

FILED  
02-22-2024  
Walworth County  
Clerk of Circuit Court  
2024CV000098  
Honorable Kristine E.  
Drettwan  
Branch 3

STATE OF WISCONSIN    CIRCUIT COURT    WALWORTH COUNTY

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JILL GERBER,  
234 S. PLEASANT ST.,  
WHITEWATER, WI 53190,

Case No.:

Petitioner,

Case Code: Petition for Writ  
of Mandamus 30952

-VS-

CITY OF WHITEWATER,  
c/o Heather Boehm, City Clerk,  
312 W. WHITEWAER ST.,  
WHITEWATER, WI 53190,

Respondent.

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**SUMMONS**

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STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, except the State of Wisconsin which has forty-five (45) days to answer and the United States of America which has sixty (60) days to answer, you must respond with a written answer, as that term is used in Chapter 802 of the

Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is **Walworth County Judicial Center, 1800 County Road NN, PO Box 1001, Elkhorn, Wisconsin 53121** and to **Attorney Ward D. Phillips, Plaintiff's attorney, whose address is Leece & Phillips Law Offices, S.C., Six West Street, P.O. Box 710, Elkhorn, Wisconsin 53121**. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 12 day of February 2024.

LEECE & PHILLIPS, S.C.  
Attorneys for the Plaintiff

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Ward D. Phillips, SBN: 1016416  
6 West Street, P.O. Box 710  
Elkhorn, WI 53121-0710  
Telephone: 262-723-7040  
Fax No.: 262-723-7039

STATE OF WISCONSIN    CIRCUIT COURT    WALWORTH COUNTY

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**PETITION FOR WRIT OF MANDAMUS**

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This is an action to enforce the provisions of §§19.32 through 19.37, Wis. Stats., Wisconsin’s open records law, which provides for public access to government records and declares the public policy of the State of Wisconsin as follows:

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is

contrary to the public interest, and only in an exceptional case may access be denied.

See §19.31, Wis. Stats.

Petitioner, Jill Gerber, by her attorneys, Leece & Phillips, S.C., by Attorney Ward D. Phillips, hereby petitions this court for a writ of mandamus directing the Respondent, City of Whitewater, pursuant to §19.37, Wis. Stats., to provide records sought by the Petitioner, alleging to the Court as follows:

1. The Petitioner, Jill Gerber (Hereinafter “the Petitioner”), is an adult resident of the City of Whitewater, residing at 234 South Pleasant Street, Whitewater, Wisconsin 53190.
2. The Respondent, City of Whitewater (Hereinafter “the Respondent”), is a Wisconsin City, organized pursuant to the laws of the State of Wisconsin and located in the State of Wisconsin in Walworth County. Heather Boehm is the Clerk for the City of Whitewater, which principal place of business is located at 312 West Whitewater Street, Whitewater, Wisconsin 53190.
3. On or about December 13, 2023, the Petitioner forwarded a written open records request to the City Clerk for the City of Whitewater, requesting public records related to the hiring of the City of Whitewater’s City Manager. Attached hereto as Exhibit 1 is a true and correct copy of the Petitioner’s open records request.
4. Specifically, the Petitioner’s open records request, asks for the following records:
  - a. All background checks completed on John Wiedl prior to being hired with the City of Whitewater as the City Manager or Interim City Manager.
  - b. The GOVHR contract that was used to fill the City Manager position by John Weidl.

- c. All recommendations from John Weidl's previous employers.
- d. John Weidl's resume on file.
- e. Copy of any scoring system used to provide a rank of the candidates for the City of Whitewater position by GOVHR or by the City of Whitewater.

5. On or about January 5, 2024, the City of Whitewater, through its attorney, provided a response to the Petitioner's open records request. Attached hereto as **Exhibit 2** is a true and correct copy of the response the Petitioner received from the City of Whitewater, as well as the Petitioner's response to the City of Whitewater's attorney.

6. Attached to the Respondent's attorney's email, were documents that were responsive to the Petitioner's open records request; however, the documents provided by the Respondent were not a complete disclosure of all records requested by the Petitioner.

7. The Respondent provided pages 3, 4 and 15 of its contract with GOVHR, but did not provide the remaining pages. The Respondent did not provide any letters of recommendation submitted on behalf of Mr. Weidl.

8. On or about January 4, 2024, the Petitioner requested audio records from Respondent's Finance Committee meetings for September 26, 2023, October 10, 2023, October 12, 2023, October 16, 2023, and October 24, 2023. The Petitioner also requested videotape footage for November 7, 2023, and December 19, 2023.

9. On January 16, 2024, Respondent's City Clerk responded to the request. The initial response was that the Respondent had the audio for the Finance Committee meetings that were requested by the Petitioner.

10. On January 17, 2024, Respondent's City Clerk again responded. The response provides that the Respondent had the audio recording for the October 12, 2023, Finance Committee meeting and audio for a November 28, 2023, Finance Committee meeting.

11. On or about January 17, 2024, Petitioner again requested Finance Committee Meeting audio for September 26, 2023, October 10, 2023, October 16, 2023, and October 24, 2023, as well as questions regarding surveillance video cameras.

12. On or about January 18, 2024, Respondent's City Clerk responded to Petitioner's inquiry. Which states in part "[i]n response to your request, I have sent you all of the information that is available."

13. The communications between the Petitioner and the Respondent's City Clerk were all via email. Attached hereto as **Exhibit 3** is a true and correct copy of the string of emails between the Petitioner and the Respondent's City Clerk from January 4, 2024, until January 18, 2024.

14. Petitioner took further steps to get copies of the audio for the Finance Committee meetings that had not been provided by the City. Attached hereto as **Exhibit 4** is a true and correct copy of emails between the Petitioner and one of Respondent's employees regarding the Finance Committee meeting audio tapes.

15. According to Respondent's employee, the Respondent does not have the Finance Committee meeting audio tapes requested by the Petitioner.

16. Pursuant to Respondent's Code of Ordinances, Respondent is to maintain audio recordings of governmental body meetings for one year after the minutes from such meeting have been approved and published. See Whitewater Code of Ordinances §2.66.070 (2).

FIRST CAUSE OF ACTION: WRIT OF MANDAMUS  
PURSUANT TO §19.37, WIS. STATS.

17. Plaintiff incorporates paragraphs one (1) through sixteen (16) of this petition by reference as if fully set forth herein.

18. The Petitioner is a “requester” as that term is defined in §19.32 (3), Wis. Stats.

19. The Respondent is an “authority” as that term is defined in §19.32 (1), Wis. Stats.

20. The Petitioner has a specific legal right free from substantial doubt pursuant to §19.35, Wis. Stats., to have access to public records that she has requested in her December 13, 2023, open records request and her January 4, 2024, open records request.

21. The Respondent has a positive and plain duty to provide to the Petitioner copies of the records the Petitioner requested in her December 13, 2023, and January 4, 2024 open records requests to the Respondent.

22. By failing to provide the Petitioner with the records she requested in her December 13, 2023, and January 4, 2024, open records requests Respondent has violated its plain and positive duty pursuant to the Wisconsin Open Records law.

23. Section 19.37, Wis. Stats., provides that the Petitioner may file a petition for a writ of mandamus to remedy violations of Wisconsin Open Records law. Further, other than a writ of mandamus there is no adequate alternative remedy available to the Petitioner.

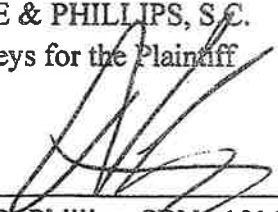
WHEREFORE, Plaintiff demands judgment as follows:

- A. A writ of Mandamus requiring the Respondent to provide the records requested in the Petitioner’s open records requests;
- B. An award to the Petitioner of her damages pursuant to §19.37 (2), Wis. Stats.;

- C. An award of costs, fees, including attorney's fees and disbursements pursuant to §19.37 (2), Wis. Stats.;
- D. An award of punitive damages pursuant to §19.37 (3), Wis. Stats.;
- E. An award of a penalty not to exceed \$1,000.00 pursuant to §19.37 (4), Wis. Stats.;  
and
- D. An order for such other and further relief as the court deems just and necessary.

Dated this 21<sup>st</sup> day of February 2024.

LEECE & PHILLIPS, S.C.  
Attorneys for the Plaintiff



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Ward D. Phillips, SBN: 1016416  
6 West Street, P.O. Box 710  
Elkhorn, WI 53121-0710  
Telephone: 262-723-7040  
Fax No.: 262-723-7039



**Records Request**

Jill Gerber <jgerber@whitewater-wi.gov>

Wed 12/13/2023 5:50 PM

To: Karri Anderberg <kanderberg@whitewater-wi.gov>

Cc: John Weidl <jweidl@whitewater-wi.gov>; Jonathan McDonell <jm@hmattys.com>

Karri

I am requesting a copy of the following documents:

1. All background checks completed on John Weidl prior to being hired with the City of Whitewater as the City Manager or Interim City Manager.
2. The GOVHR contract that was used to fill the City Manager position by John Weidl.
3. All recommendations from John Weidl's previous employers
4. John Weidl's resume on file
5. Copy of any scoring system used to provide a rank of the candidates for the City of Whitewater position by GOVHR or by the City of Whitewater.

If you have any questions, please let me know.

Thank you

Jill Gerber  
 Common Council Representative  
 Aldermanic District 4  
 Voting Wards 6,7,8  
 City of Whitewater  
 262.949.9370



**Re: Open Records Request**

Jill Gerber <jgerber@whitewater-wi.gov>

Fri 1/5/2024 4:40 PM

To:JonathanMcDonell <jm@hmattys.com>

Jon,

Per you note below, you say the police department is not releasing all information, but why did not I not receive the full GovHR contract which most likely is old the online Council Packet from June or July, which is no longer posted online? The GOVHR contract goes from page 4 to Page 15?

Jill Gerber  
Common Council Representative  
Aldermanic District 4  
Voting Wards 6,7,8  
City of Whitewater  
262.949.9370



From: JonathanMcDonell <jm@hmattys.com>  
Sent: Friday, January 5, 2024 4:23 PM  
To: Jill Gerber <jgerber@whitewater-wi.gov>  
Subject: Open Records Request

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Dear Ms Gerber:

Please consider this the City of Whitewater's response to your public records request. I have enclosed records which are provided pursuant to that request. Also, please be advised the Police Department is not releasing all of the records pertaining to your request. The reasons for the refusal to release all of the records include:

1. Some portions of the records are not being released in order to protect the privacy of individuals. The public policy basis for the refusal is that the public policy protecting the individual's privacy outweighs the public's right to receive this information.
2. Some records are not being released because they include driver's license numbers, phone numbers or addresses that are confidential based the Driver's Privacy Protection Act and Wis. Stat. §19.36(a).
3. Some records are not being released because they refer to a performance improvement plan of an employee and/or other evaluation reports which are confidential due to Wis. Stat. §19.36(10)(c) and §19.36(10)(d) and the public policy encouraging frank evaluations and criticisms of employees which might be compromised if the evaluator knows that the records may be released to the public. This policy outweighs the public's right to receive the records.
4. Some records are not being released because they include information relating to one or more employees that is used by the department for staff management planning, performance evaluations, judgments or recommendations concerning future salary adjustments or other wage treatments, promotions, job assignments or letters of reference. Also refusing to release performance evaluations and critical comments concerning employee performance supports the public policy of encouraging the candid and frank review of job performances of employees and therefore encouraging accurate evaluations. If the reviewer or person offering criticism knows the

2/2/24, 1:10 PM

Mail - Jill Gerber - Outlook

evaluations may be released to the public, critical and candid evaluations are much less likely. This policy outweighs the public's right to receive the redacted portions of the records

Thank you,

Jonathan K. McDonell

Harrison, Williams & McDonell, LLP

522 W. Main Street

P.O. Box 59

Whitewater, WI 53190

Phone: 262-473-7900

Fax: 262-473-1977

Email: [jm@hmattys.com](mailto:jm@hmattys.com)

**From:** Heather Boehm <[hboehm@whitewater-wi.gov](mailto:hboehm@whitewater-wi.gov)>  
**Sent:** Thursday, January 18, 2024 3:19 PM  
**To:** Jill Gerber <[jgerber@whitewater-wi.gov](mailto:jgerber@whitewater-wi.gov)>  
**Cc:** Taylor Zelnert <[tzeinert@whitewater-wi.gov](mailto:tzeinert@whitewater-wi.gov)>  
**Subject:** RE: Open Records

Jill,

Thank you for following up! Tim was able to find the recording of Karri and yourself. This recording is available via flashdrive at the Municipal Building for you to pick up. He stated the camera is set to keep 30 days' worth of data, however everything on that particular unit is recording more than what it is set for, and he does not know why. Staff is working to obtain more information.

Additionally, attached to this email is all ordinances related thereto.

In regards to your request, I have sent you all of the information that is available.

Thank you,

**Heather Boehm**  
City Clerk



312 W. Whitewater St., Whitewater, WI 53190  
(262)473-0102 | [hboehm@whitewater-wi.gov](mailto:hboehm@whitewater-wi.gov)

**DON'T LET THE UGLY IN OTHERS DESTROY THE BEAUTY IN YOU!**

The City of Whitewater will be starting a monthly newsletter! Subscribe to receive the latest news, public service announcements & updates, and upcoming events delivered to your inbox. Subscribe: <https://p.constantcontactpages.com/su/g8U4Af4/whitewater>

**From:** Jill Gerber <[jgerber@whitewater-wi.gov](mailto:jgerber@whitewater-wi.gov)>  
**Sent:** Wednesday, January 17, 2024 12:15 PM  
**To:** Heather Boehm <[hboehm@whitewater-wi.gov](mailto:hboehm@whitewater-wi.gov)>  
**Subject:** Re: Open Records

Heather,

Great! I will try to pick up before 4:30 pm. Can you provide me an update on my remaining items I requested:

- Finance Committee Meeting Minutes - Audio
- 9/26
- 10/10
- 10/16
- 10/24



2/6/24, 3:08 PM

Mail - Jill Gerber - Outlook

What happened to the Fremont Street Camera?

I would also like a copy of the ordinance or policy cover the retention and destruction of the surveillance videos.

Thank you

Jill Gerber  
Common Council Representative  
Aldermanic District 4  
Voting Wards 6,7,8  
City of Whitewater  
262.949.9370

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From: Heather Boehm <[hboehm@whitewater-wi.gov](mailto:hboehm@whitewater-wi.gov)>  
Sent: Wednesday, January 17, 2024 11:32 AM  
To: Jill Gerber <[jgerber@whitewater-wi.gov](mailto:jgerber@whitewater-wi.gov)>  
Cc: Taylor Zeinert <[tzeinert@whitewater-wi.gov](mailto:tzeinert@whitewater-wi.gov)>  
Subject: Open Records

Hello Jill,

I have a USB drive here ready for you to pick up with the following information

October 12, 2023 Finance Committee audio  
November 28, 2023 Finance Committee audio

Video

Finance Camera  
Parking Lot East

Thank you,

Heather Boehm  
City Clerk



312 W. Whitewater St., Whitewater, WI 53190  
(262)473-0102 | [hboehm@whitewater-wi.gov](mailto:hboehm@whitewater-wi.gov)

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<https://p.constantcontactpages.com/su/g8U4Af4/whitewater>

2/6/24, 3:13 PM

Mail - Jill Gerber - Outlook

**RE: Open Records**

Heather Boehm &lt;hboehm@whitewater-wi.gov&gt;

Tue 1/16/2024 10:25 AM

To: Jill Gerber &lt;jgerber@whitewater-wi.gov&gt;

Cc: Taylor Zeinert &lt;tzeinert@whitewater-wi.gov&gt;

Good Morning Jill,

Here is what we have so far for the following request.

**Audio recording of the following Finance Committee Meetings:**

9/26

10/10

10/12 Here is the link for the video on October 12<sup>th</sup>'s meeting.<https://transcripts.gotomeeting.com/#/s/d3db41ee4df5d98f9ccdc5dbe05d5756558ee099e930211324ffcdb08e9b1d40>

10/16

10/24

As far as the video recordings, Tim was able to find the following G:\Shared\City Clerk\Public Records Request\20240108 Gerber video from 12/19/23 but was unable to catch Jim Allen leaving the building. He let me know that the camera recordings only keep for about 30 days. He also stated that there are no cameras on Fremont St. This includes the Finance video that was added to the request 1/8/24.

Thank you,

Heather Boehm  
City Clerk



312 W. Whitewater St., Whitewater, WI 53190  
(262)473-0102 | [hboehm@whitewater-wi.gov](mailto:hboehm@whitewater-wi.gov)

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<https://lp.constantcontactpages.com/su/g8U4Af4/whitewater>

From: Jill Gerber <jgerber@whitewater-wi.gov>  
Sent: Thursday, January 4, 2024 4:36 PM  
To: Heather Boehm <hboehm@whitewater-wi.gov>  
Cc: Taylor Zeinert <tzeinert@whitewater-wi.gov>  
Subject: Open Records

Heather,

2/6/24, 3:13 PM

Mail - Jill Gerber - Outlook

I am requesting the following items:

**Audio recording of the following Finance Committee Meetings:**

9/26  
10/10  
10/12  
10/16  
10/24

**Video Tape Footage from the 2<sup>nd</sup> floor lobby**

11/07/23 around 6:00 pm - 6:15 PM- Interaction with Karri Anderburg

**Video Tape Footage from 12/19/23**

End of Common Council Meeting Closed Session- CC went into closed session around 8:50 pm. I am looking for the footage from the 1<sup>st</sup> floor lobby and the outside cameras on Whitewater and Fremont Street, which show myself leaving with Jon McDonnell from the lobby and then talking in the municipal lot across the street AND the footage of Jim Allen leaving the meeting and exiting on Fremont Street to his car which should be between 9:00pm and 10:00 pm.

Jill Gerber  
Common Council Representative  
Aldermanic District 4  
Voting Wards 6,7,8  
City of Whitewater  
262.949.9370

**RE: Open Records**

Taylor Zeinert <tzeinert@whitewater-wi.gov>

Tue 1/23/2024 1:47 PM

To: Jill Gerber <jgerber@whitewater-wi.gov>

Cc: JonathanMcDonell <jm@hmattys.com>; Heather Boehm <hboehm@whitewater-wi.gov>

Jill,

We do not have the audio tapes.

Thanks,

Taylor

From: Jill Gerber <jgerber@whitewater-wi.gov>

Sent: Friday, January 19, 2024 4:11 PM

To: Taylor Zeinert <tzeinert@whitewater-wi.gov>

Cc: JonathanMcDonell <jm@hmattys.com>

Subject: Re: Open Records

Taylor

I appreciate you looking into this, but "We do not have the audio" doesn't answer my request. There really are only two answers.

- 1. I receive the finance committee audio tapes
- 2. The meetings were recorded but audio tapes were destroyed

Otherwise, I don't understand why you don't have the audio that you need to retain for 90 days.

Jill Gerber

Common Council Representative

Aldermanic District 4

Voting Wards 6,7,8

City of Whitewater

262.949.9370

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From: Taylor Zeinert <tzeinert@whitewater-wi.gov>

Sent: Friday, January 19, 2024 3:31 PM

To: Jill Gerber <jgerber@whitewater-wi.gov>

Subject: RE: Open Records

Jill,

Thank you for the correspondence.

I believe what Heather meant by "available at this time" is that we do not have the audio. However, I will confirm that with her when I return to the office. I was in a meeting in Jefferson this afternoon and haven't been able to connect with her yet.

Regarding the immigration letter, I believe that John had noted that he would write one on behalf of the common council if they so choose.

Have a great weekend!

Taylor





2/6/24, 3:09 PM

Mail - Jill Gerber - Outlook

From: Jill Gerber <jgerber@whitewater-wi.gov>  
Sent: Friday, January 19, 2024 9:36 AM  
To: Taylor Zeinert <tzeinert@whitewater-wi.gov>  
Subject: Fw: Open Records

Taylor,

I will try to stop in on my lunch today to pick up the flash drive.

In regards to my open records request, I don't mean to be difficult, but I feel like I am not getting a direct answer on the status of the Finance Committee audio tapes 10/10, 10/12, 10/16 and 10/24. I understand Heather says they are not available, but why? The attached Chapter, says 90 days for minute taking purposes and my request was sooner than 90 days so they should be available? If you are refusing to release, I am entitled to the reason for the refusal otherwise I would appreciate the audio tapes.

Ordinance 2.66.070 is different than Chapter 15.124. One of the ordinances should be correct so they match.

Please note: 2.66.070- Destruction of public records.

Notwithstanding any minimum period of time for retention set forth above, any taped recording of a meeting, as defined in Wis. Stats. § 19.82(2), by any governmental body, as defined under Wis. Stats. § 19.82(1), of the city may be destroyed no sooner than one year after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting.

Ordinance 2080 received 2<sup>nd</sup> reading approval at the last CC meeting. I am thinking Heather will have this published on January 25th, making the ordinance effective on 1/16/24. Would it be possible to make sure the public is aware via our website and social media of the changes to the policy and what is allowed as several homes will still be in violation of this ordinance and they should reach out to MCE for an extension if so needed.

Immigration Letter: John mentioned he was going to write his own letter to include different data and information regarding the City and immigration impacts. He didn't have anything on the last agenda and I noticed four people in the audience who were possible there to talk about immigration as one of them was in the newspaper. He is planning on writing his own letter as he indicated or did he change his mind?

Thanks for your help,

Jill

Jill Gerber  
Common Council Representative  
Aldermanic District 4  
Voting Wards 6,7,8  
City of Whitewater  
262.949.9370

**STATE OF WISCONSIN****CIRCUIT COURT****WALWORTH**

JILL GERBER vs. CITY OF WHITEWATER

**Electronic Filing  
Notice**

Case No. 2024CV000098

Class Code: Petition for Writ of Mandamus

FILED

02-22-2024

Walworth County

Clerk of Circuit Court

2024CV000098

Honorable Kristine E.

Drettwan

Branch 3

CITY OF WHITEWATER  
312 WEST WHITEWATER STREET  
C/O HEATHER BOEHM, CITY CLERK  
WHITEWATER WI 53190

Case number 2024CV000098 was electronically filed with/converted by the Walworth County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party. This fee may be waived if you file a Petition for Waiver of Fees and Costs Affidavit of Indigency (CV-410A) and the court finds you are indigent under §814.29, Wisconsin Statutes.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

**Pro Se opt-in code: 7220ba**

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 262-741-7012.

Walworth County Circuit Court  
Date: February 22, 2024