No. 126507

IN THE SUPREME COURT OF ILLINOIS

THOMAS ITTERSAGEN,	)	On Petition for Leave to Appeal
	)	from the Appellate Court of
	)	Illinois, First Judicial District
	)	No. 1-19-0778
	)	
Plaintiff – Appellant	)	There Heard from the Circuit No.
	)	Court of Cook County, Illinois,
	)	County Department,
v.	)	Law Division, No: 16-L-003532
	)	
ADVOCATE HEALTH AND HOSPITALS CORPORATION and ANITA THAKADIYIL, M.D.,	)	The Honorable
	)	Rena Van Tine
	)	Judge Presiding
	)	
Defendants – Respondents.	`)	

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PRELIMINARY STATEMENT

There is no merit to Defendants' motion to strike Plaintiff's Nature of the Case, Issues Presented, Statutes Construed, and Statement of Facts. The facts supplied were necessary for this Court's understanding and were supported by a citation to the record in compliance with Supreme Court Rule 341(h)(6). In accordance with Illinois Supreme Court Rule 315(c)(5), Plaintiff's Petition for Leave to Appeal set forth his arguments, and citations to the relevant supporting authorities, including citations and arguments to Defendants' Form 990 Tax Form, which is at issue before this Court. See, *Caveney v. Bower*, 207 Ill. 2d 82 (2003) (raising an argument in a petition for leave to appeal puts that argument properly before this Court.)

Likewise, there is no merit to Defendants' argument that Plaintiff has waived review of the juror bias issue. It is undisputed that Juror Glascott did not disclose his relationship to Advocate during jury selection. The disclosure occurred on the seventh day of trial when Glascott revealed his fiduciary duty to Advocate that he *forgot* to disclose during jury selection. The trial court allowed him to remain on the jury because he said he could be fair. The entire transcript of Glascott's in chambers *voir dire*, including his questioning, the arguments of the attorneys, and the trial judge's ruling are in the record before this court. (R. 1874 - 1899). Plaintiff has presented a sufficient record for this Court's review of this issue. (Def. Br. at p. 11).

Further still, Plaintiff moved to strike Glascott and replace him with an alternate juror. (R. 1897). That was all that was required to preserve this issue for review. Plaintiff could not have requested an additional preemptory challenge. (Def. Br. at p. 11). The jury had already been seated. Nor was Plaintiff required to move for a mistrial to

preserve his right to seek a new trial on this issue. (Def. Br. at p. 11). *See*, *Bisset v. Lemont*, 119 Ill. App. 3d 863, 866, 457 (3rd Dist. 1983). This issue is not waived.

ARGUMENT

I.

De novo review is proper because implied bias does not depend on a trial court's determination of demeanor and credibility, but reversal is required even under an abuse of discretion standard of review.

Plaintiff is not asking this Court to "wipe out" the discretion afforded to trial judges in evaluating the veracity and demeanor of jurors challenged for cause. (Def. Br. at p. 7). Of course, trial judges do have great discretion when it comes to evaluating the veracity and demeanor of a juror. *People v. Cole*, 54 Ill. 2d 401, 412. But those determinations are irrelevant to the doctrine of implied bias. *United States v. Greer*, 285 F.3d 158, 172 (2d Cir. 2000) (holding that implied bias does not depend on "determinations of demeanor and credibility."). That is why the majority of courts that have considered this specific issue apply a different standard of review for implied bias than for actual bias.

"Actual bias" is based upon "determinations of demeanor and credibility that are peculiarly within a trial judge's province." *Zia Shadows, Ltd. liability Co. v. City of Las Cruces*, 829 F.3d 1232, 1235 (10th Cir. 2016). Therefore, the trial judge who heard and observed the witnesses is given deference. *Id.*

Implied bias, on the other hand, is a legal determination that turns on an objective evaluation of the challenged juror's experiences and their relation to the case being tried." *Id*. at 1243. For that reason, a trial court's assessment of a juror's credibility or partiality is

immaterial and not afforded discretion. *Brooks v. Dretke*, 418 F.3d 430, 434 (5th Cir. 2005).

Because this Court has not specifically considered this issue, Plaintiff asks this Court to consider the established law from federal and state jurisdictions outside of Illinois. When there is no Illinois determination on a point of law, "it is well settled that the courts of this state will look to other jurisdictions as persuasive authority." *Hawthorne v. Village of Olympia Fields, 262 Ill. Dec. 338, (2002) (Quinn, J., specially concurring in part and dissenting in part); See also, National Commercial Banking Corp. v. Harris*, 125 Ill. 2d 448, 457 (1988) (holding that Illinois courts will consider persuasive authority that a Federal decision may provide when it concerns a similar issue).

Further, in *Naperville v. Wehrle*, 340 Ill. 579, 582 (1930) and *People v. Cole*, 54 Ill. 2d 401, 412 (1973), this Court held that when bias is implied due to the relationship between a juror and a party, actual bias need not be proven. *See, Naperville* at 583 (when bias is implied, "evidence of its actual existence need not be given."); *Cole* at 413 (when bias is presumed, "it is not necessary to establish that bias or partiality actually exists."). Given that this Court applies the same analysis to the application of implied bias, it follows that this Court should consider adopting the same standard of review as well.

These cases are persuasive support that *de novo* is the proper standard of review for implied bias. *See, also, Fields v. Brown*, 503 F.3d 755, 770 (9th Cir. 2007) (holding that the standard for implied bias is "essentially an objective one," under which a juror may be presumed biased even though the juror himself believes or states that he can be impartial. Review is *de novo, because implied bias is a mixed question of law and fact.);*

Caterpillar Inc. v. Sturman Industries, 387 F.3d 1358, 1367 (Fed. Cir. 2004) (holding that in cases of implied bias, as opposed to actual bias, "whether a juror's partiality may be presumed from the circumstances is a question of law," which we review *de novo*).

Even if this Court applies the abuse of discretion standard, however, reversal is still required. As this Court has held, "Although questions of witness credibility generally lie in the sound discretion of the trial judge, a reviewing court will not 'rubber stamp' an erroneous judgment that results from an abuse of that discretion." *People v. Parmly*, 117 Ill. 2d 386, 406-07 (1987) (Clark, Chief J., concurring). In *Parmly*, the Chief Justice concurred in the judgment, but found that the trial court's failure to meaningfully consider evidence of a juror's close relationship to the victim was an abuse of discretion that required reversal. "The judge here based his refusal to excuse Mr. Simpson on a demonstrably inaccurate view of the record and far too narrow a view of the type of relationship that disqualifies a juror." *Id*. Further, the failure to excuse a questionable juror when sworn alternate jurors were available, "strengthened" the conclusion that discretion was abused. *Id*.

Here, as in *Parmly*, the lower courts' factual findings were not supported by the record and the potential bias stemming from Glascott's fiduciary relationship was not properly considered. Further, here, too, an alternate juror was available. There was no reason to keep Glascott on the jury after he admitted his fiduciary relationship to Advocate. Under either standard of review, this case should be reversed.

II.

JUROR GLASCOTT'S DIRECT FIDUCIARY RELATIONSHIP TO ADVOCATE REQUIRED THE PRESUMPTION OF BIAS AND HIS REMOVAL FROM THE JURY.

Introduction

In their appellee brief, Defendants have unequivocally conceded that Advocate's sworn tax return admits that Advocate Health & Hospitals Corporation did not have **any** endowment, separate or direct. (Def. Br. at p. 41) (emphasis in the original). That means, as Plaintiff has argued all along, Juror Glascott's fiduciary relationship to the Advocate endowment was, unquestionably, a direct fiduciary relationship to the Defendant, Advocate Health & Hospitals Corporation.

That relationship required his absolute disqualification as a juror under *Naperville v. Wehrle*, 340 Ill. 579 (1930) and *People v. Cole,* 54 Ill. 2d 401 (1973). The failure to remove him from the jury deprived Plaintiff of his constitutional right to a fair trial by an unbiased jury. "This is a right so basic that a violation of the right requires a reversal." *People v. Cole*, 54 Ill. 2d 401, 411 (1973).

A. The endowment *is* synonymous with the Defendant, Advocate Health & Hospitals Corporation.

At trial, Defense counsel told the trial judge that the endowment was "separate" from the defendant. (R. 1882) and (R. 1883). Both the trial court and the Appellate Court relied on those unsupported statements and found that Glascott had a relationship with the Advocate endowment, but that he did not have a direct fiduciary relationship to the Defendant. *Ittersagen v. Advocate Health & Hospitals Corp.*, 2020 IL App (1st) 190778 ¶ 63.

Now, in a complete about face, Defendants concede that Advocate Health & Hospitals Corporation did not have **any** endowment, separate or direct. (Def. Br. at p. 41) (emphasis in original). There is no way to reconcile defense counsel's statements at trial that the endowment was "separate" from the defendant with Defendants' admission to this Court that there is no separate endowment at all. Had the trial court known that the endowment was not separate from Advocate, perhaps this injustice could have been prevented.

Because Defendants concede that Advocate did not have *any* endowment at all, they now attempt to convince this Court that the endowment referred to by Juror Glascott had no relationship whatsoever to the Advocate Health and Hospitals Corporation. This position is untenable and unsupported by the record.

Defendants, repeatedly, accuse Plaintiff of misleading this Court by identifying Advocate Health & Hospitals Corporation as "Advocate" in their Appellant's Brief. (Def. Br. at p. 1, 3, 7, 18, 20). Defendants claim that Plaintiff "pretends that any reference to "Advocate" had to mean "Advocate Health and Hospitals Corporation" (Def. Br. at p. 20) This attempt at obfuscation should be ignored. The record demonstrates that every reference to "Advocate" during Glascott's *voir dire* did indeed mean the Defendant. The trial judge identified the Defendant as "Advocate."

> THE COURT: So you forgot to disclose that you had a business relationship with Advocate?
>
> JUROR GLASCOTT: I just didn't realize it when we were going through the jury selection. (R.1880).

Juror Glascott also identified his firm's business relationship as being with "Advocate" in his note to the trial Court.

> Although I don't believe it would bias me, I thought I should disclose that my firm has a business relationship with *Advocate*. I apologize. I did not realize or think of this until last night. Bill Glascott. (R. 1874).

Plaintiff's counsel argued, "He's got two separate legal fiduciary duties to Advocate Health and Hospitals Corporation" (R. 1890), and then in direct response, Defendant's counsel identified Defendant as "Advocate":

> MS. DAYAL: Well, first off, I think we are spinning the fiduciary here. He's saying he's holding Advocate's money in his hands. No. This is already invested money. That's his corporation. There's already the investment that, as he explained, that is made. That's a pool of money that has already been made. He doesn't have and never said there's an obligation *to the entirety of Advocate's money*. (R. 1890).

What's more, defense counsel acknowledged that Advocate's money was invested with Glascott's firm.

Clearly, the trial judge, the juror, plaintiff's counsel and defense counsel all understood that the defendant, Advocate Health and Hospitals Corporation, was synonymous with "Advocate."

Defendants' other efforts to separate the endowment at issue from the Defendant are equally unsupported by the evidence.

First, Defendants argue that Glascott never told the trial court that endowment I to Defendant. (Def. Br. at p. 21). When asked to explain his relationship to the *Defendant,* Glascott said, "*their* hospital endowment" was one of his investors. (R. 1880 - 1881; emphasis added). "Their" means "belonging to or associated with the people or things previously mentioned or easily identified." Oxford Learner's Dictionary, online edition,

www.oxfordlearnersdictionaries.com/english/their. He also said, "I have a fiduciary duty to the endowment *of Advocate*." (R. 1888; emphasis added). Thus, Glascott testified that the endowment belonged to Advocate.

Next, Defendants argue that there was "zero evidence" that the money belonged to Advocate. (Def. Br. at p. 20). But Glascott testified that it was "Advocate's money":

> JUROR GLASCOTT: I oversee all of the new investments that we make, which is *Advocate's* money goes into -- in a pool of money that we invest. (R. 1882 – 1883; emphasis added).

Then, Defendants argue there was not one "scintilla of evidence" that Glascott had any direct communication with anyone at Advocate. (Def. Br. at p. 10). But Glascott informed the court that he had received a LinkedIn update from someone he was "connected with at Advocate" the night before, which prompted him to disclose the relationship. (R. 1881).

Defendants cite one partial response from Glascott, who said, "I don't know who owns what or where that money goes," when he was asked if the endowment pays either defendant. (Def. Br. at p. 20 - 21). Defendants contend that one this partial line of testimony proves that Glascott did not know what, if any, relationship existed between the defendant and the endowment. (Def. Br. at p. 20 - 21). Glascott did know the relationship between the endowment and the Defendant. He specifically explained that, "the endowment invests to raise money for the growth and expansion of the *hospital system* overall." (R. 1883; emphasis added). Moreover, the relevant issue is not what *Advocate* does with its money it earns from its investments. The relevant issue is *whose* money does Glascott have a fiduciary duty to manage. The answer to that is *Advocate's* money.

These attempts to show that the endowment at issue had no relationship to the Defendant have no support from the record, the law or logic.

B. Glascott's relationship fits squarely within the classes of relationships expressly prohibited by this court.

Under this Court's holding in *City of Naperville v. Wehrle*, 340 Ill. 579, 582 (1930), Glascott's absolute disqualification was required. In *Naperville*, this Court held:

> [O]ne is not a competent juror in a case if he is master, servant, steward, counselor or attorney of either party. In such case a juror may be challenged for principal cause as an absolute disqualification of the juror.

Defendants offer numerous arguments to overcome this holding, but none of them is persuasive. First, Defendants' claim that "none of those terms can appropriately be applied to Juror Glascott on the record" is wrong. (Def. Br. at p. 16).

Glascott was a *steward* of Advocate's investment. A steward "transacts the financial and legal business of a manor on behalf of the lord." Oxford English Dictionary, p. 3047 (1971). Another recognized and more modern definition is "a fiscal agent." Merriman-Webster Dictionary, www.merriam-webster.com/dictionary/steward. As the Chief Investment Officer of the general partnership, Glascott personally oversaw the investment of the limited partners' money – which included Advocate's money. (R. 1889).

Glascott was Advocate's *servant*. As an officer of the general partnership, Glascott was an agent of each of the limited partners, including Advocate. 805 ILCS 215/402 (a) (LexisNexis, Lexis Advance through P.A. 102-15 of the 2021 Session of the 102nd Legislature). A servant is an agent. *See,* IPI Civil 50.10 (2021); *See also*, *Moy v. County of Cook*, 159 Ill. 2d 519, 523 – 24 (1994) (noting the similarity between the terms servant

and agent). Concomitantly, because his firm was hired to make investments on Advocate's behalf, Advocate was his master.

As a steward and servant to Advocate, Glascott's "absolute disqualification" was required under *Naperville*. *Id*. at 582. Further, Glascott would be disqualified in the majority of states throughout this nation that have adopted these classes of relationships between a juror and a party as grounds for removal. (Appendix at A. 45 to A. 53)

Not only was Glascott a steward and servant to Advocate, Glascott was also Advocate's admitted fiduciary. Defendants argue that *Naperville* does not apply to fiduciary relationships. (Def. Br. at 11). But this argument defies logic. The relationships requiring absolute disqualification set forth by *Naperville* are fiduciary relationships. *See e.g..Saletech, LLC v. E. Balt, Inc*, 2014 IL App (1st) 132639, ¶¶ 14-15 ("An agency is a fiduciary relationship in which a principal has the right to control the manner in which the agent performs his work and the agent has the power to act on the principal's behalf and subject the principal to liability." *See also, Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 9 (2004) ("the attorney-client relationship is a fiduciary relationship.").

C. *Naperville* Applies to Jurors.

There is no merit to Defendants' next argument that *Naperville* does not apply to jurors. (Def. Br. at p. 11 -12). That argument is directly contradicted by the language of the decision itself:

> [O]ne is not a competent *juror* in a case if he is master, servant, steward, counselor or attorney of either party. In such case a *juror* may be challenged for principal cause as an absolute disqualification of the *juror*. *Naperville* at 582. (Emphasis added.)

Further, the *Naperville* Court specifically held that that administrative commissioners "are quasi-*jurors*, and should be, like them, *'omni exceptions majores.'" Id*. (emphasis in the original). Further still, over twenty-five states have adopted these classes of relationship as grounds to excuse a *juror* for cause. (Appendix at A. 45 to A. 53)

D. *Naperville* disqualifies jurors if they are compensated by a party.

Glascott was compensated by Advocate. This alone should have been disqualifying under *Naperville*.

Glascott's firm charged an asset management fee to all of its investors. (R. 1884). Those fees were used to pay salaries and bonuses at the firm. (R. 1884). Glascott was paid a salary and a bonus by his firm. Therefore, his compensation was derived, in part, from the fees paid by Advocate. For these reasons, Glascott was not "disinterested" or "competent" to serve as a juror. *See, Naperville* at 583 ("that a commissioner whose duty it was to assess benefits against the property of the corporation of which he was an officer and from which he was receiving compensation was neither 'competent' nor 'disinterested' would seem too clear, in the light of the above principles, to require discussion.").

Other jurisdictions have determined that a juror receiving any measure of compensation from a party justifies the imposition of implied bias. *c.f.; Caterpillar Inc. v. Sturman Industries*, 387 F.3d 1358, 1372-73 (Fed. Cir. 2004) (holding that a juror was biased as a matter of law. The court reasoned that because her husband worked for Caterpillar, her "financial well-being was to some extent dependent on defendant's).

In short, none of Defendants' arguments defeat the holding of *Naperville*, which required the absolute disqualification of Glascott as a juror. While Glascott was not an

employee of Advocate, the evidence established that Juror Glascott received compensation from Advocate through management fees which went to pay salaries at his firm. (R. 1884.)

E. Glascott had a personal fiduciary duty to Advocate that Required his Absolute Disqualification.

Defendants repeatedly contend that Glascott did not have an individual fiduciary duty to Advocate because he was an employee of Green Courte. (Def. Br. at p. 10, 13, 16, 24). Defendants present no argument, other than conclusory statements, in support of this contention. A point raised, but not argued or supported by citation to relevant authorities cite violates Supreme Court Rule 341(h). These arguments are waived and should not be considered by this Court. *People v. Felella*, 131 Ill. 2d 525, 540 (1989). However, because the facts and the law so sharply demonstrate that defendants' position is wrong, Plaintiff will respond.

Defendants are correct that Juror Glascott was an employee of Greene Court. However, Defendants, conveniently omit that Juror Glascott was the Chief Investment Officer of Green Courte, the general partner of this investment partnership. (R. 1883) They also omit that he *personally* oversaw the investment of Advocate's money. (R.1884). Based on those facts, Juror Glascott was an investment advisor to Advocate while he sat on a jury judging whether Advocate was liable to pay money damages.

As an investment advisor, Juror Glascott had an individual fiduciary duty to Advocate as a matter of law. The United States Supreme Court has recognized that investment advisors such as Juror Glascott have a close and direct duty to their investors under federal law. "The Investment Advisers Act of 1940 thus reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship, as well

as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser -- consciously or unconsciously -- to render advice which was not disinterested." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963); *See also, Van Dyke v. White*, 2019 IL 121452, ¶ 76 (2019) (holding that an investment advisor is a fiduciary as a matter of law).

Further, Glascott's firm, Green Courte Partners, is a corporate entity. Such an entity depends on its officers to carry out its fiduciary duties and responsibilities. As the Chief Financial Officer, Glascott was required to carry out the fiduciary duties of the general partnership. IPI Civil 50.11 (2021) (a corporation can act only through its officers and employees); See also, *Mier v. Staley, 28 Ill. App. 3d 373, 378 (4th Dist. 1975). Finally, and most obviously, Defendants purposefully ignore Juror Glascott's own repeated statements that he had a fiduciary duty to his limited partners, one of which was the defendant.*

When Juror Glascott was asked directly whether he had a fiduciary duty to Advocate, he responded that he did.

MR. WILLIAMS: But you have a fiduciary duty to Advocate?

JUROR GLASCOTT: I do, correct. (R. 1886).

When asked directly whether he had a fiduciary duty as a general partner, he responded that he did.

MR. WILLIAMS: Right, and you have a fiduciary duty as a general partner; correct?

JUROR GLASCOTT: Correct. (R. 1886)

When defense counsel suggested that he only had a fiduciary duty to his employer, Glascott agreed, but also made clear that he had a fiduciary duty to all of the investors, including Advocate.

> JUROR GLASCOTT: Right, but we have a fiduciary responsibility to all of our investors. So the endowment -- I have a fiduciary responsibility to the endowment of Advocate. (R. 1888).

And, where Defendants admit that Advocate has no endowment. (Def. Br. at p. 41), Glascott's individual fiduciary duty was to Advocate.

Plaintiff's burden was to prove that the juror's relationship was of "such a character that a presumption of prejudice would arise therefrom." *People v. Porter*, 111 Ill. 2d 386, 404 (1986). Juror Glascott's own repeated admissions that he personally had a fiduciary duty to Advocate are the best and most persuasive evidence of his relationship to Advocate.

Given Juror Glascott's statements that he had a fiduciary duty to Advocate as well the Supreme Court's proclamation that all investment advisors are fiduciaries to their clients, Juror Glascott had a direct disqualifying relationship with Advocate that denied Plaintiff a fair trial.

F. This Court approved of the *Marcin* Court's holding that a juror in a relationship with a party built on trust and confidence must be removed.

Marcin v. Kipfer, 117 Ill. App. 3d 1065 (4th Dist. 1983) held that a juror whose relationship to a party was based on trust and confidence, was impliedly bias and must be removed. In *Roach v. Springfield Clinic*, 157 Ill. 2d 29 (1993), this Court approved of that reasoning and that result. *Id*. at 47. This Court declined to extend the presumption of

bias to a juror whose wife was a patient because there was no relationship of trust and confidence between the juror and the defendant. *Id*. at 48.

Defendants attempt to analogize this case to *Roach*, relying on the same unsupported argument that Glascott had no relationship to Advocate, only his employer did. (Def. Br. at p. 24 - 25). As discussed above, that argument provides no support. Glascott personally had a relationship to Advocate that was built on trust and confidence, just as the *Marcin* jurors had to the defendant who was their physician.

Further, unlike the *Roach* juror, whose wife was a *former* patient of the defendant, Glascott himself was actively in an *ongoing* investment partnership with Advocate. Marcin's holding should apply. *Id*. at 47.

III.

THE LAW OF STATES AND FEDERAL JURISDICTIONS OUTSIDE OF ILLINOIS SUPPORT REMOVAL OF GLASCOTT.

First, there is no merit to Defendants' claim that Plaintiff's appendix fails to comply with Supreme Court Rule 341. (Def. Br. at p. 26.) Illinois Supreme Court Rule 342 governs appendices to briefs in this Court. The Rule states that an appendix may include a supplementary appendix with materials "essential to any understanding of the issues raised in the appeal." Ill. Sup. Ct. R. 342. As this Court has not addressed the issue of implied juror bias for some time and implied juror bias is fundamentally a due process issue, the current state of the law in sister jurisdictions is relevant to this appeal.

Since this Court's latest statements on implied juror bias in *Cole* and *Naperville*, the law of prohibited relationships between jurors and parties has become clear. Further, the law of our sister jurisdictions is consistent with this Court's statements in *Naperville*.

Defendants' claim that the states referenced have not "specifically codified" a rule that partners of parties are disqualified jurors is simply incorrect. (Def. Br. at p. 26). Our sister jurisdictions not only disqualify business partners, but recognize the inherent bias in these relationships and go further to disqualify debtors and creditors, guardians and wards, masters and servants, employers and employees, and principal and agent relationships, to either party, or united in business with either party, or being on any bond or obligation for either party. (Appendix at A. 45 – A. 62).

Second, Defendants' meandering analysis of Plaintiff's appendix is misapplied. Obviously, Plaintiff recognizes that this case is governed by Illinois law. As this Court stated in *Cole*, there are certain relationships which may exist between a juror and a party to the litigation which are so direct that a juror possessing the same will be presumed to be biased and therefore disqualified. In such a case it is not necessary to establish that bias or partiality actually exists. *People v. Cole*, 54 Ill. 2d 401, 413 (1973). Juror Glascott had such a direct relationship as this Court enumerated in *Naperville*.

Despite Defendants' claims to the contrary, Plaintiff's appendix demonstrates that once a prohibited relationship is established in *voir dire*, a trial court abuses its discretion by seating any such juror. (Appendix at A. 45 – 62). As this Court stated in *Cole*, once a disqualifying relationship is established by the evidence, the juror is disqualified as a matter of law. Juror Glascott was hired by Advocate to invest Advocate's money. Juror Glascott was compensated by Advocate to do so. Juror Glascott admitted he personally had a fiduciary duty to Advocate as its investment advisor. Juror Glascott was a steward of Advocate's investment. Under this Court's precedent, Juror Glascott had a direct

relationship with Advocate and was disqualified from sitting as a juror. As Plaintiff's appendix demonstrates, the current state of Illinois law is in concert with its sister jurisdictions.

IV.

JUDICIAL NOTICE WAS AND IS APPROPRIATE.

Advocate misstates both the law of judicial notice and the facts of this case. (Def. Br. at p. 41.) Courts of review, including this Court, routinely take judicial notice of evidence that was not submitted to the trial court. *May Dep't Stores Co. v. Teamsters Union,* 64 Ill. 2d 153, 159 (1976). This Court's existing precedent was further entrenched with the adoption of Illinois Rule of Evidence 201(f), which states plainly that "Judicial notice may be taken at *any stage* of the proceeding."

Judicial notice is appropriate in this case because the information sought to be noticed complies with each element required under Rule of Evidence 201. Juror Glascott, as repeatedly noted, had a fiduciary business relationship with Advocate's endowment. Advocate claimed to the trial court that the endowment was separate from the Defendant. The Appellate Court refused to take judicial notice of the fact that Advocate had no endowment as it admitted in its 2018 tax returns.

The facts sought to be judicially noticed were all contained in Advocate's 2018 tax return and were that Advocate had no endowment, either direct or indirect. (R. 3/3/21: Exhibit B to Motion - Advocate's 2018 Form 990 return, filed August 14, 2020 p. 3, line item 10); that Advocate invested its own money in closely held equity interests. (*Id*. at p. 11, line 12 and p. 36, Schedule D, Part VII (a)2); and that Advocate directly paid

investment management fees. (*Id*. at p. 10, line item 11(f)). These facts are not subject to reasonable dispute within the meaning of Illinois Rule of Evidence Rule 201(b) as Advocate has sworn under penalty of perjury on its tax return that it has no endowment. The fact that Advocate has no endowment is capable of accurate determination by resort to a source whose accuracy cannot reasonably be questioned.

As a non-profit corporation Advocate's tax returns are a public record. See, 26 USCS § 6104(a)1(A). Public records are sources whose accuracy cannot be reasonably questioned. Ill R. of Evid. 803(8). Finally, in its Appellee Brief to this Court, Advocate admits that it "did not have **any** endowment, separate or direct." (Def. Br. at p. 41).

The Appellate Court erred in refusing to take judicial notice of the fact that Advocate had no endowment. The Appellate Court was required to take judicial notice of that fact pursuant to Ill. R. Evid. 201(d) which states: **(**d) *When Mandatory***.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

Again, the fact that Advocate had no separate endowment proves that juror Glasscott had a direct fiduciary relationship to Advocate Health and Hospitals Corporation, the Defendant in this case. As a result of that direct relationship, Plaintiff was denied has right to a fair and unbiased jury.

This Court has stated that in instances such as this, where public records become available during the pendency of an appeal, "no sound reason exists to deny judicial notice of public documents which are included in the records of other courts and administrative tribunals." *May Department Stores Co. v. Teamsters Union*, 64 Ill. 2d 153, 159 (1976). The Internal Revenue Service is an administrative agency of the Federal Government.

Advocate's attempt to invoke Supreme Court Rule 329 to oppose this Court taking judicial notice of the fact that Advocate has no endowment is misplaced. (Def. Br. at p. 6). Rule 329 does not defeat Plaintiff's argument, as Rule 329 does not apply to judicial notice. The Committee Comments of Rule 329 make clear that rule is to "supply omissions, correct inaccuracies or improper authentication, or settle any controversy as to whether the record on appeal accurately discloses what occurred at the trial." Ill. Sup. Ct., R 329. Neither party is contending that the record on appeal is inaccurate. The 2018 tax return was not available at the time of the trial. Finally, nothing in the Rule conflicts with conflicts with this Court's precedent that public records like Advocate's tax return are properly judicially noticed. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 35 (2016).

This Court's precedent and Illinois Rule of Evidence state plainly that judicial notice is appropriate at any stage of a proceeding. It should be noted that Advocate's tax return was not even signed until November 15, 2019, more than a year after the conclusion of the trial.

Defendants' argument that the 2013 tax returns are somehow relevant is misplaced as the 2013 tax returns are irrelevant to whether Advocate had an endowment in 2018.

CONCLUSION

None of Defendants' arguments overcome the evidence that Juror Glascott personally over saw the investment of Advocate's money. Nor can Defendants arguments overcome Glascott's sworn admissions that he personally had a fiduciary duty to Advocate. This relationship, between Glascott and Advocate, was "so direct" that it required the presumption of bias and his disqualification as a juror under Illinois law. *Cole* at 413.

The failure to remove him deprived Plaintiff of his fundamental right to an unbiased jury. *People v. Taylor*, 357 Ill. App. 3d 642, 647, (1st Dist. 2005). Because Plaintiff was denied that right, reversal is the proper only proper remedy. *Cole* at 411.

Wherefore, plaintiff respectfully requests this Honorable Court to reverse the trial verdict entered in his case and to remand this case for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

By: /s/ Carla A. Colaianni

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No. 126507

IN THE SUPREME COURT OF ILLINOIS

THOMAS ITTERSAGEN,	)	On Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District No. 1-19-0778
Plaintiff – Petitioner	)	There Heard from the Circuit No. Court of Cook County, Illinois, County Department, Law Division, No: 16-L-003532
v.	)	
ADVOCATE HEALTH AND HOSPITALS CORPORATION and ANITA THAKADIYIL, M.D.,	)	The Honorable Rena Van Tine Judge Presiding
Defendants – Respondents.	)	

NOTICE OF FILING OF THOMAS ITTERSAGEN'S PLAINTIFF-APPELLANT'S REPLY BRIEF

PLEASE TAKE NOTICE that on July 13, 2021, I electronically submitted Plaintiff-Appellant Thomas Ittersagen's PLAINTIFF- APPELLANT'S REPLY BRIEF to the Supreme Court Clerk through the Odyssey e-filing system. A copy of the PLAINTIFF- APPELLANT'S REPLY BRIEF is attached to this notice and served on you.

Respectfully submitted,

By: /s/ Carla Colaianni
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CERTIFICATE OF SERVICE

I, Carla A. Colaianni, an attorney, served the foregoing PLAINTIFF- APPELLANT'S REPLY BRIEF on the individuals listed below by emailing them on July 13, 2021 and served through the Odyssey E-Filing system. Under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct

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