's "standing laws" include every provision that governs Foreclosure by Sale pursuant to G.L. c. 244, § 14 et seq and G.L. c. 183 § 21.

⁸ See, for instance, Petitioner Hilton; Petitioner Hughes cases.

⁹ See, for instance, Petitioners Montgomery, Peristere, Farrar, Brian Potter, Bourassa, Kangaru, Mychelyne Oliveira.

¹⁰ Defendants do not need standing, Plaintiffs do but this concept is lost at the WHC. Nor is the right affirmed in the Bailey and Ibanez decisions as to a defense to challenge title whenever a Summary Process is brought by a purported post-foreclosure purchaser.

¹¹ See Mychelyne Oliveira, Housing Court Docket #17H85SP003874.

unless he worked something out in mediation with the plaintiff's attorney in the morning;¹² or, more recently, imposing an unaffordable monthly "use and occupancy" payment (first before anything including the already existing challenge to standing) on defendant WAFT members as the condition for having a jury trial;¹³ all are denials of WAFT members' substantive due process rights under the Massachusetts Constitution.

Nowhere does the Constitution require that an "individual" (Article XXIX), an "individual of the society" (Article X), a "subject of the commonwealth" (Article XI), or a "subject" (Article XII), who seeks to vindicate that person's rights to certain property, be represented by a member of the Massachusetts bar.

¹² See Al Solitro, Housing Court Case No. 17H85SP002599. See also Affidavit of Grace Ross, Attachment A, paragraphs 115 -137.

¹³ While a rare but devastating occurrence under Horan (see Petitioner Hughes case here), Judge Salvidio has claimed that the right to a jury trial is incompatible with Summary Process and not an "unfettered right", and so regularly imposes high to completely unaffordable "use and occupancy". This is done while actively refusing to address standing which has already been raised, requiring no preliminary injunction test or similar standard and in direct violation of the explicit pre-requisites in the black letter law of Chapter 239. This Court need not worry about practically any litigant (similarly situated to the Petitioners) before Salvidio reaching any of the examples in its *Adjartey* decision as to "reasonable" standard to ensure the "doors of the courts" are not shut in their face, nor any of the tenor of the Summary Process rules. Everyone is being set up to be evicted with no due process unless they give up their right to jury trial. See Petitioner O'Gara, *Vuong v. Susan Ewans* (19H85SP000537), *Costello v. John Petrie* (18H85SP002294), *Prince Magee, as Trustee of 93 Austin Realty Trust v. Manuel Figueroa* (19H85SP001208).

The Constitution, however, does require that such litigants' rights be protected "according to standing laws." This can only mean that, to be impartial, a judge must, e.g., require that affidavits and other documents proffered by foreclosing parties be admissible, and accept those so proffered by pro se defendants; and must apply the same law to the evidence adduced by counsel for a foreclosing party as the judge applies to that produced by a pro se litigant. Petitioners would be vindicated if such measures appeared in the WHC.

The Code of Judicial Conduct Confirms Pro Se Litigants' Rights to Judicial Impartiality

The Massachusetts Code of Judicial Conduct provides guidelines for the conduct of Massachusetts judges. These include principles that apply explicitly as to litigants who are pro se. Such guidelines and their comments comport with our Massachusetts Constitution's protection of property rights in its Preamble and with Articles X, XI, XII, and XXIX of its Declaration of Rights.

Thus Canon 2, "A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently, provides in paragraph A of Rule 2.6, "Ensuring the Right to be Heard":

"A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge may make reasonable accommodations, consistent with the law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard."

Rule 2.6 thus mandates that a litigant "shall" obtain an impartial hearing "according to law," whether represented by a lawyer or not. A judge fails to comply with Rule 2.6 if s/he for instance accepts as "evidence" the unsworn representations of a foreclosing party's counsel, e.g., as to the business practices of a company of which s/he is not and was never an employee, and regardless of whether counsel was in any position to swear to a given matter from his or her own knowledge. Yet, in the WHC, this happens frequently. A judge fails to comply with Rule 2.6 if the judge does not weigh a foreclosed homeowner's evidence diligently.¹⁴ A pro se litigant's right "to be fairly heard," according to Rule 2.6 A, "is an essential component of a fair and impartial system of justice." Rule 2.6, Comment 1.

For guidance in civil cases involving self-represented litigants, Comment 1A to Rule 2.6 refers judges to the Judicial Guidelines of April 2006: "Judges shall ... neither favor nor penalize a litigant because that litigant is self-represented."

Petitioners submit that the WHC systematically penalizes us for being pro se, in that it allows attorneys, but not us, to bring our cellphones and tablets into the courthouse, and to use

¹⁴ At oral argument on December 6, 2018, e.g., Petitioner Annette Bent demonstrated how the suite of documents including those that Plaintiff's counsel had submitted ex parte, taken with others recorded simultaneously in the Registry of Deeds, demonstrated that her foreclosure was void. Yet this has not persuaded the Housing Court nor has her recent attempt with applicable sections of the Adjerley decision; see her consideration. She is still fighting for her home...

them in court, and that it allows bank attorneys to have as many assistants at counsel table as they like, whereas it requires each of us to sit alone at the counsel table, without even a friend to help us with documents and citations. This is not impartial, and it is emblematic of the less obvious types WHC partiality toward foreclosing parties and against pro se defendants, with which pro se defendants must regularly contend.

The First Amendment of the U.S. Constitution Protects WAFT Members' Affiliation to Petition the Courts

In *Hilton*, this Court addressed an egregious practice of the WHC: threatening us WAFT members, in open court, with criminal charges for assisting one another with our cases. There are other ways, however, in which WHC judges and its Clerk's Office personnel make clear that they are well aware of WAFT, and that they disfavor it and its members. This is a direct attack on our constitutional rights to affiliate, in order to petition the government – here, the courts – for a redress of grievances. For instance, at a hearing at which WAFT member Leslie Hackert was sitting alone at counsel table, Chief Judge Horan addressed her as "you people."¹⁵ This is not a compliment. She said she does not want to see WAFT affidavits.

The most shocking and incontrovertible indication of the WHC Chief Judge's and Clerk-Magistrate's animus toward WAFT,

¹⁵ DocId : #17H85SP003335

however, came to light only this January. On January 15, 2019, in conversation WAFT Chair Grace Ross, Chief of Police Steven Sargent of the Worcester Police Department told Ross that he had been under pressure from "your opposition" to remove "you guys" from foreclosed homes on the day that a family was to be evicted, so that the Constables could evict without protest. See Affidavit of Grace Ross, appended as Attachment A. By "your opposition," the Chief meant Chief WHC Judge Horan and Clerk-Magistrate Moudios. See Attachment A, paragraphs 69 - 111. By "you guys," the Chief can only have meant WAFT. No other group in the Worcester area conducts eviction protests.¹⁶

Organizations such as the NAACP, unions, and others have encountered opposition on the basis of their constitutionally protected rights of affiliation, not so unlike what WAFT members have encountered in the WHC. More than half a century ago, the U.S. Supreme Court upheld union members' constitutional rights to assist one another in matters affecting their legal rights:

"It cannot be seriously doubted that the First Amendment's guarantees of free speech, petition and assembly give railroad workers the right to gather together for the lawful purpose of helping and advising one another in asserting the rights Congress gave them ... statutory rights which would be vain and futile if the workers could not talk together freely as to the best course to follow..."

"The State can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts

¹⁶ For an instance of where WAFT's presence recently was critical in protecting the family's rights, see Attachment A, paragraphs 160 - 178.

to vindicate their legal rights. The right to petition the courts cannot be so handicapped." *Brotherhood of Railroad Trainmen, Petitioner, v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 5-6, 7 (1964).

Further, the Rules of Judicial Conduct, Rule 2.3 (A), specifically provide: "A judge shall perform the duties of judicial office, ... without bias, prejudice, or harassment." Comment [2] observes: "As used in this Rule, examples of status or condition include but are not limited to ... political affiliation." See *NAACP v. Button*, 371 U.S. 415 (1963) (litigation is a constitutionally protected form of political expression. And membership in a "political association" such as the NAACP is protected for that purpose.)

Membership in WAFT thus falls within the ambit of this Rule and of *NAACP v. Button*. While we cannot with certainty say that one or another form of discrimination that WAFT members regularly encounter in the WHC is due to what can only be called its bias against WAFT, the uncontroverted evidence in the record shows this discrimination to be so pervasive, and so detrimental to the ability of pro se WAFT members to exercise their due process rights to protect their homes, that this Court cannot leave it unaddressed. See companion Motion for Reconsideration as to Relief of this Court's Decisions of April 10, 2019.

Remedies for violations of WAFT members' rights to represent themselves and to affiliate

First Petitioner on behalf of all Petitioners seeks recognition that the pro se litigants and those affiliated for the political right to petition in the Courts have equal rights to all others: that WAFT members have substantive rights to represent themselves, and to be free of bias and prejudice in the lower court. In light of the deep-seated bias that the Ross Affidavit affirms is even evident beyond the WHC, any remand to that court for these repairs would be futile.

Second, this Court should order that all Housing Courts permit pro se litigants to take their electronics into the courthouse and courtroom as any litigant's representative is, and to have another person at counsel table to support and provide assistance (not advice) if they wish. Filings must be accepted equally; affidavits weighed on an equal basis, SJC decisions, rules and arguments of law of equal weight; no belittling, threatening or intimidation – and Judges must expect and impose those expectations of all in the WHC.

Third, this Court should appoint a Special Master or equivalent official to reopen each post-foreclosure Summary Judgment case that has come before the WHC at least since Chief Judge Horan and Clerk-Magistrate Moudios' joint tenure to be adjudicated under the principles that this Court has enunciated in *Adjartey* and *Hilton*. See companion Motion for Reconsideration of Relief Options.

Fourth, this Court must address options for Relief such as outlined in the companion motion as to prejudice and the hostile environment in the WHC. This must include immediate protection of substantive rights as to access to our Courts as well as system wide repair at the WHC. Those similarly situated entering the WHC now are perhaps worse off. An entire policy with comprehensive elements and oversight of implementation is indicated. Training must also include the most basic jurisprudence as the WHC has refused to learn it from pro se litigants, nor noticed it in the decisions of this Court.

Fifth, all mention of WAFT (or any mutual aid) membership should be truly off-limits. Differential scrutiny of service on filings, scribner's errors, questioning who delivers, special intervention by the Clerk-Magistrate, mention of membership, written, oral by any party should be off limits. These are critical but really expressions of bias. Most important is what is likely too deep rooted, what led to incredibly disparate outcomes in decisions and influence attempted beyond the Court¹⁷.

Conclusion

For the foregoing reasons, this Court should modify the decision in *Hilton*.

¹⁷ Just on May 7th, WAFT members found out that Clerk-Magistrate Moudios had bad-mouthed WAFT members and told the new Register of Deeds that dealing with WAFT members will be a bad experience she will wish to avoid. Apparently, this has already affected her treatment of WAFT members. Evidence will be produced to this Court if time is permitted.

Respectfully Submitted,

Susan Osborne

Susan Osborne

69 Elm St.

North Brookfield, MA 01535

Date 5/9/19

CERTIFICATE OF SERVICE

I, the below signed, hereby certify that a true and correct copy of the above and foregoing has been furnished to all opposing parties by pre-paid First Class Mail, U.S.P.S.

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Re: Docket #16H85SP004400 MidFirst Bank v. Raymond,

Re: Docket #15H85SP003287, #15H85SP003288, #16H85SP003289,

U.S. Bank Trust, N.A. Trustee of VOLT 2012-NPL1 Asset Holdings
Trust v. Swanston,

Re: Docket # 14H85SP000755 Fannie Mae v. Osborne,

Re: Docket #13H85CV000283, Fannie Mae v. Griffin

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Date 5/9/19

EXHIBIT A

Grace C Ross
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I, Grace C. Ross, am over eighteen years old and I make this affidavit of my own free will. I do attest and aver to the best of my knowledge the following:

1. This affidavit is based on my experience over the past decade with people in the Worcester area who are being foreclosed, and on two conversations I had with Chief Steven Sargent of the Worcester Police Department in January, 2019, in my capacity as a leader in the Worcester Anti-Foreclosure Team (WAFT).
 - a. The first conversation started around 5:13 p.m. on January 15th, 2019, and took place in the presence of Deputy Chief Saucier.
 - b. The second one took place on January 23rd, 2019, starting at about 8:32 a.m. and took place in the presence of Captain Kenneth Davenport.
 - c. Both conversations took place in Chief Sargent's office at Worcester Police Headquarters, 9-11 Lincoln Square, Worcester, 01608, MA.

These conversations in which the Chief of Police lays out his clear unwaiver experience of the Chief Judge Diana Horan and Clerk Magistrate Moudios as collectively the "Opposition" of WAFT and the request that he illegal curtail the first amendment rights of WAFT members commences on page 10 of this affidavit.

I. My Background with Worcester-Area Foreclosure Issues

2. For the more than 10 years since it was founded, I have been the coordinator of the Massachusetts Alliance Against Predatory Lending, a statewide coalition of more than 70 organizations that share an interest in and commitment to ending the illegal foreclosure of Massachusetts homes and concomitant harm to all of our state.
3. Also since its inception, in about 2008, I have served as the chair of WAFT. WAFT is one of five Massachusetts bank tenants' associations. It is a mutual aide organization whose members join together to protect their homes and to seek redress of grievances through a number of avenues, including through our courts. This necessarily includes improving court practices, as well.

4. As chair of WAFT I am familiar with the facts of numerous members' Worcester Housing Court cases over the years, as well as with the motions and other pleadings that WAFT members prepare and file pro se, that is, without a lawyer.

5. WAFT members regularly debrief one another on their experiences in the Worcester Housing Court, including in its Clerk's Office. I am therefore familiar with that Court's actual practices as WAFT members' cases have progressed and still progress through it.

II. Worcester Anti-Foreclosure Team

WAFT has several hundred members. All are defending their homes. Most have fought post-foreclosure eviction actions in the Worcester Housing Court or courts of appeal, or they have done so. All agree to "pay it forward," that is, to help others to the extent that they can, as they themselves have been helped.

A. WAFT members assist one another in court

6. WAFT members, for instance, attend one another's hearings in the Worcester Housing Court in order to support one another and to serve as witnesses for what goes on. Members frequently make hand-written notes of the courtroom proceedings.

7. Such witnesses are essential in order to observe and to document what happens to pro se litigants in the courtroom, the hallways, and the Clerk's Office.

8. This is because only members of the Bar are allowed to bring into the courthouse their cell phones, tablets, or other electronic devices that could make recordings.

9. Also as witnesses, and as support, WAFT members accompany one another to the Worcester Housing Court's Clerk's Office, e.g., to help ensure that the clerks will not refuse to accept WAFT members' filings, refuse to schedule hearings or otherwise disadvantage or treat disparately WAFT members (to the extent that they can anyway.)

10. Worcester Housing Court personnel, both judges and clerks, are well aware of the identities of WAFT members who regularly do such "court support." So they can immediately tell when defendant homeowners or tenants who are new to that Court are affiliated with WAFT, by the WAFT "court support" members who accompany them.

B. WAFT members' post-judgment eviction protests

11. WAFT members also frequently attend and protest the evictions that the Worcester Housing Court orders after summary process eviction judgments.
12. WAFT members' role at such eviction protests is to support the family being evicted in any non-violent way that will help. This includes by observing the conduct of the constables who conduct the eviction, and, sometimes, objecting to it.
13. WAFT is the only organization in the Worcester area that conducts eviction protests.

III. Early 2016: Housing Court environment becomes actively inimical to victims of foreclosure

14. In my experience with the Worcester Housing Court, its judges have never really listened to pro se litigants. This might have been called neglectful, though their neglect was certainly not benign. Even with rights to their property, that is, their homes, under the Massachusetts and U.S. Constitutions, families were, and still are, losing them to the rampant illegalities of large, out of state banks and financial institutions.
15. Starting in early in 2016, however, the Worcester Housing Court's treatment of pro se litigants (WAFT members) in both the courtroom and its Clerk's Office became suddenly and markedly worse. In courtroom and Clerk's Office, the environment for pro se litigants became unabashedly inimical to them.
16. In addition, Plaintiffs' attorneys learned that they could speak in the hallways, in a bullying manner, to post-foreclosure defendants whom they'd learned were pro se, and that they could do this even in open court, without objection from the judges.

*****The Swanston cases illustrate some of pro se defendants' new challenges**

17. This change toward pro se litigants first showed up in four related cases of WAFT members Betty Swanston and her son, Myron Swanston¹: *U.S. Bank Trust, N.A., Trustee of Volt 2012-NPL1 Asset Holdings Trust v. Swanston, Betty A.*, cases

¹ Myron Swanston is a Petitioner in *Adjartej, et al., v. Worcester Housing Court*, Document No. SC012030.

numbered 15H85SP003287, 15H85SP003288, and 15H85SP003289, and *U.S. Bank Trust, N.A., Trustee of Volt 2012-NPL1 Asset Holdings Trust v. Swanston, Myron, et al.*, case number 15H85SP003290².

18. After a purported foreclosure, the U.S. Bank Trust, N.A. (hereafter, US Bank Trust), as trustee of a purported securitized trust named the "Volt 2012 NPL1 Asset Holdings Trust," sued separately in the Worcester Housing Court for eviction from each of the four units.

19. On December 17, 2015, the Chief Judge entered Judgment of Dismissal against the US US Bank Trust as to the three cases concerning the rental units. All three cases were closed.

20. Some time in December 2015, with no authority from a court, an agent of the plaintiff purported securitized trust broke into the Swanston home, Unit #1; removed evidence; and changed the locks. This was an illegal attempt at constructive eviction, which is itself illegal.³

**** Discovery in case about Unit #1: no evidence that plaintiff securitized trust existed**

21. On January 13, 2016, the US Bank Trust finally provided discovery. It was incomplete.

22. There was no record of it at the SEC.

23. Furthermore, neither it nor the US Bank Trust was registered with the Office of the Secretary of the Commonwealth as a foreign corporation authorized to own real property in the Commonwealth, and to sue in the Massachusetts courts as a title theory

² Evidence for the statements about the Swanston cases is in Myron Swanston's pro se first Petition for Review against the Worcester Housing Court with the Single Justice, filed in September 2016, as part of *Adjartey, et al., v. Worcester Housing Court*, and with his pro se Amended Petition for Review, refiled with the Single Justice on February 28, 2017. On April 17, 2017, the Worcester Housing Court filed a Motion to Dismiss. That court has never filed a responsive pleading, under Mass Rules of Civil Procedure that renders them undisputed facts

³ After a foreclosure by deed, the sole legal way to terminate a property owner's right of possession is by means of a Summary Process action for eviction in Housing Court. See *16 v. Dime Savings Bank*, 413 Mass. 284 (1992).

state. Real property of course would include the mortgage on the four-unit property that Betty Swanston, and Myron Swanston, owned.

24. This motion to compel was put on for a hearing on Monday, January 25, 2016, the same time as the pre-trial conference scheduled in the Summary Process eviction case against Myron Swanston as to Unit #1.

**** Judge reverses three judgments; rules for plaintiff purported securitized trust**

25. The Chief Judge had entered Judgments of Dismissal *for* Betty Swanston and *against* the US Bank Trust on December 17, 2015. See, paragraph 24, above. Nonetheless, without explanation, on January 25, 2016, she entered Final Judgment in these three cases *for* the US Bank Trust and *against* Betty Swanston. Judgment states "After Hearing", there was no hearing. Now Mass Rules of Civil Procedure requires Judges as well as parties seeking a change in judgment to act within 10 days of entry of judgment.

**** Judge refuses jury trial continuance; denies motion to compel; strikes jury trial**

26. January 25, 2016, the Swanstons got an attorney for Limited Assistance Representation (LAR). He told the Chief Judge that he could not be in court for the jury trial scheduled for the next day, January 26, 2016.

27. The LAR attorney argued that, unless the Chief Judge postponed the jury trial, Myron Swanston would have to argue, *pro se*.

28. The Chief Judge refused to reschedule the jury trial to a date when the LAR attorney could attend.

29. The Chief Judge then struck the Swanstons' jury trial, on the grounds that they would be unprepared.⁴

**** M. Swanston, with WAFT members' help, revises brief, prepares to argue pro se**

30. With well under 24 hours to do so, Myron Swanston then worked with friends at WAFT to revise the motion to compel, very slightly, into an opposition to eviction, as his LAR attorney advised him to do.

31. Myron Swanston knew his facts and was prepared to present them. He was prepared to argue against the use of evidence that the agent of the purportedly foreclosing purported securitized trust had seized illegally from his family's home in December 2015.

**** Judge berates Swanston; offers 60 day continuance if he swears to leave WAFT**

32. At the hearing on January 26, 2016, the Chief Judge berated Myron Swanston for not knowing his argument better. She told him that he was being victimized by WAFT. She interrogated him about where he'd got his brief; whether or not he had paid WAFT; and whether or not he had paid his LAR attorney. None of which was relevant to his possession of his home.

33. The Chief Judge then offered Myron Swanston a postponement of 60 days to get to know his case better and to hire an attorney, *but only if he would swear under the pains and penalties of perjury not to associate with, or to speak with, WAFT.*

34. This in effect pitted Myron Swanston's 1st and 14th Amendment rights of freedom of speech, and freedom of association, against his rights, under Article XI of the Massachusetts Declaration of Rights, to the law's assistance in protecting his rights to his property. He chose freedom of speech and freedom of association with WAFT.

⁴ Massachusetts residents have the right to a jury trial under Article XII and XV of the Massachusetts Declaration of Rights, as well as under the U.S. Constitution, long standing jurisprudence such as the Commonwealth v. Dime Savings affirms this.

****WAFT members try getting cases away from Chief Judge by moving for
recusal**

35. In the winter of 2016, in other WAFT members' cases the Chief Judge's due process violations, her interrogations in court about members' relationship with WAFT, her threats to file criminal charges, and even her questions about who had typed their filings, had led eight of them in quick succession to file, or try to file, well-researched motions for recusal.

36. I say "try to file" because the Clerk's Office refused periodically, and now refuses frequently, to accept WAFT members' motions and other case documents for filing. This is although these documents are formatted properly, and although each includes a certificate of service *and the Clerk has a ministerial responsibility to accept them.*

37. For instance, on February 22, 2016, WAFT member Paul Norris filed a motion that the Chief Judge recuse herself from *HSBC Bank USA, National Association v. Norris, Paul, et al.*, #11H85SP002665.

38. The Chief Judge denied it without addressing any of the legal bases for recusal that Norris had adduced.

****Schumacher moves for recusal: queried in court about source for motion;
denied**

39. On March 2, 2016, in *U.S. Bank National Association, v. Schumacher, et al.*, #10H85SP001207, WAFT member John Schumacher filed three motions, one of them a motion that the Chief Judge recuse herself from this case.

40. When the Chief Clerk-Magistrate was not there, an assistant clerk accepted Schumacher's motions for filing, but when Clerk-Magistrate returned a moment later he refused the recusal motions by Mildred Collins and Marjorie Evans.

41. At the motions hearing that day, March 2, the Chief Judge refused to let Schumacher argue his motion to recuse.

42. She asked him where his motion had come from. She had stated more than once in WAFT members' hearings that such questions were for the purpose of referring

all of them for charges. Nonetheless, she did not inform Schumacher that answering her questions about this might incriminate him, or that he had a right not to answer.⁵

43. On March 15, 2016, the Chief Judge let Schumacher argue this motion. She denied it, however, without addressing any of the legal bases for recusal that Schumacher had adduced, or his arguments that her conduct called for it.

****WAFB member discovers alterations in some members' dockets**

44. By the fall of 2016, some WAFB members had started discovering that the dockets in their respective cases had been altered to change what the Court said had happened in those cases.

45. Inspection of the dockets in additional WAFB members' case files also showed tampering.

46. Furthermore, these "doctored" dockets included no entries that identified and explained those alterations. Such identification and explanation are required whenever it is necessary to change an existing docket entry, e.g., to correct an error.

****Tampering added defendants retroactively**

47. In some WAFB members' cases, the doctoring includes, e.g., altering the docket retroactively to add a defendant to the case post-judgment. This could involve changing the case style, as if that purported defendant had been named and served at the start of the case; had had a hearing, etc.; when this person was not a party at all.

48. Tampered dockets obviated, although not legally, plaintiffs' need to bring separate Summary Process cases for each such occupant and guarantee any due process rights.

⁵ The Chief Judge is not a police officer. Miranda warnings apply only when a suspect is subject to any kind of interrogation while in police custody. *Miranda v. Arizona*, 384 U.S. 436 (1966). Had the Chief Judge told Schumacher that he had a right to have an attorney present, it would have been absurd. He was, after all, arguing his motion to recuse pro se precisely because the cost of an attorney was more than he could afford at that point. Still, the Chief Judge's purpose was apparently to elicit admissible statements for use in criminal referrals. Unless he was willing to give up all hope that she would recuse herself from his case, Schumacher was scarcely free simply to leave the courtroom.

****Tampering added case “events” that never happened**

49. Some tampering also falsely indicated that certain “events” had taken place when they had not.

50. One example of several is the Chief Judge’s entry of judgment *against* Betty Swanston in her three rental property cases, after first having entered judgment *for* her, and after a “hearing” that never occurred. See paragraphs 23, 24, 30, above.

51. Some doctored docket entries proved to be for “events” that had never occurred. Elizabeth Norris obtained a TRO to stop her eviction when she had not been named but her parents were being evicted. After that, Chief Judge Horan sua sponte put an entry on the TRO docket for a supposed motion for reconsideration, supposedly by Elizabeth Norris⁶.

52. The Chief Judge refused Norris’s oral and written requests to remove this entry and take the hearing for it off the schedule. Apparently ex parte, the Chief Judge held a hearing and then granted her own/Norris’s non-existent motion for reconsideration. This resulted in judgment for the purportedly foreclosing party and against Norris. Norris was evicted.

****Docket tampering is a felony in the Commonwealth; criminal referrals**

53. M.G.L. c. 268, s. 13E, “Tampering with record, document, or other object for use in an official proceeding,” subsection (b), provides: “Whoever alters, ...a record... or attempts to do so, with the intent to impair the record[’s] integrity or availability for use in an official proceeding, ... shall be punished by (i) a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2½ years, or both....”

54. On behalf of WAFT, I accordingly made criminal referrals for docket tampering in four of the cases in which WAFT members discovered this and documented it. (see appendix)

****Another challenge for WAFT: abusive evictions by constables**

⁶ See Elizabeth Norris v. HSBC Bank USA, National Ass’n, # 16H85CV000234

55. In the past few years constables at Worcester area post-foreclosure evictions have engaged in particularly abusive tactics.
56. One WAFT member was standing in the driveway of another WAFT homeowner just prior to a scheduled eviction; he was there at the explicit request of the homeowner. The Constable, with no court-ordered papers to arrest anyone, handcuffed him before the eviction was ever served.
57. This Constable was later sued for violating the WAFT member's right and lost.
58. The idea apparently is that if the constable can force a way into the home; admit the movers; and have the house cleaned out and the moving truck loaded before the homeowner can get a stay or find another impediment, the eviction will already be over.

IV. Eviction protests; WAFT's "opposition": Chief Judge and Chief Clerk

59. Cucufate's attempted eviction brought to a head a series of issues with evictions after purported foreclosures of Worcester area residents' homes. (See details at end of affidavit)
60. in light of the almost complete lawlessness of post-"foreclosure" evictions in the City of Worcester that the Cucufate family's experience on January 11th⁷ exemplified, WAFT got new items on the Worcester City Council's agenda for the evening of January 15th including the issue of training for Worcester Police officers.
61. WAFT members almost always protest at post-foreclosure evictions.
62. Their role is to support the family being evicted in any non-violent way that will help. This includes by observing the conduct of the constables who conduct the eviction; calling the police if a constable is injuring people, etc.

*****January 15, 2019: Chief Sargent's and my first conversation**

63. On January 15, 2019, the Tuesday after Cucufate's attempted eviction, Worcester Chief of Police Steven Sargent had Nicole Valentine from the City Manager's office reach out to me. Chief Sargent wanted the two of us to meet, if possible, that

⁷ See details at end of affidavit as to the event of the unscheduled Cucufate eviction

afternoon, before the City Council discussed WAFT's eviction-related police training agenda item that evening.

64. Chief Sargent and I had initially met one another, as I recall, in 2007, after my first run for Governor. He became Worcester's Chief of Police in May 2016.

****Chief Sargent and I plan for Council meeting: police; post-foreclosure evictions**

65. The Chief's and my meeting on Tuesday, January 15th focused on the concerns of the WAFT leadership, that is, police officers' understanding and responsibilities in being present when Constables attempt evictions of homeowners and/or tenants after a purported foreclosure.

66. In particular, these concerns included inconsistency in the Worcester Police Department's handling of evictions that crossed the line into criminality, and officers' refusal to take police reports in instances such as the attempted eviction of the Cucufate family.

67. I will say that overwhelmingly the Worcester Police Department has been good in this area. There is room for improvement, however, and it is critical.

68. The Chief was focused specifically on how whatever agreement he and I made regarding these matters would get expressed that evening at the City Council's meeting.

****Chief Sargent: Pressure from WAFT's "opposition"**

69. Several times during our conversation, Chief Sargent spoke of pressure "from the other side," "your opposition," and "you guys' opposition," to be more active in facilitating post-foreclosure evictions. This left me with a clear sense that there was a separate serious issue.

70. Chief Sargent emphasized, more strongly each time he said it, that he was getting a lot of pressure from the "other side."

71. After he'd said this a few times, I asked the Chief to whom he was referring as "our opposition".

72. He replied that it was the Worcester Housing Court.

73. He also said that "your opposition" was pressuring him to do things that are not legal, and which he does not have the powers to do. He said however that he wouldn't do those things. So we should not worry.

****Chief Sargent: Judge and Clerk want WAFT eviction protesters removed**

74. I finally asked, "Well, what are they asking?"

75. He said that the Judge and the Clerk were pressuring him to remove eviction protestors from a property⁸ *so that the eviction could be levied without protest.*

76. I was a little shocked, because of course a Clerk of Courts is not allowed to give any kind of legal advice. I asked the Chief, "The Judge *and* the Clerk?" He answered with a single word in the affirmative.

77. I informed the Chief that the Clerk, in his position as a Clerk, is not allowed to offer any legal advice.

78. The Chief responded that the Clerk is a lawyer.

79. I replied, "He may be a lawyer, but when he is in the capacity of a Clerk he is not to give any legal opinion."

80. Chief Sargent repeated that the Clerk is a lawyer, and that this is what he and the Judge say: that the police are not doing enough to address "you guys."

81. The Chief did not specifically name the Worcester Anti-Foreclosure Team. However, he had asked to meet with me as a leader of WAFT, to discuss what WAFT would present at the City Council meeting that would commence in about an hour, and what I would report back to the group.

82. Further, WAFT is the only group to which the Chief could have referred. In the City of Worcester, no other group conducts eviction protests.

*****January 23, 2019: Our second conversation confirms first one**

⁸ This would mean removing protestors from a purportedly foreclosed property before the eviction had begun. Until the constable levies an eviction by serving the named occupants and then it is starting, protestors are on the property legally, at the invitation of the purportedly foreclosed homeowner. Even if a foreclosure is valid, up until the moment of the actual levy, the homeowner or tenant is still in possession as a matter of law, and so can invite others onto the property. WAFT members who stand on foreclosed premises before the levy of eviction are thus lawful invitees, and if they protest there they are exercising their protected First Amendment right of free speech.

83. A few days later I asked for another meeting with Chief Sargent. The purpose was to clarify the details of what he had referred to, in our January 15th meeting, as communication to him from our "opposition" or the "other side," and to clarify that what he told me was such serious legal evidence that I could not in good conscience keep it confidential even if much of our initial conversation had been confidential.

84. The critical, alarming, and clearly partisan nature of what he'd told me felt like something that I could not, in good conscience, keep to myself.

85. Clarifying this with the Chief was necessary because our January 15th conversation had concerned sensitive topics. I tend to assume that any such conversation should be treated as confidential unless both parties agree on what they will say about it elsewhere, so that both parties feel that it would be an accurate reflection of what they have said.

86. So, the Chief's and my conversation on January 23rd commenced with my clarifying to him that although I'd assumed confidentiality, I needed to be able to discuss with others the reports that he had made about his conversations with our "opposition."

****Police Chief clarifies as to Worcester Housing Court Chief Judge, Chief Clerk**

87. The Chief then clarified explicitly:

- Yes, the conversations to which he referred were with Chief Judge Horan of the Worcester Housing Court and Chief Clerk-Magistrate Moudios of the Worcester Housing Court.
- The primary conversation to which he had referred was an in-person conversation in the Clerk's Office of the Worcester Housing Court. It had occurred when he happened to have had other business at the courthouse.
- This conversation had occurred slightly before or just after Chief Sargent was promoted to his present position as Chief of Police. He was installed the week of May 12, 2016.⁹
- The Chief Clerk-Magistrate had struck up the conversation, demanding that Worcester police officers take action at the evictions that (and again the Chief referred to us as "you guys") you guys protest.

⁹ The environment at the Worcester Housing had taken a turn for the worse for pro-se litigants in the winter of 2015/2016. See paragraph 15, above.

- Shortly after the conversation began, the Chief Judge had come out, as Chief Sargent said, her primary role had been to “kind of moderate” the conversation.
- While both Chief Judge Horan and the Chief Clerk-Magistrate participated, the one who was really pushing hard that the police needed to remove protesters was Chief Clerk-Magistrate Moudios.
- The Chief wanted to clarify for me that the Clerk had not been saying we should be arrested, but that we should be removed from the premises as trespassing.
- Again the Chief confirmed that he was firm that we had a right to protest.
- That for all he knew we were screaming and yelling (as actually he’d never been at an eviction protest) and maybe we weren’t, but that it was our right to protest.
- He was not going to infringe on that.

88. Chief Sargent and I clarified that if someone at an eviction protest was actually prepared to do civil disobedience, this would be clear to the police (and it has been clear the few times anyone has), but that’s not what the Chief was talking about. We also clarified that the police would not be removing us when we have a right to protest.

****Chief Clerk-Magistrate: “his” constables; Judge & Clerk mean WAFT**

89. Chief Sargent also said that Clerk Moudios had referred to “his” Constables (that is, the Clerk’s Constables), and that we were interfering with them, and that he wanted the Worcester Police to take action.

90. Please note: *Constables who levy execution to evict are NOT public employees, either of the court or of any other governmental agency. Constables are not sworn officers of the law. While the Court hires constables as independent contractors for some other purpose, in these cases they are hired by private parties to evict. No court has any interest in such private contracts.*

91. The Chief clarified that this was Clerk Moudios advocating for the police to step outside of their police powers, and that the Judge was playing more of a moderating role in their conversation.

92. However, it was clear from the Chief’s presentation of what happened in their conversation, in or about May 2016, that the Chief Clerk and Chief Judge were referring to the Worcester Anti-Foreclosure Team; they were referring to evictions of its members

who were litigants in the Worcester Housing Court, and to activities of WAFT outside of the Worcester Courthouse and outside of the Worcester Housing Court's purview.

93. When speaking with the Chief of Police the Chief Judge and Clerk Magistrate could only have been talking about evictions yet to occur. An execution to levy an eviction has to be used within three months so the almost to a one the future evictions that the Chief Judge and Clerk -Magistrate were referring to would be cases of WAFT homeowners/tenant litigants whose cases had not yet been decided. In other words the people who the chief judge and magistrate were contemplating to have a future eviction protest at their house were people presently in front of the court or whose cases would be in the future in front of the court. They were trying to preemptively arrange the stripping of these litigants' first amendment rights to hold a protest based on their first amendment right of affiliations of whatever political group they chose.

****Chief Judge fails to damp Chief Clerk's talk of removing WAFT members**

94. Further, Chief Sargent indicated that the Chief Judge in that conversation in no way pointed out that the affiliation of those appearing before the court was none of her business; that it was not the Chief Clerk's business; that she and he could not even be discussing affiliation under Court rules; that she as a Judge is not allowed to take affiliation into consideration; or that the Clerk as her employee is also not allowed to take affiliation into consideration, as the Code of Judicial Conduct makes clear.¹⁰

95. Chief Sargent also indicated that the Chief Judge in no way interrupted, but rather facilitated, a conversation explicitly about asking the Chief Law Enforcement Officer of the City of Worcester to bar members of an affiliated group from exercising their 1st Amendment rights to protest and to organize for the redress of grievances.

96. By the end of his and my conversation on January 23rd, Chief Sargent was back to referring to the Chief Judge and Chief Clerk-Magistrate as "the opposition" or "our opposition."

97. To all appearances, he has been left with a lasting impression that this Chief Clerk and this Chief Judge are in opposition to the Worcester Anti Foreclosure Team.

¹⁰ See Code of Judicial Conduct, Rule 2.3, Comment [2].

****Captain Davenport's and my talk: banks presumably WAFT's
"opposition"**

98. After my conversation with Chief Sargent on January 23rd, 2019, Captain Davenport walked me out. As part of his and my discussion about Constables and their rights, Chief Sargent's and my conversation about the Worcester Housing Court came up again.

99. As I said to him, "You know, my concern here is that the Clerk and the Judge are not supposed to be anybody's opposition, that they're neutrals".

100. The Captain very much nodded his head.

101. I said, "They're not supposed to be our opposition."

102. He replied no, he would think the banks would be.

103. I added, or their lawyers and the Constables that they hire.

****Summing up my meetings with Chief Sargent: this should not be
happening**

104. I think it clear that both the Chief Judge and the Chief Clerk-Magistrate had crossed the line that forbids them to consider let alone treat WAFT members differently based on our affiliation.

105. It is equally forbidden the Clerk-Magistrate's advocate that the police play a role that is not constitutionally available to them, that is, to stop WAFT members from exercising our right to protest, and to advocate for this to a police executive without restraint by his supervising Chief Judge.

106. Further, the Chief's description was of the Chief Judge playing a moderating role as to the clerk's request that WAFT members be stopped from our right to protest; he described no role for her in opposing as a topic of conversation, the political association of the litigants as members of WAFT.

107. While the Judge may have been playing a moderating role in that May 2016 conversation, she has an affirmative obligation to ensure that her staff does not cross

the line on such matters as treating certain litigants and members of the public differently because they exercise their 1st Amendment right to affiliate.

108. Per Chief Sargent's account to me, the Chief Judge did not interrupt the Chief Clerk, or tell him that affiliation is not supposed to be identified or considered by the court or its personnel, and should not even be discussed.

109. Even if the Chief Judge was not actively advocating for an inappropriate response by the police, the fact that she did not recognize that the conversation itself should not have happened strongly suggests that these conversations do happen.

110. It should simply be impossible for any Judge and her staff to treat members of an organized group differently, worse, with apparent hostility, and with negative consequences to their cases, because members exercise their First Amendment rights to associate, and to protest.

111. That the Judge and Clerk are comfortable with WAFT members being stripped of the first amendments right is congruent with WAFT members experiences in the Worcester Housing Court.

V. Chief Judge and Chief Clerk-Magistrate Violate Code of Judicial Conduct

112. The conduct of the Chief Judge, as related by Chief Sargent, violates the Code of Judicial Conduct in a number of respects. Selected examples follow.

113. I mention these because WAFT members share information as to the Code of Judicial Conduct, and of how seriously the Worcester Housing Court falls below its standards.

*****WAFT members are aware of Code; have filed Judicial Conduct Complaints**

114. WAFT members have filed complaints with the Judicial Conduct Commission as to Chief Judge Horan and as to other Worcester Housing Court Judges.

****Solitro learns of Worcester Housing Court hearing by accident the day before**

115. For example, WAFT member Al Solitro has been legally blind since birth.¹¹ He worked for the Worcester Sheriff's Office until his parents' illnesses required him at home.

116. After his mother died, the joint mortgage loan Solitro had got with his mother to pay medical bills was foreclosed. This was because Fannie Mae's mortgage servicer refused either to take any more payments on his and his mother's joint mortgage, or to modify the mortgage loan.

117. Solitro found a defectively served summons only by accident. That is how he learned of a hearing the next morning, Thursday, July 30, 2017, at 9:00 a.m. There was no time to get a lawyer. His fiancée drove and came into the courthouse with him.

118. Solitro met WAFT "court support" member Chris Horton at the courthouse. Horton took Solitro to the Clerk's Office to file his Answer and Discovery request. Horton advised Solitro to file for discovery as he was obviously going to need it.

119. Solitro's fiancée read him the Answer and Discovery form and he told her what to fill in. He signed it.

120. No WAFT members happened to be in the courtroom with Solitro.

121. Chief Judge Horan did not care about the defective service of process. She denied Solitro's motion for discovery. She said however that she'd consider his Answer.

122. It is worthy of note that the docket does not show his filing of his answer which has serious implications for further civil process right, nor does it ever show if it was accepted or denied by the judges. His discover shows wrongly as filed the next day, and then denied.

****Chief Judge Horan orders Solitro to mediation: agree, or go to jury trial today**

123. The Chief Judge nonetheless ordered Solitro to go to mediation with Fannie Mae's counsel at once and to work something out. Unless they did, they'd go to jury trial that afternoon.

¹¹ See Federal National Mortgage Loan Ass'n v. Solitro, **17H85SP002599**. Solitro is a Petitioner in Adjartey, et al., Worcester Housing Court

124. This was an empty threat. All Worcester Housing Court jury trials start in the morning.

125. Solitro told the Chief Judge that he wasn't prepared for a jury trial: he needed to subpoena documents. She did not care.

****Mediation: cash for keys; no ADA accommodation; sign Agreement**

126. In mediation with the mediator, Fannie Mae's lawyer, and his fiancée, Solitro explained that he would not be able to make out any documents they gave him to read. He related the history of the case, from Fannie Mae's servicer who refused his mortgage payments, to the defective service of process for the hearing that day, July 20th, 2017.

127. Fannie Mae's lawyer offered \$2,000. cash for keys. Solitro got him up to \$2,500. The mediator said that if it were she, she'd take it.

128. For a litigant such as Solitro, the ADA apparently requires that an advocate or if available a neutral party read any documents aloud. But it was Fannie Mae's lawyer who read him the Agreement for Judgment. Solitro said that he "read the words off fast." The Agreement actually states that Solitro himself had read it.

129. The mediator either did not know about Solitro's rights to a reasonable accommodation under the ADA because of his blindness, or she did not care. She let counsel for the adverse party, not a neutral party, read the document aloud to Solitro.

130. Solitro's fiancée guided his hand to show him exactly where to sign.

****Thoughts about Solitro's signing that Agreement for Judgment**

131. Chief Judge Horan accordingly approved an Agreement for Judgment signed by a pro se defendant who was legally blind, and whom she'd threatened into mediation.

132. As Solitro said later, he thought that if he didn't sign, he was certain to lose at trial, and that Chief Judge Horan would order execution and padlock his family's home that same day.

133. Later, also, Solitro said that he figured there'd be some sort of agreement in the mediation. If he'd known that he'd have to sign a document, however, he'd have objected and sought legal representation.

****Solitro's Judicial Conduct Complaint against Chief Judge Horan: rejected**

134. In or about October 2017, Solitro filed a Judicial Conduct Complaint about Chief Judge Horan with the Commission on Judicial Conduct. This was the first such Complaint that a member of WAFT had filed.

135. The Commission on Judicial Conduct rejected it without docketing it.

136. The Commission has done the same with every additional Judicial Conduct Complaint that WAFT members have filed with the Commission. All have concerned judges at the Worcester Housing Court.

137. So WAFT members have yet to find the assistance from the Commission on Judicial Conduct that they sorely need, and which the Commission was established to provide.

*****Judicial Conduct Rules: at Worcester Housing Court, honored in the breach**

138. The Judicial Conduct Rules are vital to the administration of justice. Here's how the conduct of the Chief Judge and her Chief Clerk-Magistrate, in pressuring the Chief of Police to remove WAFT eviction protesters, stacks up when measured against some of them.

****Rule 1.2: Promoting Confidence in the Judiciary**

139. **Rule 1.2 provides: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."**

140. Rule 1.2 applies to judges "at all times." So it applies to any and all communications by the Chief Judge to Chief of Police Sargent, asking or acquiescing in her Chief Clerk-Magistrate's asking him to have the police facilitate evictions on behalf

of the agents of the plaintiff foreclosing banks, and third parties who believe that they have bought from foreclosing parties.

141. From what Chief Sargent told me in January 2019, that he was getting a lot of pressure from the "other side" (see paragraph 110, above), more than once, starting with the initial May 2016 conversation more than 2½ years previously.

142. The Chief of Police consistently and firmly expressed his perception that the Chief Judge and Chief Clerk constitute WAFT's "opposition" or "other side." As Chief Sargent presented his perception, the Chief Judge and the Clerk-Magistrate had no appearance of impartiality, but rather appeared partial to those trying to evict families from their homes.

143. Regardless of whether a foreclosure is void or valid, their conduct here violates Rule 1.2.

144. As the evictions where the Chief Judge and Clerk-Magistrate were asking that the right to protest be abridged, addressed future evictions and were therefore to be of then present and future litigants before her or before her court; these were pre-emptive requests and reflected, clearly, that the Judge have the affiliation of these present and future litigants in mind when they are before her or judges in her court as did and does the Clerk-Magistrate in his dealings with these litigants.

145. Further, some WAFT members at any eviction protest are, even then, before the Worcester Housing Court in their own cases. The Chief Judge's and Clerk's requests, that Worcester Police curtail those WAFT members' 1st Amendment rights at protests, indicate a lack of impartiality that parallels the experience of WAFT members also in the courtroom and Clerk's Office, when those WAFT eviction protesters are fighting to save their own families from illegal foreclosure and eviction.

146. Both the Chief Judge and the Chief Clerk-Magistrate have therefore failed to promote public confidence in the integrity, and in the impartiality, of the judiciary.

147. They have failed to avoid both impropriety and the appearance of impropriety.

Rule 2.12: Impartiality and Fairness

148. Rule 2.12 (A) provides: "A judge shall require court personnel ... to act in a manner consistent with the judge's obligations under this Code."

149. The Chief Clerk-Magistrate is among the Worcester Housing Court personnel.

150. Instead of requiring him to act in a manner consistent with [her own] judicial obligations of impartiality, however, on Chief Sargent's report the Chief Judge has acted in concert with her Chief Clerk to violate **Rule 1.2**, as well as others.

Rule 2.3: Bias, prejudice, and harassment

151. (A) A judge shall perform the duties of judicial office, including administrative duties, without bias, prejudice, or harassment

152. (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice or engage in harassment, including bias, prejudice, or harassment based upon a person's status or condition. A judge shall also not permit court personnel or other subject to the judge's direction and control to engage in such prohibited behavior.

153. The Chief Judge's communications to the Chief of Police occurred in her area of the Courthouse where she was in her role and attempt to infringe the 1st Amendment rights of those who protest an eviction resulting from a case decided in her court.

154. How would bias, prejudice, and harassment ever, at any time, be acceptable in a judge?

155. Furthermore, the Chief Judge absolutely *does* permit a member of the court personnel, "to engage in such prohibited behavior." In fact, she engages in it with him.

Rule 3.1: Extrajudicial activities in general

192. Rule 3.1 provides: "[W]hen engaging in extrajudicial activities, a judge shall not: (D) engage in conduct that would appear to a reasonable person to be coercive...."

193. Chief Judge Horan's communications to Chief Sargent are obviously extrajudicial. Chief Sargent himself described Chief Judge Horan and Chief Clerk Moudios in January 2019 as pressuring him (see paragraphs 109 - 122 above), and reported the first instance of this as occurring in about May 2016.

194. A reasonable person could, I think, find this to be attempted coercion, and could find that it failed of its object not for lack of trying, but because Chief Sargent refuses to exceed the powers of the police.

Rule 3.2: [C]onsultation with government officials

156. Rule 3.2 in pertinent part provides: "A judge shall not ... consult with, an executive ... official except: (A) in connection with matters concerning the law, the legal system, or the administration of justice."

157. Over a period of time, Chief Judge Horan has evidently been communicating with an official of the executive branch, to urge that official to have the Worcester Police exceed their powers by violating WAFT members' 1st Amendment rights of free speech and affiliation.

158. This might not exactly have been "consultation." But it surely oversteps the separation of powers among the Commonwealth's legislative, the executive, and the judicial departments, as Article XXX of the Massachusetts Declaration of Rights mandates.

159. Maintaining separation as among the respective functions of each department must be fundamental purpose of both Article XXX and Rule 3.2.

****January 11, 2019, egregious constable conduct: surprise eviction**

160. Lori Cairns, WAFT's organizer received a panicked call that constables, lawyer, and movers were in Cucufate's living room on the morning of Friday, January 11th 2019.

161. Two constables from Hull, MA, had removed the front door locks and attempted a surprise illegal post-foreclosure eviction of WAFT member Jackeline Cucufate from her home in Worcester.

162. This eviction in and of itself¹² was illegal. Ms. Cucufate had never been served with the 48-hour notice of eviction that the law requires. (M.G.L. Ch. 239 §3)

163. When Cairns arrived and she negotiated with the constables, they promised Cucufate that the movers would hold off packing and removing her family's belongings for one hour, so she could try to file for bankruptcy and get a bankruptcy stay of the eviction.

¹² I do not address here various legal violations that made Cucufate's foreclosure void and of no effect, or the Worcester Housing Court's actions that led to its illegal issuance of an execution to evict Cucufate and her family.

164. Within the hour that the constables had promised, Cucufate called with filed Bankruptcy Court docket number with the stay of eviction.

****Movers load household goods, medicine, while Cucufate is at Bankruptcy Court**

165. However, as WAFT member Miledy Paulino at the scene reported, as soon as Cucufate left for the Bankruptcy Court, the constable and movers went ahead and started to pack and load her family's household goods.

166. By the time Cucufate returned an hour later, they had completed packing most of the first floor.¹³

167. The movers also packed up Cucufate's own \$1,200 worth of diabetes medicine and all her testing equipment

168. Cucufate had just got out of the hospital five days previously. She was dealing with lithium poisoning that she had acquired there. She must also take her diabetes medication regularly, as testing shows her to need it, or risk dying.

169. Eviction movers are not supposed to take medications, especially those that are life-sustaining.

****Constable tells unnamed movers to leave with goods despite stay of eviction**

170. Unlike all of WAFT's previous experience with a court-ordered stay, instead of having the movers return Cucufate's household goods from their truck and put them back in her house, the constables told the movers to drive off. They did.

171. This was although the movers had failed to present Cucufate with their inventory of what they were taking, and first allowing her to review it and sign it, as is regular practice.

172. Cucufate did not have the name of the movers or know where they were taking her family's belongings.

¹³ This included all of her 9 year old son's clothes and sneakers except what he was wearing that day, and his TV screen and games. For the boy, this has been traumatic.

173. The identity of the movers, and the identity of the storage facility to which they will take a family's belongings, are both legally required to be listed on the 48-hour notice of eviction. But that was the legally required notice that Cucufate had never been served with.

174. Lori Cairns, WAFT's organizer, fortunately, did take a photo of one of the trucks that had the movers' name on the side of it.

****Police return; refuse to take police report about goods movers took**

175. I was trying to help halt this eviction by talking to various city officials and elected officials. At one point I went by the Cucufate's home as a representative of WAFT.

176. At my suggestion, Cucufate and Lori Cairns, the WAFT staff member, went through the house and compiled an inventory of what the movers had taken. Copy of inventory appended as **Attachment B**.

177. Officers of the Worcester Police had been at the Cucufate's home but had left. I contacted the Chief of Police who appear to have sent Police to return. They did.

178. Despite the movers' complete lack of authority to take anything of her family's, the Worcester Police officers who responded refused to accept the inventory that Cucufate and Cairns had made. They also refused to take a police report about what the constables and movers had done.¹⁴

What should happen with the post-foreclosure Summary Process cases

179. I want to go on record that I am sure the Chief of Police of Worcester did not intend initially for our conversation on January 15th to be a public conversation, or for me to repeat anything he had said.

180. Yet in our conversation on January 23rd, he confirmed what he'd said on January 15th, in the full knowledge that I believed this to be so important as to require its communication to others.

¹⁴ The movers later sent Cucufate an invoice for \$350.00, to be paid if she wanted her belongings back. Copy of invoice appended as **Attachment C**. She does have them now. The large electronics are broken.

181. It is quite shocking that a sitting state court Chief Judge, who is supposed to be impartial, and her Chief Clerk-Magistrate, whom she supervises, would be pressuring a municipal official such as Chief Sargent, and that he would describe them repeatedly as WAFT's "opposition."
182. A judge could not, or at least should not, be the "opposition" of any group organized to protect their constitutional rights to their property, that is, their homes, and to obtain redress of grievances – particularly when its members appear in court before her. An impartial judge is every WAFT member's constitutional right. Indeed, it is the right of every resident of the Commonwealth.
183. A judge should certainly have no opinion about the constitutionally protected affiliation of parties that appear before her, let alone a biased one, to which she can give effect by how she rules in their cases. Chief Judge Horan's actions show her to have an opinion about WAFT members' affiliation with WAFT.
184. That opinion is not benign.
185. In her capacity as a judge, Chief Judge Horan has purported to provide legal interpretation to the police, and she did this together with her Chief Clerk-Magistrate, while the two of them used their respective official positions in more than one attempt to pressure a public servant to violate the constitutional rights of the very people whom he and his officers have sworn to protect and serve,
186. Chief Judge Horan also failed to hold her Clerk to the standards of Judicial Conduct that apply to herself.
187. The Chief of Police clearly experienced the two of them as wielding their legal authority
188. The Chief Judge and Chief Clerk-Magistrate asked that Worcester Police interfere with organized activities of legal protest by "you guys" outside the Worcester Housing Court's purview.
189. "You guys" here can only be members of WAFT.
190. But such a request depended on the Chief Judge's identification of WAFT members, and thus their affiliation. Most members of WAFT are defendants presently before the Chief Judge and other Worcester Housing Court judges, and

the purpose of the request was to curtail their 1st Amendment rights to affiliate in order redress grievances – in this case, by protesting evictions ordered by the Chief Judge and her judicial colleagues.

191.

Re-open specified cases decided in the Worcester Housing Court

192. The Chief was describing a Chief Judge's behavior so lacking in judicial propriety, and I would say sufficiently obviously biased, that **every Summary Process post-foreclosure eviction case of a WAFT member that has come before Chief Judge Horan or any other Worcester Housing Court judge during her tenure should be reopened.**

193. WAFT is not in a position to say whether Summary Process post-foreclosure cases of other defendant homeowners should be reopened, as well.

Find a way to rectify the Worcester Housing Court's degraded docket

194. Regardless of who was or is a Worcester Housing Court judge for any given case the Chief Clerk-Magistrate had and continues to have access to the official court docket of every single case in that court.

195. As members of WAFT have discovered, its docket's integrity, as to Summary Process post-foreclosure eviction cases against them, is now seriously degraded.

196. The situation is actually far more damaging to litigants' due process rights, e.g., even to being able to learn when their hearings are scheduled, than what I've said here indicates.

197. WAFT members cannot say whether the dockets in Summary Process post-foreclosure eviction cases against other defendants are more reliable than ours. Assuming that they're all in good order would seem unwise.

For the integrity of the Massachusetts court system, however, and the vindication of the Rule of Law, not to mention pro se homeowners' constitutional rights to the Commonwealth's help in protecting their homes, the Worcester Housing Court Clerk's Office cannot be allowed to continue as it is.

198. Based on what Chief Sargent has told me, it appears that Chief Judge Horan and Chief Clerk-Magistrate Moudios have not only agreed in violating several Rules of the Code of Judicial Conduct. They have agreed as to violating and have violated the Massachusetts Constitution of 1780, and have agreed in attempting to have the officers of the Worcester Police Department violate the U.S. Constitution.

199. The bias by Chief Judge Horan and Chief Judge Moudios, which WAFT members have experienced, has now been confirmed by a trained, precise, and impartial witness.

200. Impartiality is required of any judge of the Worcester Housing Court. It is required of any and every judge on the bench of any court in Massachusetts.

201. The requirements of the Code of Judicial Conduct are an expression of Constitutional guarantees to the residents of this Commonwealth.

202. The facts speak for themselves. Chief Judge Horan and her Chief Clerk-Magistrate have failed faithfully to discharge these sacred trusts.

I so swear,



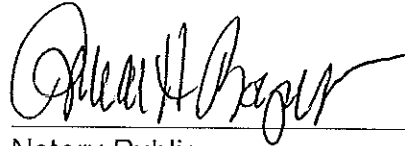
Grace C. Ross
10 Oxford St., #2R
Worcester, MA 01609

Date: May 6, 2019

COMMONWEALTH OF MASSACHUSETTS

Worcester County, ss.

On this 6th day of MAY 2019 before me, the undersigned notary public, personally appeared GRACE C ROSS who proved to me through X (mark an X) satisfactory evidence of identification, which was _____, or was X (mark an X) known to me to be the person(s) who signed the preceding document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.



Notary Public

Printed Name: BRUCE H. BOGUSLAV

My Commission Expires: APRIL 11, 2025

