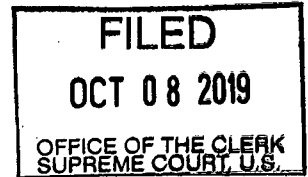


19-479
No. _____



In The
Supreme Court of the United States

CAROL M. KAM, PRO SE,

Petitioner,

v.

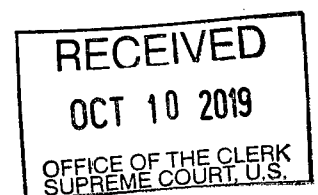
JOHN B. PEYTON JR.,

Respondent.

**On Petition For Writ Of Certiorari
To The Fifth Circuit Court Of Appeals**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the Rooker-Feldman Doctrine apply to two Void [not voidable but, void] "proposed" State Court Rulings produced by a former Associate Judge, who failed to acquire authority from the Judge of Record for the Dallas County Probate Court or the State Probate Court Judge, as required by State Law, to enter a Dallas County Probate Court and who failed to obtain a sign-off of his rulings from the Judge of Record within 30 days of their creation, as required by State Law?

For the record, John B. Peyton Jr., Associate Judge who created the now expired Proposed Orders, which remain unsigned by the Judge of Record, has been removed as a Judge by the State of Texas as the State has deemed him to be "unfit."

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption of the case as recited on the cover page. There are no government corporate parties requiring a disclosure statement under Supreme Court Rule 29.6

RELATED CASES

In the Estate of Robert S Kam Deceased/Justin Kam and Carol Kam v David Kam as Trustee for the Robert S Kam, Trust/Application to set aside the Order probating the Will for the Determination of heirship and the removal of David Kam as Independent Executor. PR-11-01368-3 Dallas County Probate Court #3. Judgement for the original July 2013 trial was entered by the Associate Judge, Peyton¹, August 9, 2013.

Judgement for the October 16, 2013 rehearing was entered by the Associate Judge Peyton¹ on October 16, 2013.

Both of these Orders by the Associate Judge¹ remain unsigned by the Record Court and per Texas law the "Effective Date" for these two Orders is the date they are signed by the Referring Court. Also per Texas Law these Orders, which remain unsigned by more than 30 days, are now expired. [Texas Government Code 54A.214.b, 54A.215, and 54A.217]

RELATED CASES – Continued

Carol Kam Bill of Review PR-15-02286-3 Dallas County Probate Court #3 Judgement entered Nov. 16, 2015. To date the Findings of Fact requested have never been issued by the Court as required by Texas Law. [Texas Rules for Civil Procedure Rules 296 and 297]. In addition, the documents presented to this court by my Counsel were confiscated by Judge Margaret Jones Johnson, were not entered in the Court Record, and were unavailable to the Appeal Court.

Carol Kam Bill of Review 05-16-00126-CV. Court of Appeals Fifth District of Texas at Dallas. Judgement entered December 29, 2016 Note that this court failed to discipline Judge Margaret Jones Johnson for misconduct and failure to follow state law in handling my Case as noted above.

Carol Kam Bill of Review 17-0079 Texas Supreme Court. No Judgement/Court denied to review the Petition. March 10, 2017.

Carol M Kam v Dallas County/State of Texas 3:18 CV-00378-G-BK U.S. District Court, Northern District of Texas. Magistrate's Ruling accepted June 12, 2018.

Carol M Kam v Dallas County/State of Texas 18-10735 U.S. Court of Appeals for the 5th District, Magistrate's ruling upheld March 8, 2019.

Carol M Kam v John B. Peyton Jr.¹ 3:18 CV-01447-D U.S. District Court, Northern District of Texas. Magistrate's ruling accepted December 20, 2018.

RELATED CASES – Continued

Carol M Kam v John B. Peyton Jr.¹ 18-11657 U.S. Court of Appeals for the 5th District. Magistrate's ruling upheld July 18, 2019.

Carol Kam v David Kam DC-19-00682, Texas State District Court 116, Dallas County. Hearing Set for October 17, 2019 for Summary Judgement to determine the Effective Date of the Orders, per State Law, signed by Peyton¹ and that remained unsigned by the referring Court.

¹ John B. Peyton Jr. is a former Associate Judge that has been permanently removed as a Judge by the Texas State Commission on Judicial Conduct as they have deemed him unfit to be a Judge.

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CITATIONS TO THE OPINIONS AND ORDERS BELOW

The decision of the Fifth Circuit of Federal Appeals is unpublished. The Petitioner filed for a rehearing which was denied.

The decision by the Fifth District Court in North Texas is published.

STATEMENT OF JURISDICTION

The Fifth Circuit Court of Appeals has denied the Petitioner's request in a final ruling dated July 18, 2019. Jurisdiction in this Court is proper per Title 28 USC, Section 1254 as the Supreme Court has the right to review an Appeal Court Ruling via a Writ of Certiorari.

APPLICABLE LAW

The Federal District Court denied the Petitioner's request based solely on the Rooker Feldman Doctrine which disallows any Federal Court review of a valid State Court Judgement. The District Court failed to address the actual validity of the Judgement and also failed to consider the violations of Federal Civil Rights and the burden placed on the Petitioner related to the process of the "Void" state Judgement.

The Fifth Circuit Court of Appeals upheld the District Court Ruling related to the Rooker Feldman

Doctrine. The Federal Appeal Court also failed to address any of the violations of Federal Civil Rights during the State Judicial proceedings and ignored the Fact that the proposed and now expired Ruling by a former Associate Judge, with no Valid Order of referral, No Motion for Recusal, all as required by State Law and no sign-off by the Judge of Record for the Court, as Required by State Law was and is Void.

Rooker v Fidelity Trust Co. 263 US 413-415, 44 S. Ct. 149 [1923]: "finding no federal jurisdiction to review state court judgments where the state had subject matter over the underlying case. . . ." This requires a VALID State Court Judgement where the state court had proper jurisdiction *District of Columbia Court of Appeals v Feldman*, 460 US 462 [1983]. This is also based on a VALID non-Federal court decision and is not applicable to this Case.

The case law which defines the Rooker-Feldman doctrine is based on undisputed VALID state court rulings. The District Court and the Appeal Court also refer to additional Case Law which are based on VALID State Rulings. Judge John Peyton was an Associate Judge which required an Order of Referral from the Judge of Record [Miller] or the State Probate Judge [Guy Herman] prior to entering a State Probate Court. John Peyton failed to acquire Orders of Referral for two hearings on my Case in July and October 2013. As an Associate Judge, John Peyton was also required to have the Judge of Record sign-off on any of his proposed Rulings within 30 days per State Law. John Peyton has never had the Judge of Record sign-off on any

rulings in my Case and, as of this date, the proposed Orders are Void.

The importance of this Case is critical to the Law across this Country. Without exception, all prior cases related to the Rooker Feldman Doctrine rely on a VALID State Court Rulings. In this Case we have no Valid State Court Ruling but essentially only a collection of proposed orders by an Associate Judge who failed to have Jurisdiction, and who failed to have the sign-off by the Judge of Record within 30 days, as required by State Law. The Dallas District Court and the Fifth Circuit Court of Appeal have now created Case Law that is completely void of Logic and is in complete conflict with all prior Case Law related to the Rooker-Feldman Doctrine.

The Case is also critical as the lower Federal Courts failed to address any of the violations of Federal Civil Rights related to the improper conduct of John Peyton. Per the lower Federal Court rulings one can interpret that holding a trial in a State Court by a Jurist without proper authority and creating Void Rulings which unfairly burdens a litigant is not a violation of one's Civil Rights to a Fair and Equitable trial. This is completely void of logic and counter to accepted legal doctrine and tradition.

STATEMENT OF THE CASE AND RELEVANT FACTS

The Case is based on Judicial Misconduct by a former Dallas Probate Associate Judge who has been removed as a Judge by the State of Texas as the State has deemed him to be "unfit" to be a Judge. The original trials in July and October 2013 were manipulated to cover for the gross incompetence, unethical behavior, and ineptitude of a Dallas Probate Attorney, David Pyke. Pyke was never employed by my Brother. Pyke mishandled and squandered assets from my Brother's estate and the Court system was used to cover for the misconduct and used to punish me for exposing the complete idiocy of this man. Not only was I denied my Civil Rights to a fair Trial but former and currently disgraced John B. Peyton actually used his position in a malicious manner to punish me for "whistle blowing" the gross ineptitude, unethical behavior, and misconduct of Pyke.

The following is a historical background to my Brother's estate.

In June of 2010, my older brother, Robert S. Kam was diagnosed with Stage IV Pancreatic Cancer. His health deteriorated with time and by mid February of 2011, Robert S Kam created and fully funded an Irrevocable Trust which bequeathed me a fixed amount of \$10,000. In early March 2011, my brother's girlfriend, observing that my brother no longer had capacity, contacted her attorney, David Pyke, to revise the Trust in order to add her Children and to assign her a greater portion of the Estate. During the initial meeting on March 11, 2011, the Attorney [Pyke] sent my brother

home as he admitted Robert Kam was too ill to work with.

By early March 2011, Robert Kam was 8 months into Stage IV Pancreatic Cancer with no remission, was on a significant amount of narcotics to control the excruciating pain, had a valve permanently inserted thru the front of his body into his stomach to frequently drain accumulating fluids, required dialysis every three days due to complete loss of Kidney function three months earlier, had significant loss of liver function with associated accumulation of irretrievable toxins, had an attention span of two minutes, required diapers, was unable to walk unassisted, required 24 hour care, was totally blind in one eye from glaucoma and required very significant correction in the other eye with limited vision due to myopia and glaucoma. By early March 2011, Robert S Kam had no capacity and was essentially a breathing cadaver.

After the March 11, 2011 meeting, the girlfriend continued to work with her Attorney [Pyke] and revised the documents to her satisfaction which increased her benefits and added her children as heirs. She wheel chaired Robert back to Pyke's office on March 17, 2011 for an alleged "signing". David Pyke had illegally created an Amended/Restated Trust without taking the original irrevocable Trust back thru a Court and without notifying any beneficiaries.

Even though Pyke was instructed to add me in as a beneficiary for \$10,000, per the original irrevocable Trust, he failed to do so. Pyke acknowledged, under

oath, in the trial that the omission of me as an heir in the Trust he created for the girlfriend was his error. My brother Robert was too ill to recognize the omission and it was not discovered until later the night of March 17, 2011 when the Trustee's wife reviewed the Amended and Restated Trust and noted the deficiency and the "**fatal flaw**" to Pyke's work.

While Pyke re-amended the Trust and that added me back in at a later date, it was crystal clear that on March 17, 2011 my brother Robert **did not have legal testamentary capacity**, no less contractual capacity, to sign a Will or Trust. This irrefutable FACT voided all of the documents created by the girlfriend and Pyke that was allegedly signed by Robert Kam on March 17, 2011.

The Medical Records for March 18, 2011[R.E. 12] and the M.D. Anderson Oncologist by Report [R.E. 10] and Courtroom Testimony reconfirmed that my Brother **did not** have capacity. Per *Croucher v Croucher*, 660 S.W.2d 55 [1983] if one has a history of non-capacity immediately before or immediately after an event, he does not have capacity at the time of the event. My brother passed 10 days later on March 28, 2011 while being loaded in a car to be taken to dialysis.

I became very vocal when I discovered the gross ineptitude and incompetence of Pyke and the fact, he was not employed by my Brother to Amend the Irrevocable Trust. Pyke instructed the Trustee to refuse to pay me my inheritance even though it was undisputed

by any party in the original Irrevocable Trust and in the Amendment to the Amended Trust.

In order to simplify the Contest of the Case, I joined my Nephew who legally disputed the validity of the Amended Trust which had significantly reduced the inheritance promised to him by his father. In this case I sought my undisputed \$10 K inheritance.

Seven days prior to the trial set by Dallas Probate Judge Michael Miller, my attorney attended a pre trial meeting with Attorney James Fisher representing the Trustee and Pyke. My attorney left at the conclusion of pre trial meeting however, unbeknownst to my Attorney, James Fisher remained and conducted an ex-parte meeting with Judge Miller which resulted in Judge Miller refraining from any future contact with my Counsel, Miller stepping down as Judge for the Trial and the substitution of Associate Judge Peyton to handle the trial. In retrospect, this is all illegal and was clearly a "set-up" to rig any ruling to maintain professional cover for the gross ineptitude, misconduct, and incompetence of Pyke.

After a 3-day trial, Peyton immediately ruled that my brother Robert had capacity, which was counter to court testimony, the Medical Records, the M.D. Anderson Oncologists report, testimony, the facts, Case Law, and all common sense. Even though all parties acknowledged that I was a valid heir for \$10,000 and was not paid, Peyton not only removed me from the estate but charged me with \$226,000 of Court costs as punishment for flagging "Pyke".

During the trial, Pyke claimed that Dr Robert Beard, a pediatrician, who never treated my brother, was in his office on March 17, 2011 and signed a DNR [State Promulgated Do Not Resuscitate Form]. Pyke's paralegals signed as witnesses to Dr Beard's signature on this Form that was brought to Pyke's office by the girlfriend. Dr Beard was not announced as a person of knowledge prior to the trial.

After the August 9, 2013 Proposed ruling by Peyton, my attorney sought a rehearing with the Judge of Record, Miller. Miller granted the rehearing and it was scheduled for October 16, 2013 with Judge Miller listed to preside.

Pyke nor Fisher had not listed Dr. Beard as a person with knowledge in the Case prior to trial however, Pyke claimed in Court testimony that Beard had intimate knowledge of Robert's Capacity in Pyke's Office on March 17, 2011. As noted above, Pyke had his paralegals sign as witnesses to Beard's signature.

My attorney Subpoenaed Dr. Beard for testimony at the rehearing.

In doing research for the rehearing, Attorney Mark Steirer discovered that as of mid-August 2013 there was no Order of Referral and No Motion for Recusal of any kind shown in the Court Records. Mark Steirer had made a screen shot of files in mid-August that documented this omission. An Order of Referral did appear in the court Files until Late August and it was postdated to July 16, 2013. This Order was and has never been presented to any party for review at any time. The Court docket numbers also confirm that

the document dated July 16, 2013 did not exist and was not filed until late August 2013. The signature on this document is not by Judge Miller.

Even though the Court Records listed Miller as the Judge for the rehearing in October 2013, Judge Peyton showed up, with no prior announcement and no authorization from Miller. Peyton refused to allow my attorney to depose Dr. Beard and denied my right to depose a reported medical expert with critical knowledge directly related to the Case.

[R.E. Indicates an item from the Record of
Excerpts from the Fifth Circuit Appeal Submittal]

ARGUMENT FOR ACCEPTING THE PETITION

John Peyton failed to obtain and have authority and thus jurisdiction to hear my Case as required by State Law. The Judge of Record has never signed off on any of the proposed rulings as required by State Law. Peyton refused to allow me to depose a critical medical expert who the defense claimed had knowledge of the "capacity" of Robert Kam on March 17, 2011 in Pyke's office.

A] ABSENCE OF ORDER/FRAUD/WORTHLESS DOCUMENT

A Texas Probate Judge has the right to refer a Case to an Associate Judge however, it can only be done by an Order of Referral issued prior to the event. Texas Government Codes 54A.207 and 54A.208.

When Peyton walked in the Court room in July 2013, no Order of Referral existed. Per Texas Statute, Associate Judge John Peyton was supposed to have an "Order of Referral" from Probate Judge Michael Miller in Dallas or State Probate Judge Guy Herman in Austin. John Peyton heard my Case in July 2013 and the rehearing on October 2013. State Probate Judge Guy Herman issued an Order of Referral for John Peyton for only August 2013 and September 2013 [R.E. 17 to R.E. 20]. He did not issue any Order for July or October 2013. An Order of Referral was created and filed on or around August 28, 2013. [R.E. 15]. It has numerous factual and technical errors, is signed by an unknown individual, and is worthless as a legal instrument. This Order lists Government Codes 54.610 and 54.618 as the basis for the Referral however, these laws did not exist in 2013 and do not exist today. We do not know the legal basis for the Referral. The "signature" on this Order of Referral is significantly different than Miller's signature on the Notice of Rehearing [R.E. 16] so we have no idea who authored and signed this postdated Order.

Final Judgment signed by John Peyton on August 9, 2013 [R.E. 13 and R.E. 13.1] shows the File Number of 218243.

The postdated Order of Referral dated July 16, 2013, created and filed around August 28, 2013 shows a later file number of 247680.

The Notice of Hearing signed September 17, 2013 has a File Number of 270844. The Court file numbers are in sequence and the Order of Referral was not created and filed until **AFTER** the Judgment.

To date, John Peyton has offered no explanation for the late filing, no confirmation of the unknown author or signatory for this technically worthless instrument. We can reasonably that John Peyton has no explanation to this Court for the incompetence and/or fraud related to this document.

B] REQUIRED SIGN-OFF BY THE JUDGE OF RECORD

Refer to the following Texas Government Code Laws for Clarity:

54A.209.17.c “ . . . *The judge of the referring Court **shall** sign the order not later than the 30th day after the date the associate judge signs the order.*”

54A.212[f] “*After a hearing conducted by an associate judge, the associate judge shall send the associate judge’s signed and dated report including the proposed order, and all other papers relating to the case to the referring court.*”

54A.214[b] “ . . . *or the right to a de novo hearing before the referring court is waived, the decisions and recommendations of the associate judge or the proposed order or judgement of the associate judge **becomes** the order or judgement of the referring court **at the time** the judge of the referring court signs, the proposed order or judgement.*”

54A.215[b] “*The judge of the referring court shall sign a proposed order or judgment the court adopts as provided by subsection [a][1] not later than the 30th day after the date the*

associate judge signed the order or judgement.”

Per Texas Law, Peyton’s rulings are a now only expired proposed Orders and not a Final Order by the Court. Given that we are well past 30 days from the dates of August 9, 2013 and October 16, 2013 when Peyton signed his proposed Orders, the proposed Orders are completely VOID at this time. Although absent of integrity, Peyton was an experienced associate Jursit and knows Miller had to sign-off on his work. Miller never signed off because Peyton never provided the now expired proposed Orders to Miller or Miller found fault with the now expired proposed Orders and Peyton never corrected it to Miller’s satisfaction.

C] REQUIRED SIGN-OFF BY THE JUDGE OF RECORD FOR AN APPEAL

Without Peyton having the Judge of Record sign-off on his proposed Orders to make an Appealable final Order, Peyton denied me my civil right to take the Probate Court Case to a Texas Appeal Court.

A State Appeal court will **not** accept a proposed Order as a Final Order.

Refer to Texas Government Code 54A.217[b] “*Except as provided by subsection [c], the date the judge of a referring court signs an order or judgement is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or a supreme court*” [“c” refers to 54A.209.16 where all parties have agreed

to the associate judge's ruling in writing, which is certainly not applicable with my case].

HAVING AN ORDER WHICH IS SUITABLE FOR APPEAL IS THE ULTIMATE DEFINITION OF A FINAL ORDER BY THE COURT AND THIS LAW CLEARLY AND UNEQUIVOCALLY SHOWS PEYTON'S' WORK IS SIMPLY A NOW-EXPIRED PROPOSED ORDER.

D] APPLICABLE CASE LAW

Illinois Central R.R. Co. v Guy 682 F 3d 381, 390 [5th circuit 2012] This is a Case were the Railroad sued two attorneys in a Federal Court for damages they incurred from a State Court Ruling where the Attorneys were found to have been deceptive. No party contested the validity of the State Court Ruling and it is assumed to be valid.

In essence, the Railroad was seeking compensation for damages directly related to the results of a valid State Court ruling. The 5th Circuit deemed that "The Rooker Feldman Doctrine" did not apply to this case because adjudicating Illinois Central claims did not require the District Court to review any final Judgement by a State Court even though the requested reimbursement are related to the losses in the State Court decision. It is apparently "OK" to seek the losses one incurred in a valid State Court Ruling as long as the ruling itself is not reviewed. As there is no Valid Ruling in my case for this Court to review, it

appears I clearly have a right to seek compensation for the losses I incurred in a State Court Procedure.

As in the Illinois Railroad Case, Fraud was acknowledged within the State Court Case. The Fraud in my Case is actually more egregious as the Fraud in my Case was actually performed by Officers of the Court and not an outside party.

If one can prosecute and seek compensation for Fraud by a third party in a single valid State Court Case and be able to bypass the Rooker-Feldman Doctrine, I should certainly be permitted to prosecute for compensation for fraud by the Court itself from invalid State Court hearings.

Salinas v U.S. Bank National Association 13-41012 U.S. Court of Appeals for the Fifth Circuit quoting *United States v Shepherd* 23 F.3d 923, 925 [5th Circuit 1994] observing that the Rooker-Feldman Doctrine would likely not bar federal court review of void state court judgments . . . " . . . a federal court may review the state court record to determine if the judgment is void . . . a judgment is void . . . " if the rendering court [1] lacked jurisdiction over the party or his property [2] lacked jurisdiction over the subject matter of the suit [3] lacked jurisdiction to enter the particular judgment rendered; or [4] lacked capacity to act as a court" With no Jurisdiction by Peyton, this quote from this case, from this court, fits my Case to a "T".

Mosely v Bowie City, Tex 275 Fed Appx 327,329 [5th circuit 2008] citing *Shepherd* for the proposition that under some circumstances, a federal court may

review the state court record to determine if the judgment is void.

Rooker v Fidelity Trust 263 US at 415, 44 S. Ct 149 is based on “where a judgment has been rendered, after due hearing, by a state trial court, with jurisdiction of the subject matter . . . ” Peyton has **failed** to provide this court with documentation showing he had permission to enter the court prior to each hearing and he has **failed** to provide this course with any Order signed by the referring court. Rooker-Feldman cannot apply to this case.

Travelers Insurance Co v Joachim 315 S. W. 3D 860 863 [Tex 2010] quoting *Browning v Prostok*, 165 S. W. 3d 336, 346 [Tex 2005] “ . . . A judgment is void only when it is apparent that the court rendering the judgment had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter a particular judgement or no capacity to act.”

The Federal Court has the right, and from a Civil Rights point of view, the obligation to assess my case to determine if the State Judgment is Void and, if Void, Rooker Feldman cannot and does not apply.

Per *First District of Texas Appeal Court ruling Jackson v Saradjian* 01-11-00128-CV [2013] “ . . . that a judgment of the Associate Judge become the Judgment of the referring Court only on the referring Court’s signing of the proposed judgment . . . There is no referral Order in this case, so the November 22, 2010 decree signed by an Associate Judge does not even have the standing of a . . . proposed judgment. Because the November 22, 2010 decree was not signed by the District judge, we hold that it has no legal effect as a judgment.”

This ruling by the First District of Texas is extremely clear, pertinent, rational and logical . . . No Order and No Sign-off creates no Valid Order.

E] FRAUD/FORGERY

During the trial, Pyke's two legal assistants initially testified that they witnessed Dr. Robert Beard signing the DNR [Do Not Resuscitate Form]. They later backed-off stating, again under oath, that Doctor Beard was never in their office, yet they signed as witnesses to his signature. My Family grossly underestimated the Fraud committed by Pyke on March 17, 2011 and after the Probate Trial, we employed a hand writing expert, Curtis Baggett, who confirmed that ALL of the Robert Kam signatures on the March 17, 2011 documents are Forgeries [R.E. 21 to R.E.23]. Given the March 18, 2011 Medical Record showing a period of syncope and a 69/43 blood pressure reading [R.E.12], this now makes perfect sense. It was illegal to Probate the documents with forged signatures *Aston v Lyons*, 577 S.W. 2D 516, 519 [TX Civil Appeal]. The handwriting expert who created these reports is highly reputable and frequently employed by Dallas County. Former Associate Judge B. Peyton was highly motivated to cover for the gross incompetence, ineptitude, and misconduct of Pyke.

F] PREGNANCY/JURISDICTION

A woman is pregnant or not pregnant at any time. There is no "in between". The same concept holds true

in Law. A Judge has Jurisdiction or he/she does not have Jurisdiction. If he or she does not have Jurisdiction, any ruling made by such Judge has no Force of Law. In addition, any Judicial Act made by a Judge without Jurisdiction can, and in this case, has placed an undue burden on an innocent citizen, and is a violation of my right to a fair trial.

The concept of "Partial Jurisdiction" does not exist in Law. Peyton NEVER had Jurisdiction at any time for either hearing. While this is a simple analogy, it is a very powerful concept that all parties can comprehend.

John Peyton presided over two hearings. From July 22, 2013 to July 26, 2013 and the second on October 16, 2013. There is No Order of Referral for John Peyton from any entity for the October 16, 2013 hearing.

There is an Order of Referral filed in the Court in late August 2013. This Order however, **did not exist** prior to late August and it was never provided to any party in the Suit. This Order has numerous technical and factual flaws has an unknown signatory, which deem it to be of no legal value and illustrates the Fraud created by someone with access to court Records.

"JUDICIAL POWER IS VESTED IN THE COURT, NOT AN INDIVIDUAL". When Peyton walked into Miller's Court on July 22, 2013 and October 16, 2013 he did not have authority from the Judge of Record, Michael Miller. Furthermore, Miller never reviewed or signed off on any ruling by Peyton. Only Miller and

Guy Herman can provide authority to Peyton. No other Officer of the Court can do this.

Failure to provide a duly authorized Judge in my trial represents a severe denial of my civil rights.

G] MILLER'S APPARENT/ILLEGAL RECUSAL

Seven days prior to the initial trial, Judge Miller held a pre-trial hearing on July 16, 2013, attended by my Counsel and the Defendant's Counsel James Fisher. At the conclusion of this meeting, my Counsel left Judge Miller's Office and, unknown to my Counsel, James Fisher remained with Miller to discuss the Case. One hour after this meeting, James Fisher called my Counsel and notified him that Judge Miller would not attend the Trial he set, but that Associate Judge Peyton would hear the Trial. Judge Miller never contacted my Attorney and No Motion of Recusal or Order of Referral was ever provided to my Counsel at any time for this event.

A recusal motion must not be filed after the tenth day before the date set for trial. See TEX. R. Civ. P. 18a(b)(1)(B). Rule 18a states a motion to recuse must be filed "as soon as practicable after the movant knows of the ground stated in the motion" and not after the tenth day before the date set for trial of other hearing "unless, before that day, the movant neither knew nor reasonably should have known: . . . (ii) that the ground stated in the motion existed." TEX. R. Civ. P. 18a(b)(1); see *Newby v. Uhl*, No. 02-10-00466-CV, 2012 WL 3115628, at *4 (Tex. App.-Fort Worth Aug. 2, 2012, no

pet.) (mem. op.) (motion to recuse must not be filed after tenth day before date set for trial, unless movant neither knew nor reasonably should have known “that the ground stated in the motion existed.”)

Per Texas Government Code Section 25.00255 “RECUSAL OR DISQUALIFICATION OF JUDGE” Section g-1.B.2: *a judge who disqualified himself or herself . . . shall enter an order of disqualification and . . . if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk, who serves the statutory probate courts in that county, to randomly reassign the case to a judge of one of the other statutory probate court and may not take other action in the case.*” None of this was done as required by State Law.

H] FAIR TRIBUNAL

The United States Supreme Court has concluded that “[a] fair trial in a fair tribunal is a basic requirement of due process.” *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) (quoting *In re Murchison*, 349 U.S. 133, 138 (1955)). This court also has concluded that a party has a right to a fair trial under the federal and state constitutions. *Rymer v. Lewis*, 206 S.W.3d 732, 736 (Tex. App.-Dallas 2006, no pet.) (citing *Metzger v. Sebek*, 892 S.W.2d. 20, 37 (Tex. App.-Houston [1st Dist.] 1994, writ denied)); see also *Udeh v. Kabobi*, No. 05-99-01071-CV, 2000 WL 1690188, at *5 (Tex. App.-Dallas Nov. 13, 2000, no pet.) (not designated for publication). “One of the most fundamental components of

a fair trial is a neutral and detached judge.” *Rymer*, 206 S.W.3d at 736; *Udeh*, 2000 WL 1690188, at *5. Although the Supreme Court traditionally has concluded that personal bias or prejudice alone was not a sufficient basis “for imposing a constitutional requirement under the Due Process Clause,” in *Caperton v. A.T. Massey Coal Company*, the Court stated that there are circumstances “in which experience teaches that the probability of actual bias on the part of the judge of decisionmaker is too high to be constitutionally tolerable.” *Caperton*, 556 U.S. at 877.

I] MR. PEYTON

John B. Peyton Jr. was removed as a Judge by the Texas State Commission on Judicial Conduct in early 2018. This removal was allegedly related to an affair he carried on with a Probate Attorney during a trial while she represented one party in a Case that Peyton presided over and he had made rulings in favor of her client during the trial proceedings.

Affairs and intimate relationships are common and normally accepted in the legal community and have been so for many years. Affairs are normally not a cause for severe action such as removal of a long-term Jurist. While the D magazine article [R.E. 24 and R.E. 36] on Peyton well documents the affair, Peyton’s gross betrayal of his wife and family, Peyton’s incredible absence of good judgement, and his absence of understanding of personal responsibility, it does not

actually prove that Peyton was influenced by this relationship. That would be pure speculation.

The Judicial Commission however, already had a significant file of prior misconduct, including well documented information on this Case. The published affair was simply used to remove him without any need to disclose more serious and actual documented misconduct.

In evaluating this Petition, I trust this Court will consider Peyton's documented absence of integrity and unprofessional conduct, and the fact that the State of Texas has deemed him unfit to be a Jurist.

Per Texas Government Code 54A.204: *QUALIFICATIONS: To qualify for appointment as an associate judge under this subchapter, a person must: [4] not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.*

J] UNCONTESTED FACTS OF THE CASE

1] The Amended Trust by Pyke is factually Void as Robert Kam failed to have Testamentary Capacity to recognize that I was omitted from the illegal revision by Pyke, to an active irrevocable Trust.

2] I am an uncontested, valid heir under any Trust scenario for a fixed amount and there are no court testimony or defense pleading that

I am not a valid heir for \$10K and that my contest was frivolous in any manner.

3] Documentation and presentation have consistently shown that unelected, unappointed Associate Judge John B. Peyton Jr. did not have authorization to be in the Courtroom in July 2013 and October 2013 for my hearings as required by Texas Law.

4] Judge Miller has never signed off on ANY of Peyton's now expired proposed orders in my Case, as required by Texas Law.

5] The Authority of a Court is the Court itself and not an individual.

6] Without Authorization and/a sign-off by the Judge of Record for the Court, all of Peyton's rulings are VOID ORDERS.

7] Peyton has not produced valid state final Court Orders suitable for an Appeal.

8] As Peyton's Rulings are now expired "VOID ORDERS", per State Law.

9] The Rooker Feldman Doctrine can only apply to valid State Court orders.

10] An unelected, unappointed Associate Judge holding a trial without authorization and a sign-off by the Judge of Record for the Court all required by State Law is a violation of my Civil Rights.

11] Peyton's denial of my right to depose an announced Medical Expert by the Defense in a Case involving Capacity is a violation of my Civil Right to a Fair and Equitable Trial.

K] NO JURISDICTION/NO IMMUNITY

Per 28 USC Section 1738 "... The record and judicial proceedings of any court of any such state ... together with a certificate of a judge of the court that the said attestation is in property form." Peyton has failed to provide this to this court. Per 42 USC Section 1983 I have the right to receive compensation from Peyton as he did not have jurisdiction and he has no immunity. He only has immunity "... in such officer's judicial capacity" which he had known.

CONCLUSION

The Magistrate in the District Court failed to address my rights to a fair trial and equitable consideration under the law per 28 USC 1343, the 14th Amendment to the U.S. Constitution, and the Bill of Rights Amendment #7. She also failed to understand this Case or understood this Case and was pre-disposed to cover for Judicial misconduct.

In her Conclusion she claims that "*The case was assigned to Probate Court Judge Michael Miller and subsequently transferred to Judge Peyton ...*" The "transfer" is a false and completely unsupported statement as it was illegal for Miller to Recuse himself from

the Case less than 10 [7 actual] days before a trial, there is no Motion for Recusal, and there is no Order of Referral for either the July or October Hearings. All of these are State Law requirements.

The Magistrate claims that "*Judge Peyton's ruling was affirmed on Appeal . . .*". The Proposed Orders have never been Appealed and are unappealable per State Law as the Court of Record has never signed off on them as required by State Law.

The Magistrate references the Bill of Review for my Case however, the Bill of Review Denial never ruled on the Jurisdictional Issues of Miller's illegal recusal, the illegal Absence of any valid Order for Peyton prior to each hearing, and the absence of any sign-off by the Court on the Associate Judge Ruling to reverse. The Dallas Probate Court failed to address the Jurisdictional Issues. Mr. Peyton has conveniently side stepped the Bill of Review and the Magistrate, District Judge and the Appellate Court was not astute enough to pick-up this "sleight of hand" Omission.

The Magistrate is correct that I argued ". . . *that Judge Peyton did not have jurisdiction to preside over the Probate Proceeding or rule on her motion for a new trial* [this was actually a rehearing on selective issues and a deposition of a reported Medical Expert and not a trial de novo] *and, thus, has lost his right to judicial immunity . . .*"

The Magistrate claims "*To grant this relief, the Court would have to reverse the judgement entered in the Probate Proceeding.*" This is a completely false

statement as there is no valid State Probate Ruling to reverse. To hold a trial without Jurisdiction, to make rulings not based on Court records, and to deny me the right to depose a reported critical Medical Expert on a Case which is based on an individual's "Capacity" are all violations of my Civil Rights to a Fair and Equitable Trial. None of these critical Federal Issues are addressed by the Magistrate and subsequent Judicial Review.

The District Court Judge of Record clearly failed to review the Magistrate's work and the Appeal Court simply copied the Magistrate's Opinion, I incorrectly assumed that the District Court Judge had supervised the Magistrate. They summarily dismissed all other pleadings without any review or commentary.

As a direct result of this inadequate review and lack of understanding of the Case, the Federal Court system has now created Case Law, absence of all logic that claims the Rooker-Feldman Doctrine can now apply to Void State Court Rulings. The Supreme Court must reverse the Appeal Court decision to re-establish Logic into the legal system with respect to the Rooker Feldman Doctrine.

I also pray that the Supreme Court shall permit me to seek relief the relief I requested from John B. Peyton for the denial of my access to a Fair and Equitable trial in accordance with State Law and the denial

of my Federal Civil Right to an equitable and Fair
court system.

Respectfully submitted,

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