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COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
DIVISION IV  
CIVIL ACTION NO. 21-CI-02998  
*Electronically Filed*

MEDIA5022

VICKI LEMASTER, Individually, and as Court Appointed  
Administratrix of the ESTATE OF GARY LEMASTER

PLAINTIFF

VS.

**MOTION FOR RECUSAL**

DAVID P. DUBOCQ, MD and FAMILY PRACTICE  
ASSOCIATES OF LEXINGTON, P.S.C.

DEFENDANTS

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Comes the Plaintiff, Vicki LeMaster, Individually, and as Court Appointed Administratrix  
of the Estate of Gary LeMaster, by counsel, and for her Motion for Recusal, states as follows:

**FACTUAL BACKGROUND**

As this Court is aware, on October 11, 2020, Gary Anthony (Tony) LeMaster passed away  
of a myocardial infarction at Clark Regional Hospital in Winchester, Kentucky.<sup>1</sup> Prior to this date,  
on October 2, 2020, Mr. LeMaster had a scheduled doctor's appointment with his family  
practitioner, Dr. David Dubocq, at Family Practice Associates, PSC because he had been  
experiencing chest pain, elevated blood pressure, and an elevated pulse.<sup>2</sup> At the appointment, Mr.  
LeMaster had an EKG which revealed an acute coronary syndrome.<sup>3</sup> Notably, Dr. Dubocq did not  
advise Mr. LeMaster that he had recently had a heart attack.<sup>4</sup> Instead of referring Mr. LeMaster to  
an emergency department, Dr. Dubocq referred him out for a cardio stress test to be conducted in  
a few weeks.<sup>5</sup>

<sup>1</sup> Death certificate of Gary Tony LeMaster issued May 14, 2024, certifying date of death on October 11, 2020, due to myocardial infarction.

<sup>2</sup> Deposition of Vicki LeMaster, March 14, 2022, P. 63, ll. 22-25; Dr. Dubocq's treatment record of Gary Tony LeMaster dated October 2, 2020.

<sup>3</sup> Deposition of Dr. Brian Swirsky, March 20, 2023, P. 86, l. 18 – P. 88, 8.

<sup>4</sup> Deposition of Ms. LeMaster, P. 42, ll. 6-10.

<sup>5</sup> Deposition of Ms. LeMaster, P. 42, ll. 11-14.

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On October 11, 2020, Mr. LeMaster and his wife, Vicki LeMaster, were at home getting ready to attend church via Zoom.<sup>6</sup> As church was getting ready to begin, Mr. LeMaster grabbed his chest and yelled “Oh God!” before becoming unresponsive.<sup>7</sup> Ms. LeMaster called 911 and began giving him CPR.<sup>8</sup> City of Winchester Fire and EMS arrived at their home and transported Mr. LeMaster to Clark Regional Medical Center.<sup>9</sup> Shortly thereafter, Mr. LeMaster passed away because Dr. Dubocq failed to recognize his medical emergency and properly diagnose his abnormal EKG finding.<sup>10</sup>

After Mr. LeMaster died, Dr. Dubocq’s office generated a treatment note dated November 4, 2020, which gave the impression that Mr. LeMaster had been seen on that date.<sup>11</sup> Obviously, that did not occur despite the record which indicated that it did.<sup>12</sup> This highlights one of the major issues in this case: the accuracy and reliability of Mr. LeMaster’s medical records.<sup>13</sup> The accuracy and reliability of the October 2, 2020, record is likewise problematic with even the Defendants’ own medical expert describing the documentation as “not good.”<sup>14</sup> Plaintiff’s expert opined, “Dr. Dubocq failed to appropriately recognize the symptom complex and further explore and document the symptom complex of Mr. LeMaster...”<sup>15</sup> In fact, he further noted, “the history is wholly insufficient from a documentation standpoint...because it is absent information.”<sup>16</sup>

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<sup>6</sup> Deposition of Ms. LeMaster, P. 53, ll. 3-11.

<sup>7</sup> Deposition of Ms. LeMaster, P. 54, l. 22 – P. 55, l. 21.

<sup>8</sup> Deposition of Ms. LeMaster, P. 54, l. 22 – P. 55, l. 21.

<sup>9</sup> Deposition of Ms. LeMaster, P. 55, l. 24 – P. 56, l. 10.

<sup>10</sup> Discovery deposition of Dr. Swirsky, P. 100, l. 10 – 101, l. 4; Discovery deposition of Dr. Nitin Damle, March 30, 2023, P. 157, ll. 1-7; P. 158, ll. 9-19.

<sup>11</sup> Dr. Dubocq’s treatment record of Gary Tony LeMaster dated November 4, 2020.

<sup>12</sup> Death certificate of Gary Tony LeMaster issued May 14, 2024, certifying date of death on October 11, 2020, due to myocardial infarction; Dr. Dubocq’s treatment record of Gary Tony LeMaster dated November 4, 2020.

<sup>13</sup> Discovery deposition of Dr. Swirsky, P. 87, l. 2 – 88, l. 8; *See also* P. 30, ll. 13-25; P. 83, l. 5 – 84, l. 2; Discovery deposition of Dr. Damle, P. 156, ll. 13-16.

<sup>14</sup> Deposition of Dr. John Corl, November 8, 2023, P. 38, ll. 1-13.

<sup>15</sup> Discovery deposition of Dr. Swirsky, March 20, 2023, P. 100, ll. 10-14.

<sup>16</sup> Discovery deposition of Dr. Swirsky, March 20, 2023, P. 87, ll. 22-25.

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Importantly, Dr. Swirsky opined “Had Mr. Lemaster been send to the emergency room on October 2nd, 2020, and received cardiology consultation... he would have underwent diagnostic cardiac catheterization and received cardiac revascularization as appropriate, and survived and not died on October 11th, as he did, from a sudden cardiac death.”<sup>17</sup>

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### **PROCEDURAL HISTORY**

This case was tried before a jury on May 20-24, 2024 (“first trial”) and retried on July 14-17, 2025 (“second trial”). Plaintiff has not received impartial treatment by the Court nor a fair trial. Therefore, she has filed a Motion for Judgment Notwithstanding the Verdict in her favor; or in the alternative, a Motion to Alter, Amend, or Vacate the verdict; or in the alternative, a Motion for a New Trial with an impartial judge contemporaneously with the instant Motion for Recusal and adopts and incorporates it by reference as though fully set forth herein. For the reasons stated herein and as evidenced by the record, the impartiality of the presiding judge of this Court may be reasonably questioned.

Throughout both trials, the Court improperly made facial expressions that appeared designed to prejudice the Plaintiff, though the extensiveness of these nonverbal communications and the prejudicial effect was much greater at the second trial.<sup>18</sup> At the first trial, the Court admonished the Jury not to consider her facial expressions.<sup>19</sup> However, no such admonishment was given at the second trial despite the Court’s facial expressions more strongly exuding disdain for Plaintiff’s counsel and Plaintiff’s witnesses (though no such admonishment would cure the prejudicial impact).

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<sup>17</sup> Discovery deposition of Dr. Swirsky, March 20, 2023, P. 93, ll. 10-16; *see also* Discovery deposition of Dr. Nitin Damle, March 30, 2023, P. 157, ll. 15-18.

<sup>18</sup> Dr. Corl’s Trial Testimony on July 16, 2025, at VR 12:25:10—12:26:11; *Id.* at VR 12:33:45—12:35:33; Dr. Cline’s Trial Testimony on July 17, 2025, at VR 10:20:09—10:22:25.

<sup>19</sup> Trial Testimony, May 24, 2025, P. 76, ll. 6-21.

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At the first trial, the Court interpreted Mr. LeMaster's EKG as "show[ing] there's nothing going on."<sup>20</sup> The trial Judge also made comments off the record<sup>21</sup> at the first trial that her own personal EKGs looked worse than Mr. LeMaster's EKG and even went so far at the second trial to claim she knew more about heart issues than anyone else in the courtroom at that time.

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At the second trial, the Court made clear its partiality to Dr. Dubocq and defense counsel abundantly clear both verbally and non-verbally (i.e. statements on the record and facial expressions). The Court's nonverbal cues undoubtedly influenced the jury's perception of the evidence presented. Given the Court's obvious opinions about the merits of Plaintiff's case and numerous rulings that disregarded the evidence and controlling law, the Court's impartiality can be reasonably questioned and prejudice must be presumed.

Additionally, at the second trial, the Court attempted to interpret Mr. LeMaster's EKG and stated "the EKG established there was no heart attack going on."<sup>22</sup> Despite being a hotly contested issue by the parties, the Court went a step further and stated, "There is no evidence [Mr. LeMaster] was having chest pain that day. It's undisputed."<sup>23</sup> The Court ignored the evidence contained within the October 2, 2020, record: "present chest pain (burning sensation relieved with rest)," and simply stated, "[Dr. Dubocq] explained what those [words] meant" and "he created the record." Plaintiff's counsel explained to the Court that "the medical record is one piece of evidence and Dr. Dubocq's testimony is a different piece of evidence. And they don't have to be completely in harmony." Plaintiff's Counsel also stated, "Does the jury have to believe [Dr. Dubocq] over the record? They're both pieces of evidence they can evaluate." Ultimately, over vigorous objections,

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<sup>20</sup> Trial Testimony, May 24, 2025, P. 67, ll. 10-11.

<sup>21</sup> Undersigned presumes the comments were made off the record since she has not located them within the record at this time.

<sup>22</sup> Trial Testimony, July 16, 2025.

<sup>23</sup> Trial Testimony, July 16, 2025, VR 01:15:00.

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the Court denied that the record said present chest pain and Plaintiff was prejudiced since she could not highlight this fact to the jury given the Court's ruling.

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Moreover, the Court equated Defendants' interpretation of disputed facts with the truth and berated Plaintiff's counsel throughout the second trial to "tell the truth." At the pre-trial conference on July 11, 2025, the Court chastised Plaintiff's counsel about her closing argument in the first trial that highlighted the issue of poor documentation in Mr. LeMaster's records; the Court stated, "The Court finds it extremely unethical and inappropriate to say something different to a jury that is not the evidence in the case."<sup>24</sup> During that same pre-trial conference, in reference to Plaintiff counsel's cross-examination of Dr. Dubocq at the second trial, that Court stated, "What we are not going to do is put words in somebody's mouth that doesn't exist...and not through your continual cross and asking and asking and using the term 'a few days'<sup>25</sup> to a layperson when they're being deposed and you are a lawyer trying to set up exactly what you want. We are just not going to go down that road."<sup>26</sup>

At one point in the second trial, during Plaintiff's cross-examination of a defense expert, the Court stated, "I know you're not going to like the answer necessarily but you're you're [sic] probably not going to get the answers you want, so just let him answer your question."<sup>27</sup> When facts are disputed, such as the facts of the instant case, attorneys are well in their right to elicit testimony on cross-examination in support of their interpretation of the facts.

After repeatedly making objections on behalf of the defense and interpreting disputed facts in a way that was favorable to the defense, the Court went so far as to suggest that Plaintiff's

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<sup>24</sup> Pre-Trial Conference on July 11, 2025, VR at 09:37:22 – 09:37:37.

<sup>25</sup> When Mr. LeMaster experienced chest pain is a disputed issue in this case and reasonable minds can differ on whether he was experiencing chest pain at his appointment with Dr. Dubocq on October 2, 2020.

<sup>26</sup> Pre-Trial Conference on July 11, 2025, VR at 09:22:06 – 09:23:49.

<sup>27</sup> Trial Testimony, July 16, 2025, VR at 12:21:43 – 12:21:32.

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counsel was not smart enough to watch the trial transcripts from the first trial and realize where she dropped the ball on objecting.<sup>28</sup>

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At the second trial, the Court improperly gave Plaintiff a Hobson's choice<sup>29</sup> by threatening to declare a mistrial<sup>30</sup> and have Plaintiff's counsel "start from square one"<sup>31</sup> if counsel wanted to use the same theory of the case as was used in the first trial: that Dr. Dubocq should have told Mr. LeMaster that he had a heart attack; that if Mr. LeMaster had been sent to the ER, the ER would have undertaken measures that would have prevented his untimely death; and that Dr. Dubocq's deficient documentation called into question whether Mr. LeMaster was experiencing chest pain at the time of his appointment with Dr. Dubocq on October 2, 2020.<sup>32</sup> The Court likewise excluded crucial evidence that would have been used to advance the foregoing theory of the case and made other improper rulings amounting to reversible error, which again is set forth in more detail in Plaintiff's Motion for JONV, Motion to Alter, Amend or Vacate, and Motion for New Trial filed contemporaneously with the instant Motion for Recusal.

Such manifest as bias and prejudice, and should the Judgment not be rectified, Plaintiff is entitled to a trial with a presiding judge who can maintain impartiality and integrity in the required judicial duties. Had the Court simply provided adverse rulings with a sound legal basis without

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<sup>28</sup> Trial Testimony, July 15, 2025, VR at 01:12:44 – 01:12:55.

<sup>29</sup> A Hobson's choice is defined as a situation in which you are supposed to make a choice but do not have a real choice because there is only one thing you can have or do.

<sup>30</sup> This threat was especially inappropriate given that the Court refused to give the jury an Allen charge at the first trial and declared a mistrial after less than three hours of jury deliberations; this was presumably because the Court was aware that the majority of those jurors agreed with Plaintiff's theory of the case and sought to be the "sole protector" of Dr. Dubocq.

<sup>31</sup> **On the second day of the second trial, the Court erred in opining that Plaintiff had to amend her Complaint to more specifically describe her theory of the case in order to advance that theory at the second trial despite Kentucky following a notice pleading standard. Pursuant to CR 8.01(1)(a), a pleading setting forth a claim for relief "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff was not required to assert detailed facts to support her cause of action nor should she be prejudiced for doing exactly what the law requires.**

<sup>32</sup> Trial Record on July 15, 2025, at VR 1:09:18—1:23:12.

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the personal attacks, the inappropriate comments about the merits of Plaintiff's case, and the prejudicial facial expressions in front of the jury, the instant Motion would not have been filed.

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The Court's facial expressions conveying negative opinions about Plaintiff's counsel and Plaintiff's theory of the case coupled with the comments on the record expressing opinions concerning the merits of the proceeding, demonstrate improper bias, warranting recusal. Such actions invaded the province of the jury, whose job is to interpret the evidence, weigh credibility, and apply the law.

### ARGUMENT

Every litigant is entitled to nothing less than the cold neutrality of an impartial judge and should be able to feel that his cause has been tried by a judge who is wholly free, disinterested, impartial and independent. *Petzold v. Kessler Homes, Inc.*, 303 S.W.3d 467 (Ky. 2010) citing *Dotson v. Burchett*, 190 S.W.2d 697 (Ky. 1945) (quotations omitted). "Any doubt of qualification, therefore, should be resolved in favor of a party questioning it, bona fide, and upon grounds having substance and significance." *Dotson v. Burchett*, 190 S.W.2d 697, 700 (Ky. 1945).

Judicial Canon 1, Rule 1.2 reads: "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."

"Because an objective standard is appropriate for measuring whether a judge's impartiality might reasonably be questioned from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances...[the] determination is to be reviewed on appeal on a *de novo* basis." *Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 484 (Ky. 2021).

A party or counsel may seek to disqualify or recuse a judge from proceeding further in a matter either by filing an affidavit pursuant to KRS 26A.020, by filing a motion with the judge

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pursuant to KRS 26A.015, or by filing both. *Nichols v. Commonwealth*, 839 S.W.2d 263, 265 (Ky. 1992).

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KRS § 26A.015 in pertinent part states:

(2) **Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding:**

(a) **Where he has a personal bias or prejudice concerning a party**, or personal knowledge of disputed evidentiary facts concerning the proceedings, **or has expressed an opinion concerning the merits of the proceeding;**

(e) **Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.**

(emphasis added).

In this case, the statements and facial expressions made by the Court along with the rulings that ignored evidence and controlling law resulted in a verdict rendered with substantial prejudice to Ms. LeMaster, and constitutes conduct where the Court's impartiality may be reasonably questioned. Therefore, pursuant to the Kentucky Civil Rules, and in the interest of a fair and impartial trial as guaranteed by the Kentucky Constitution, Ms. LeMaster is entitled to a presiding judge who does not allow their personal opinions to influence their rulings. The Court's personal bias manifested in preconceived notions that obviously compromised her impartiality.

Furthermore, undersigned recently learned that the presiding judge vocalized that she must be the "sole protector" of a doctor in another recent case, and she ultimately was disqualified from presiding as a judge in that case.<sup>33</sup> Upon information and belief, the presiding judge's husband is a healthcare professional and that may be partly why she is conditioned to be biased in favor of other

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<sup>33</sup> Supreme Court Order of Disqualification, In re: Kenneth B. Ain, M.D. v. University of Kentucky, et al., attached hereto as **Exhibit A**.

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healthcare professionals such as Dr. Dubocq, one of the Defendants in this case. Whatever the reason, Plaintiff must be allowed to have a fair trial with an impartial presiding judge and Plaintiff has presented enough facts to show (1) the Court has exhibited bias or prejudice, (2) the Court has expressed opinions concerning the merits of the proceeding; and (3) the Court's impartiality may be reasonably questioned.

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**NOTICE**

Please take notice that the foregoing motion will come for hearing before the Fayette Circuit Court on August 29, 2025, at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

RICHARDSON LAW GROUP, PLLC

/s/ *Melissa Thompson Richardson*

Melissa Thompson Richardson

Thomas Wright

771 Corporate Drive, Suite 900

Lexington, Kentucky 40503

Telephone: (859) 219-9090

Facsimile: (859) 219-9292

Email: [Melissa@RichardsonLawGrp.com](mailto:Melissa@RichardsonLawGrp.com)

[TWright@RichardsonLawGrp.com](mailto:TWright@RichardsonLawGrp.com)

COUNSEL FOR PLAINTIFF,

VICKI LEMASTER, Individually, and as Court

appointed Administratrix of THE ESTATE OF

GARY LEMASTER

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**CERTIFICATE OF SERVICE**

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This is to certify that the foregoing has been served on this the 8<sup>th</sup> day of August, 2025 by  
mailing and/or emailing a true and accurate copy to the following:

Clayton L. Robinson  
Jonathan D. Weber  
Robinson & Weber, PSC  
101 Prosperous Place, Suite 100  
Lexington, KY 40509  
[crobinson@robinsonweber.com](mailto:crobinson@robinsonweber.com)  
[jweber@robinsonweber.com](mailto:jweber@robinsonweber.com)  
[cmadsen@robinsonweber.com](mailto:cmadsen@robinsonweber.com)  
*Counsel for Defendants,  
David P. Dubocq, MD, and Family Practice  
Associates of Lexington, P.S.C.*

**/s/ Melissa Thompson Richardson**  
COUNSEL FOR PLAINTIFF,  
VICKI LEMASTER, Individually, and as Court  
appointed Administratrix of THE ESTATE OF  
GARY LEMASTER

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