

AFFIDAVIT

Saira Pasha, being first duly sworn on oath, deposes and states as follows:

1. I am a licensed attorney in Illinois. I graduated from Chicago-Kent College of Law in 2012 and was admitted to the bar the same year. I have a Bachelor of Science degree in Operations and Information Management with an emphasis in information systems from Northern Illinois University. Since August 2020, I have worked as an independent consultant and testifying expert specializing in audit trail analysis, specifically in medical malpractice cases. I consult for and testify on behalf of both plaintiffs and defendants. A large portion of my work focuses on data integrity and completeness of production, such as obtaining prior versions of modified records and identifying, requesting, and obtaining data and records that were created but have not yet been produced. I have reviewed over 300 audit trails from more than 20 electronic medical record systems. The underlying concepts of audit trails for systems and the storage and retrieval of data from a database are essentially universal and apply to many kinds of systems, including court filing systems.
2. An audit trail is a timestamped report of actions performed by all users in a system, such as view, edit, add, delete, print, etc. In addition to audit trails, there are other reports and analytical tools that can be performed on record systems to conduct a comprehensive forensic analysis of electronically stored information.
3. I have been retained as a consultant by The Law Office of Alphonse A. Talarico for the purpose of evaluating file content discrepancies and missing file contents for a case under appellate review.
4. I reviewed the following materials for my analysis:
 - Transcript of court proceeding from 9/16/2022 titled “Dash Dash 09-16-2022 17LA377 Dulberg”
 - Transcript of court proceeding from 9/16/2022 titled “Dilatory Dilatory 09-16-2022 17LA377 Dulberg”
 - Emails to and from court reporters related to the transcripts listed above
 - Report titled “[Compare Report] Dash Dash 09-16-2022 17LA377 Dulberg”
 - Table of Contents of the Report of Proceedings filed on 4/24/2023 for the appellate case (2-23-0072) listing all Report of Proceedings in the file in chronological order
 - McHenry County Circuit Court’s Public Case Access website information for the underlying case (2017LA000377)

5. Based on my analysis of these materials, I conclude to a reasonable degree of professional certainty and recommend as follows:

- There are multiple substantive differences, including modifications and deletions, between two transcripts for the same court proceeding that took place on 9/16/2022. One of the edits is about a material issue: whether expert discovery was closed. To verify the accuracy of what was said at this proceeding, I recommend a forensic investigation, including but not limited to obtaining a copy of the original recording and obtaining an audit trail for the recording system itself. Based on what the audit trail from the audio recording system shows, a live forensic inspection of the system may be warranted.
- The Table of Contents for the Report of Proceedings for the appellate review that was filed on 4/24/2023 does not list all court proceeding recordings that were created in the underlying matter. It is also inconsistent with representations made on the McHenry County Circuit Court Public Case Access website. I recommend an audit trail of the appellate court's filing system(s) be produced to objectively determine which documents were uploaded to its system(s), when they were uploaded, the user(s) who uploaded the documents, and if applicable, which documents were removed from the appellate review file. Based on what the audit trails from the systems show, a live forensic inspection of the systems may be warranted.
- Because there are allegations of removing the existence of recordings from specific court proceedings from the public access website for the McHenry County Circuit, I recommend an audit and forensic investigation to obtain objective facts and the timeline of when data was added and then removed from the underlying case's record. I recommend obtaining the audit trails for McHenry County Circuit Court's filing system(s) and performing a live forensic inspection of the system if warranted by the audit trail data.

Discrepancies between two transcripts for the 9/16/2022 court proceeding

6. A court proceeding was held on 9/16/2022 in Judge Meyer's courtroom in the McHenry County Circuit Court courthouse for the underlying case (2017 L 000377).
7. The McHenry County Circuit Court courthouse uses technology that creates audio recordings of court proceedings which court reporters can access to create transcripts of those proceedings.
8. There are two distinct transcripts for this proceeding. The first transcript was emailed from a court reporter to Plaintiff on 9/26/2022 and is titled "Dash Dash 09-16-2022 17LA377 Dulberg." The second transcript was emailed from a different court reporter to Plaintiff on 9/27/2022 and is titled "Dilatory Dilatory 09-16-2022 17LA377 Dulberg." (The names of the files were presumably created to distinguish the transcripts).

9. There are multiple substantive differences between the two transcripts. Below is one example of a significant substantive difference in a statement made by defense counsel George Flynn about a material issue: expert discovery. The first transcript includes the phrase “You gave a ruling that expert discovery is completed” (page 5, lines 12-13)

8		So those (indiscernible) all relied on
9		facts regarding the accident itself that would have
10		taken, you know, additional five to ten pages of
11		facts that are -- So we'd like to do that
12		separately. In fact, we might wait until -- You
13		gave a ruling that expert discovery is completed,
14		but I'm going to (indiscernible) but I think
15		(indiscernible).

10. The second transcript includes phrase “if and when expert discovery is completed” for the same page and line numbers:

8		So those (indiscernible) all relied on	
9		facts regarding the accident itself that would have	
10		taken, you know, additional five to ten pages of	
11		facts that are -- So we'd like to do that	
12		separately. In fact, we might wait until if and	
13		when expert discovery is completed, but -- I'm going	
14		to have some more thoughts, but I think we have	
15		plenty to chew on now.	

11. These two statements are not only substantively different, they also do not sound alike when spoken aloud.
12. Another substantive difference between the two transcripts is the inclusion of the word “dilatory” in two sentences.
13. In the “Dash Dash 09-16-2022 17LA377 Dulberg” transcript (page 11, line 2) the court reporter uses “(indiscernible)”, implying that the word stated by Mr. Flynn could not be understood. In the next line, there are hyphens at the end of “do” in Mr. Talarico’s response, implying Mr. Talarico never said any word after “do.”

1	just don't see what the issue is. It seems as if
2	it's a (indiscernible) tactic to avoid --
3	MR. TALARICO: I don't do --
4	THE COURT: Hold on. I can't rule on the motion
5	until I see it. I can't rule -- I can't determine

14. In “Dilatory Dilatory 09-16-2022 17LA377 Dulberg,” page 11, line 2, the transcription of defense counsel’s statement by replacing the “(indiscernible)” with “dilatory ” On the next line, plaintiff’s Mr. Talarico’s response is transcribed as “I don’t to dilatory..” implying that the word was spoken, while the original transcript indicates no word was spoken nor was there an indiscernible sound.


1	I just don't see what the issue is. It seems as if
2	it's a another dilatory tactic to avoid --
3	MR. TALARICO: I don't do dilatory --
4	THE COURT: Hold on. I can't rule on the motion
5	until I see it. I can't rule -- I can't determine

15. These are two examples of significant and substance differences between the two transcripts that warrant further investigation to confirm accuracy.
16. To verify the accuracy of both transcripts and determine what was actually said by the parties on 9/16/2022, I recommend obtaining the original recording of the proceeding from the McHenry County Circuit Court’s audio recording system. I also recommend simultaneously obtaining an audit trail for the specific audio recording file at issue, from 9/16/2022 through present, to identify all parties who accessed the recording, when they accessed it, if any edits were made to the recording, and other objective data pertaining to the veracity of the recording.

Missing recordings of court proceedings from January and February 2018

17. The Table of Contents for the Report of Proceedings from the appellate case was filed on 4/24/2023. It lists all reports of proceedings from the underlying case included in chronological order beginning on 5/10/2018, as seen in the excerpt below:

APPEAL TO THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT MCHENRY COUNTY, ILLINOIS	
<u>DULBERG, PAUL</u> Plaintiff/Petitioner v. <u>MAST, HANS ET AL</u> Defendant/Respondent	Reviewing Court No: 2-23-0072 Circuit Court/Agency No: 2017LA000377 Trial Judge/Hearing Officer: JOEL D BERG E-FILED 2 Transaction ID: 2-23-0072 File Date: 4/24/2023 10:03 AM Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT



REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 2

<u>Date of</u>	<u>Proceeding</u>	<u>Title/Description</u>	<u>Page No.</u>
05/10/2018		<u>HEARING - MOTION DISMISS</u>	R 3-R 14 (Volume 1)
07/20/2018		<u>MOTDIM</u>	R 15-R 18 (Volume 1)
09/12/2018		<u>HEARING - MOTION STRIKE</u>	R 19-R 28 (Volume 1)

18. The public case access website for the McHenry County Circuit Court allows users to search for court events and documents related to cases. For the underlying case at issue, the top of the “Court Events” tab looks like this:

Katherine M. Keefe
 Clerk of the Circuit Court • 22nd Judicial Circuit
Public Case Access

Case Information

2017LA000377 DULBERG, PAUL VS MAST, HANS, ET AL
 TYPE **LAW > \$50,000 - LEGAL MALPRACTICE - OVER \$50,000.00**
 FILED **11/28/2017**
 STATUS **CLOSED - 02/01/2023**

Court Events
Documents
Parties
Charges / Sentences
Summons
Judgments
Financial Summary

Future Court Events

No future Court Events for this case

Previous Court Events

Date	Room	Event Type/Result	Result	Judge
04/24/2023	AP	APPEAL - RECORD DUE	APPEAL - RECORD SENT	NO JUDGE
04/21/2023	AP	APPEAL - NOT DUE	APPEAL - NOT RECEIVED	NO JUDGE
02/01/2023	201	HEARING - SUMMARY JUDGMENT	ENTERED - SUMMARY JUDGMENT	BERG
02/01/2023	201	HEARING - SUMMARY JUDGMENT	** JUDGMENT - AGAINST PLAINTIFF	BERG
12/21/2022	201	HEARING	DENIED	MEYER
12/21/2022	201	STATUS - CHECK	STRIKE - FROM CALL	MEYER
12/09/2022	201	HEARING	ALLOWED	MEYER
12/05/2022	201	STATUS - CHECK	SET - DATE FOR HEARING	MEYER
11/09/2022	355	MOTION - VACATE	ALLOWED	MEYER

19. Scrolling to the bottom of the same tab reveals the court events beginning from 1/10/2018.

06/05/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
04/03/2020	201	STATUS - CHECK	NOTICE - COVID19 PARTIAL SHUTDOWN	MEYER
02/03/2020	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
11/04/2019	201	LEAVE FILE AFFIRMATIVE DEFENSE	ALLOWED	MEYER
11/04/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
09/05/2019	201	STATUS - CHECK	CONTINUED - AGREEMENT - STATUS	MEYER
05/30/2019	201	MOTION - DEFAULT	WITHDRAWN - MOTION	MEYER
02/25/2019	201	MOTION - DEFAULT	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
02/25/2019	201	MOTION - SUBSTITUTION OF ATTORNEY	ALLOWED	MEYER
02/25/2019	201	STATUS - CHECK	CONTINUED - PLAINTIFFS MOTION - STATUS	MEYER
11/13/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
11/13/2018	201	STATUS - ATTORNEY	SATISFIED	MEYER
10/15/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER
10/15/2018	201	MOTION - WITHDRAW	ALLOWED	MEYER
09/12/2018	201	HEARING - MOTION STRIKE	ALLOWED	MEYER
07/20/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
05/10/2018	201	HEARING - MOTION DISMISS	ALLOWED - IN PART	MEYER
02/27/2018	201	MOTION - DISMISS	SET - DATE FOR HEARING	MEYER
01/10/2018	201	MOTION - EXTEND TIME	ALLOWED	MEYER

20. As seen in the screen shot above, there was a court event on 1/10/2018 during which a motion to extend time was granted and a court event on 2/27/2019 during which a motion to dismiss was set for hearing. The third court event listed took place on 5/10/2018.

21. The recordings from the first two court events in the underlying case were not included in the file contents for appellate review. I did perform a line-item check for every court event; it is possible recordings for other events are also missing.

22. The 1/10/2018 court event was listed as “Motion – Extend Time.” I reviewed the Table of Contents to determine if any recording for a “Motion- Extend Time” court event existed and found one for 3/15/2021. Therefore, there is no reason to conclude that the 1/10/2018 recording was not included in the file materials because that type of court event is not recorded.

02/10/2021	<u>HEARING - MOTION COMPEL</u>	R 101-R 124 (Volume 1)
03/15/2021	<u>MOTION - EXTEND TIME</u>	R 125-R 153 (Volume 1)
03/25/2021	<u>HEARING - MOTION COMPEL</u>	R 154-R 159 (Volume 1)

23. Plaintiff/Appellant alleges that the public record access system for McHenry County originally listed recordings for these two 2018 proceedings under the documents tab but were removed at a later date. Below is a screen shot of the top portion of the “Documents” tab for the underlying case. As the image below indicates, “Report – Proceedings” is a type of document included in the list.

Clerk of the Circuit Court • 22nd Judicial Circuit
Public Case Access

Case Information

2017LA000377 DULBERG, PAUL VS MAST, HANS, ET AL
 TYPE **LAW > \$50,000 - LEGAL MALPRACTICE - OVER \$50,000.00**
 FILED **11/28/2017**
 STATUS **CLOSED - 02/01/2023**

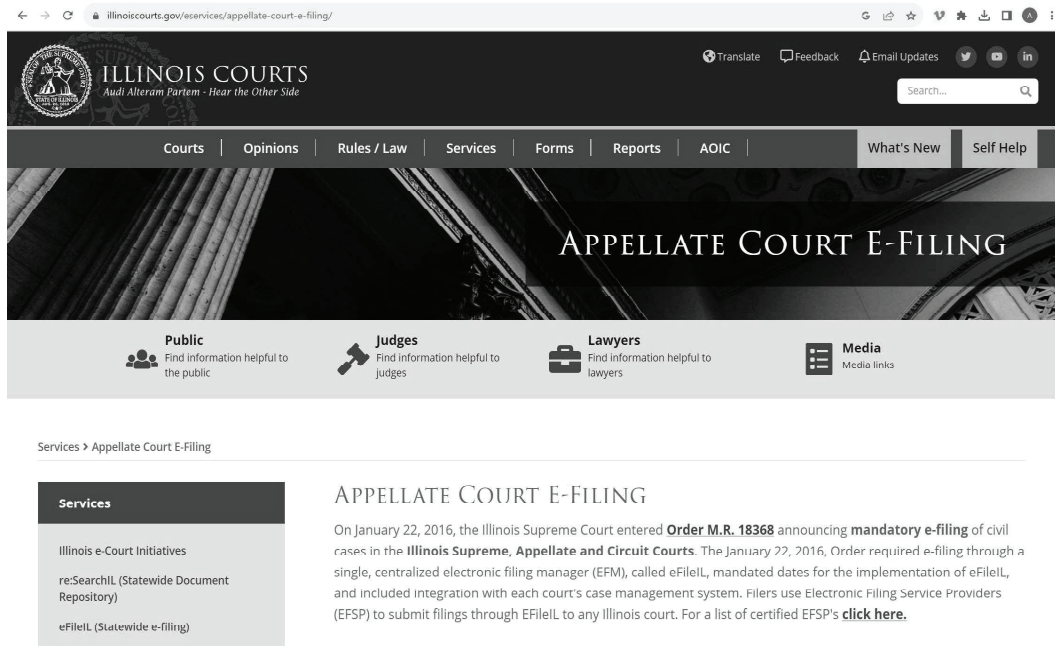
[Court Events](#)
[Documents](#)
[Parties](#)
[Charges / Sentences](#)
[Summons](#)
[Judgments](#)
[Financial Summary](#)

Filed	Type	Description
03/13/2023	RFOPRA	REQUEST - PREPARATION OF RECORD ON APPEAL
03/07/2023	LETFCG	LETTER - FROM CIRCUIT CLERK
03/06/2023	PROS	PROOF - SERVICE
03/03/2023	NOTAPL	NOTICE - APPEAL
02/27/2023	REOP	REPORT - PROCEEDINGS
02/08/2023	REOP	REPORT - PROCEEDINGS
02/01/2023	ORDSJ	ORDER - SUMMARY JUDGMENT
01/19/2023	NOTF	NOTICE - FILING
01/19/2023	RELD	REPLY - DEFENDANTS
12/28/2022	NOTF	NOTICE - FILING

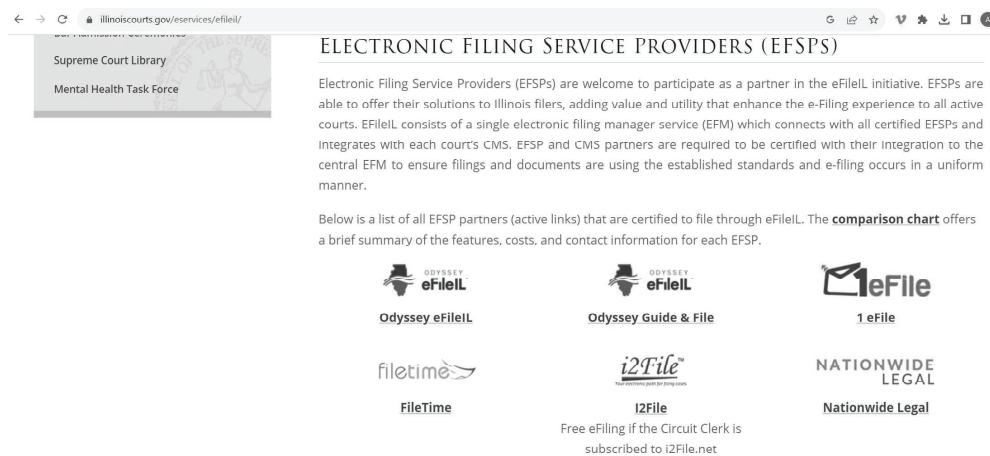
Showing 10 of 10 Documents

24. To objectively determine if the “Documents” tab of the McHenry County Circuit Court public portal ever included a listing of “Report – Proceedings” for the 1/10/2018 and 2/27/2018 court events, I recommend a forensic audit of the system(s) in which these data elements are stored and used to display information on the public access portal website.
25. To objectively determine if the recordings from the 1/10/2018 and 2/27/2018 court events were 1) ever part of the McHenry County Circuit Court file for the underlying, 2) were transmitted/uploaded to the appellate court filing system, and 3) were ever received or were part of the appellate court’s filing system or file, audit trails from each of the respective systems must be generated and produced. Based on the data included in those reports, a live forensic inspection of the systems may be warranted. If audit trails from those systems are not produced, I recommend performing a live forensic inspection of the systems at issue.

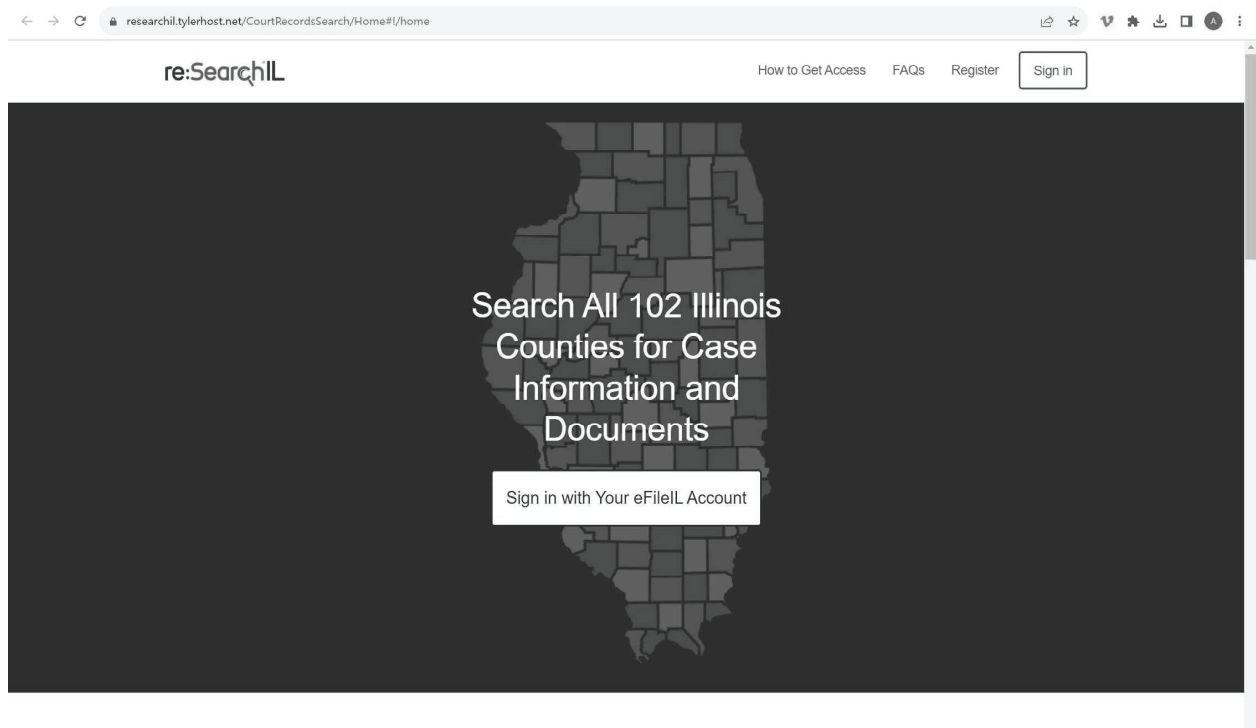
26. To objectively determine if recordings were created for the 1/10/2018 and 2/27/2018 court events, an audit trail from the McHenry County Circuit Court audio recording system must be generated and produced. Based on the data contained in those reports, a live forensic audit of the audio recording system may be necessary.
27. The website for Illinois's court systems makes reference to two distinct systems: one document repository system and e-filing systems.



28. The website displays several options for e-filing:



29. The document repository system link takes you to a separate system called re:SearchIL, managed by Tyler Technologies.



30. Based on my preliminary review of these websites and technologies, the systems used by both the appellate court and the circuit court in this case are capable of producing audit trails for regulatory and compliance reporting. These reports can also be used to verify the integrity of the records and data in this matter.

Under penalty of perjury, I certify the above statements are true and correct.

Saira Pasha