

**FILED  
08-17-2022  
CIRCUIT COURT  
DANE COUNTY, WI  
2021CV003007**

**BY THE COURT:**

**DATE SIGNED: August 17, 2022**

Electronically signed by Frank D Remington  
Circuit Court Judge

STATE OF WISCONSIN

DANE COUNTY  
BRANCH 8

CIRCUIT COURT

AMERICAN OVERSIGHT,

Petitioner,

vs.

Case No. 21-CV-3007

ROBIN VOS, et al.,

Respondents.

**DECISION AND ORDER FINDING THE ASSEMBLY OFFICE OF SPECIAL  
COUNSEL HAS PURGED ITS CONTEMPT**

This is an order finding the Assembly Office of Special Counsel (“OSC”) to have purged its contempt. On June 10, 2022, I made an oral finding that OSC was in contempt after it adduced no evidence to rebut an already-conceded prima facie case for contempt. On June 15, 2022, in a written companion to that oral ruling, I imposed remedial sanctions and set detailed purge conditions requiring OSC’s records custodian, Michael Gableman (“Gableman”) to supply evidence that he had complied with a previous order to produce records.

Here are those purge conditions, in full:

- a. Michael Gableman shall submit evidentiary proof to a reasonable degree of

certainty that he has complied with the Court's January 25, 2022, order to search for and produce records responsive to the Petitioner's requests. This proof shall specify each individual source searched and the steps taken to search that source.

- b. Michael Gableman shall submit evidentiary proof of reasonable efforts to search for deleted, lost, missing, or otherwise unavailable records, or provide an explanation of why such a search would not be reasonable.
- c. Michael Gableman shall submit evidence describing any responsive records he withholds and the reasons for withholding, but he shall not withhold any records unless because of a clear statutory exemption to disclosure.
- d. Evidentiary proof should take the form of a sworn affidavit describing the steps taken to comply with each of these purge conditions.

Decision and Order (June 15, 2022), dkt. 327:25. In response to the purge conditions, OSC's custodian filed two affidavits.

The first affidavit, filed on June 28, 2022, purged OSC's contempt. *See* Gableman Aff., dkt. 350. However, that affidavit was far from ideal. Gableman averred to a vague, blanket search of "all locations." *Id.* ¶17. It was not even clear whether he actually searched those locations or whether he misunderstood the purge condition to be, somehow, to "duplicate[] the searches previously conducted ..." *Id.* ¶16. The second affidavit, filed on August 5, 2022, sufficiently remedied some of those deficiencies. *See* Gableman Supp. Aff., dkt. 409.

It is true, as American Oversight points out, that ambiguities remain. I am nevertheless satisfied to the "reasonable degree of certainty" required by my order that OSC has, finally, complied with the Court's order to produce records. I conclude by observing that the sanction of \$2,000 / day, although burdensome, was ultimately proved necessary to compel compliance with what should have been the basic obligation of a records custodian to the public.

**ORDER**

For the reasons stated, the Court orders:

1. As of June 28, 2022, OSC had satisfied each of the purge conditions set forth in the Court's order for remedial sanctions.
2. June 27, 2022, the final day OSC was in contempt of court, is exactly twelve days after June 15, 2022, the day OSC was ordered to pay remedial sanctions.
3. Accordingly, applying the ordered rate of \$2,000 / day multiplied by twelve days, OSC is hereby ordered to make payment to the Court in the amount of \$24,000.00.