

No. 19-479

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 REHEARING

CAROL M. KAM, Pro Se
9039 Santa Clara Dr.
Dallas, Texas 75218
214-801-4901
carolmkam@gmail.com

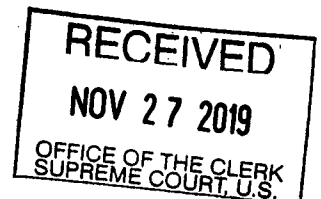


TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
GROUND FOR REHEARING	1
POWERS OF AN ASSOCIATE JUDGE	4
ASSOCIATE JUDGE ADJUDICATION	6
JUDICIAL ACTION ON ASSOCIATE JUDGES PROPOSED ORDERS	7
EFFECTIVE DATE OF AN APPEALABLE OR- DER	7
SIMPLE SOLUTION.....	8
CONCLUSION	8
CERTIFICATE OF PETITIONER.....	10

APPENDIX

<i>Shubert</i> , Judgment Declaring Heirship, PR-18- 04004-3 (Dallas Probate Court #3).....	App. 1
<i>Shubert</i> , Order Granting Independent Admin- istration, PR-18-04004-3 (Dallas Probate Court #3).....	App. 4
<i>Shubert</i> , Order to Pay Attorney Ad Litem, PR- 18-04004-3 (Dallas Probate Court #3).....	App. 8
Dallas County Job Description for Probate Court #3 (April 2019).....	App. 10

TABLE OF AUTHORITIES

	Page
Texas Government Code 25.00231.....	1
Texas Government Code 54A.117	2
Texas Government Code 54A.207	6
Texas Government Code 54A.209	4, 5
Texas Government Code 54A.214	5, 7
Texas Government Code 54A.215	5, 7
Texas Government Code 54A.216	4
Texas Government Code 54A.217	5, 7
 CASE LAW [ATTACHED]	
<i>Dallas Probate Case PR-18-04004-3</i>	2

Pursuant to Rule 44.2 Carol M. Kam, Pro Se, respectfully petitions for rehearing of the Court's denying Certiorari in this Case.

GROUNDS FOR REHEARING

The original certiorari petition in this case presented the question of whether or not the Rooker Feldman Doctrine can apply to a Case where the Proposed unsigned State Order is Void and not valid.

Because of Historical incompetence and Fraud in Statutory Probate Courts, the Texas State Legislature has created two special Features unique to Statutory Probate Courts that do not apply to District Courts.

The State of Texas requires that the County for each Statutory Probate Court provide a Liability Insurance Policy of a minimum of \$500,000 for each Judge. This is not required for a typical District Court Judge. [Tex Gov Code 25.00231] This is prompted by historical incompetence and Fraud within State Probate Courts . . . as evidenced in my Case.

The State of Texas requires that ANY AND ALL proposed Orders by an Associate Judge operating in a Statutory Probate Court be signed off by the Court in Order to establish an ***Effective Date*** for the Order in order to make it a legal instrument and eligible for an Appeal. The ONLY exception to this is where both parties agree in writing to the Order which certainly does not apply in my case. This is a unique feature required

by the State to minimize the historical Graft and Incompetence in the Probate Court System.

A sign off is an extremely simple procedure that involves engagement of two individuals in a Case and thus hopefully reduces the potential risk of Fraud and Incompetence.

An Associate Judge in a State Civil Court does not require sign off by the Judge and can become the ruling of the Court [Tex Gov Code 54A.117] This however, does not apply to a Statutory Probate Court. A sign off is required in a Texas Probate Court.

Attached is a copy of three Orders by an Associate Judge that have been signed by the Judge of Record for Dallas Probate Court #3. [PR-18-04004-3] This is per the law and standard practice for all cases legitimately handled by the Court.

When the Court has to cover for the gross misconduct and or illegal activity of a Dallas Probate Attorney who needs a "favor" from the Court, the Dallas Probate Court can easily crush an individual who exposes this misconduct by issuing an Order that essentially places a person in perpetual Limbo with an Order that is not Appealable, as in my Case.

Without an Appealable Order, my sole source of relief was to file a Bill of Review back through the same Court. As previously reported, the Judge confiscated my Counsel's entire Notebook from the Courtroom with the implication that an additional hearing would be reset to rediscuss the issues, as there were many.

Once the Evidence was confiscated and not logged as exhibits, the Judge made a ruling and failed to notify my Counsel as required by State Law. The intent of this was to allow the window for Appeal to close. The Defendant's Counsel knew this plan, felt some sense of integrity and informed my counsel one day prior to the expiration of time for the Appeal. My Attorney did get the Appeal in on time.

The Order from the Probate Court for the Bill of Review was simply a blanket denial with no explanation. My attorney repeatedly requested Finding of Fact per state Law with no response from the Court. All of this was an intentional effort to subvert my effort for Appeal. With no Findings of Fact and Exhibits, my Appeal was D.O.A. at the Appeal Court. We did inform the Appeal Court of all the misconduct at the Lower Court and they failed to sanction the Judge for misconduct and failed to issue a Writ of Mandamus for the Probate Court to sign off on the Associate Judges ruling as required by Law.

Despite my request, the Appeal Court for the Bill of Review failed to address the absence of the "Effective Date" for the Order.



POWERS OF AN ASSOCIATE JUDGE

Tex Gov Code 54A.209

54A.209 POWERS OF AN ASSOCIATE JUDGE

[A] except as limited by an order of Referral, an associate judge may:

11] recommend the rulings, orders or judgment to be made in a case.

16] without prejudice to the right to a de novo hearing under Section 54A.216 render and sign:

A] a final order agreed to in writing as to both form and substance by all parties.

B] a final default order

C] a temporary order

D] A final order in cases in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives the notice to the party of the final hearing or waives the parties appearance in the final hearing.

17] Sign a final order that includes a waiver of the right to a de novo hearing in accordance with Section 54A.216.

While there is a question that Peyton had the right to address a waiver of a trial de novo in light of Miller's granting a post trial rehearing when requested, there is a claim that 54A.209.17 applies to my case.

Assuming it does, then the following is a requirement by the referring court.

54A.214 [b] *Except as provided by Section 54A.209 [c], if a request for a de novo hearing before the referring court is not timely filed 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.*

For reference 54A.209 [c] states: *An order described by Subsection [a][16] that is rendered and signed by an associate judge constitutes an order of the referring court. 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.*

This Section 54A.209 describes ALL the powers an Associate Probate Judge Has. **Note that the Associate Judge does not have the power to set the Effective Date of the Order.** That is solely reserved to the referring Court by multiple statutes 54A.214 [b], 54A.215, and 54A.217. **The Probate Court and Appeal Court for the Bill of Review never addressed this issue.**



ASSOCIATE JUDGE/ADJUDICATION

Tex Gov Code 54A.207

Per Texas Statute, an Associate Probate Judge does have the right to hold a trial and create an Order that can be taken to an Appeal Court. With proper authorization [which remains unresolved in this Case] from the Judge of Record or the State Probate Judge, an Associate Judge can hold a final trial that can create testimony and documents suitable for an Appeal.

Sec. 54A.207 CASES THAT MAY BE REFERRED
[a] Except as provided by this Section, a judge of a court may refer to an associate judge any aspect of a suit over which the Probate Court has jurisdiction.

[b] . . . A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

Note that this statement clearly states “Adjudication” which constitutes the hearings. An **“Adjudication is not an Order, and only an Order is Appealable.”** This statute simply means that the trial can be final and the “source” of an Order. The above procedure is “book-ended” by two critical events.

First is that the Associate Judge must obtain an Order of Referral from the Judge of Record or the State Probate Judge prior to the hearing and **the date of any Order is defined as the date the Referring**

Court signs the Order per State Laws Tex Gov Code 54A.214 [b], 54A.215, and 54A.217.

JUDICIAL ACTION ON ASSOCIATE JUDGES PROPOSED ORDERS

Tex Gov Code 54A.215

54A.215 [b] *“The judge of the referring court shall sign a proposed order or **judgement** 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.**”*

EFFECTIVE DATE OF APPEALABLE ORDER

Per Texas Government Code 54A.217 APPEL-LATE REVIEW [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].

SIMPLE SOLUTION

There is an extremely simple solution for the predicament that I am in created by John B Peyton's gross ineptitude and incompetence [Which has been confirmed by the State of Texas as they have deemed him to be unfit to be a Judge and by Dallas County as they have fired him.] John B Peyton can go back to Dallas Probate Court #3 and have it follow the Law and sign off on the proposed Order in order to determine the "***Effective Date***" and allow my Appeal on the merits of the Case to proceed thru the system.

From the examples provided to this Court Dallas Probate Court #3 does know and follow the law by signing off on Associate Judge's Rulings. We can reasonably presume that the Dallas Probate Court #3 has deemed Mr Peyton's Work as improper, unprofessional and/or not worthy of a sign-off.

This Court should demand that John B Peyton Jr. simply provided a signed Order or an explanation from Dallas Probate Court #3 on why a sign off will not be provided for his defense. If he does, this case automatically goes away with no further cost to any party and the U.S. Supreme Court.

CONCLUSION

John B Peyton has not provided this Court with an Order signed by the Probate Court in accordance with State Law that clearly establishes the "***Effective***

Date” of the Order which is required for an Appeal. John B Peyton has not provided a reason that he has not provided the signature to make the proposed State Order a valid Legal Instrument.

Both Orders by the Associate Judge Peyton* remain unsigned by the Court 6 years after Peyton submitted the proposed orders to the Court for signature.

There is no provision [outside of party agreement] in ANY Statutory or Case law that permits any exception to the Judge of Record for a Statutory probate Court requirement to sign off and establish the “Effective Date” of the Order in order to make it a legal instrument suitable for Appeal. I have presented the unsigned orders, all the applicable Case law, and examples of proper procedure by the Court. John B Peyton has provided no documentation to prove the validity of the proposed unsigned Orders.

WITHOUT A VALID STATE ORDER, THE ROOKER FELDMAN DOCTRINE DOES NOT AND CAN NOT BE RELIED ON AS A DEFENSE.

Do not forget that John B Peyton was removed as a Judge almost two years ago for misconduct by the Texas State Commission on Judicial Conduct as they deemed him to be unfit.

Respectfully submitted,

CAROL M. KAM, Pro Se
9039 Santa Clara Dr.
Dallas, Texas 75218
214-801-4901
carolmkam@gmail.com

CERTIFICATE OF PETITIONER

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that this is restricted to the grounds specified in Supreme Court Rule 44.2.

CAROL M. KAM

App. 1

No. PR-18-04004-3

IN THE ESTATE OF	§	IN THE PROBATE
GLENNA GENTHNER	§	COURT
SHUBERT,	§	NO. 3
DECEASED	§	DALLAS COUNTY,
	§	TEXAS

JUDGMENT DECLARING HEIRSHIP

On this day came on to be heard the sworn Application to Determine Heirship of the Estate of Glenna Genthner Shubert, Deceased, wherein Matthew Glenn Shubert is the Applicant and is heir to Decedent's Estate, and Decedent's living heirs whose names and/or whereabouts are unknown are Defendants; and it appears to the Court, and the Court so finds that all parties interested in the Estate of Decedent have filed written waivers of service of citation, have appeared and answered herein, or have been duly and legally served with citation as required by law; that the Court appointed an Attorney Ad Litem to appear and answer and to represent Defendants and such Attorney Ad Litem did so appear and filed an answer for Defendants; that this Court has jurisdiction of the subject matter and all persons and parties; that the evidence presented and admitted fully and satisfactorily proves each and every issue presented to the Court; that Decedent died intestate; and that the heirship of Decedent has been fully and satisfactorily proved and the interest and shares of each of the heirs therein.

App. 2

The Court finds and it is **ORDERED** and **DECREED** by this Court that the names and places of residence of the heirs of Decedent and their respective shares and interests in the real and personal property of Decedent are as follows:

- a. Name: Michael B. Shubert
Relationship: Child
Share of Real Property: 1/2
Share of Personal Property: 1/2
- b. Name: Matthew Glenn Shubert
Relationship: Child
Share of Real Property: 1/2
Share of Personal Property: 1/2

SIGNED on the 8th day of July, 2019.

/s/ [Illegible]

JUDGE PRESIDING

**ASSOCIATE JUDGE,
IN AND FOR THE
PROBATE COURTS,
DALLAS COUNTY,
TEXAS**

App. 3

APPROVED AS TO FORM:

By: /s/ Byron L. Woolley
Byron L. Woolley
State Bar No.: 21986500
6440 N. Central Expwy.
Suite 505
Dallas, Texas 75206
Telephone: (214) 871-5082
Facsimile: (214) 871-5090
E-mail: woolley@woolleywilson.com
Attorney for Matthew Glenn Shubert

/s/ Margaret Jones-Johnson

<p>MARGARET JONES-JOHNSON PRESIDING JUDGE DALLAS COUNTY, PROBATE COURT #3</p>

App. 4

No. PR-18-04004-3

IN THE ESTATE OF	§	IN THE PROBATE
GLENN GENTHNER	§	COURT
SHUBERT,	§	NO. 3
DECEASED	§	DALLAS COUNTY,
	§	TEXAS

**ORDER GRANTING INDEPENDENT
ADMINISTRATION AND AUTHORIZING
LETTERS OF ADMINISTRATION
PURSUANT TO SECTION 401.003 OF
THE TEXAS ESTATES CODE**

On this day came on to be heard the Application filed herein by Matthew Glenn Shubert on December 21, 2018, for an independent administration and for the issuance of Letters of Administration to Matthew Glenn Shubert in the Estate of Glenna Genthner Shubert pursuant to Section 401.003 of the Texas Estates Code.

The Court, after having heard and considered the evidence, finds that legal notices of the filing of said Application have been issued and posted in the manner and for the length of time required by law, and no one came to contest same; that Decedent died at Dallas, Dallas County, Texas on September 28, 2018; that this Court has jurisdiction and venue over the estate because Decedent was domiciled in Texas and had a fixed place of residence in Dallas County, Texas at the time of her death; that it has been determined through

App. 5

a proceeding to declare heirship that the heirs identified in the above-referenced Application constitute all of the Decedent's heirs and are all of the distributees of Decedent's estate, that the distributees have agreed on the advisability of having an independent administration and have designated Matthew Glenn Shubert as independent Administrator of Decedent's estate; that four years have not elapsed since the death of Decedent or prior to the said Application; that a necessity exists for the administration; and that Decedent was divorced from Kenneth O. Shubert on April 17, 1985.

IT IS THEREFORE ORDERED AND DECREED by the Court that an independent administration of the Estate of Glenna Genthner Shubert is granted and that Matthew Glenn Shubert be, and is hereby appointed Independent Administrator of said Estate without bond.

IT IS FURTHER ORDERED by the Court that Letters of Administration in the Estate of Glenna Genthner Shubert, Deceased, be and the same are hereby granted, that the Clerk shall issue said Letters of Administration to Matthew Glenn Shubert, as Independent Administrator, when qualified according to law, and that no other action shall be had in this Court other than the return of an Inventory, Appraisement and List of Claims as required by law, or an affidavit in lieu of the Inventory, Appraisement and List of Claims.

App. 6

Matthew Glenn Shubert may sell the property of Decedent upon the consent of the distributees who are to receive any interest in the property, having been consented to same. No interested person has filed an application for the appointment of appraisers, and appointment of appraisers by the Court is waived.

SIGNED this 8th day of July, 2019.

/s/ [Illegible]

JUDGE PRESIDING

NOTE: If Personal Representative in this Estate intends on filing an Affidavit in Lieu of Inventory, Appraisement and List of Claims, this Court will REQUIRE such affidavit to be filed within 90 days from qualification.

**ASSOCIATE JUDGE,
IN AND FOR THE
PROBATE COURTS,
DALLAS COUNTY,
TEXAS**

/s/ Margaret Jones-Johnson

**MARGARET JONES-JOHNSON
PRESIDING JUDGE
DALLAS COUNTY,
PROBATE COURT #3**

App. 7

APPROVED AS TO FORM:

WOOLLEY <> WILSON, LLP

By: /s/ Byron L. Woolley

Byron L. Woolley

State Bar No.: 21986500

6440 N. Central Expwy.

Suite 505

Dallas, Texas 75206

Telephone: (214) 871-5082

Facsimile: (214) 871-5090

E-mail: woolley@woolleywilson.com

Attorney for Matthew Glenn Shubert

App. 8

PR-18-04004-3

THE ESTATE OF	§	IN PROBATE COURT
GLENN GENTNER	§	NO. 3 OF
SHUBERT	§	DALLAS COUNTY,
DECEASED	§	TEXAS

ORDER TO PAY ATTORNEY AD LITEM

On this day, the Court heard the sworn Application to Determine Heirship of Glenna Genthner Shubert, Deceased.

The Court found and ordered Gregory W Sampson, Attorney Ad Litem appointed to represent the interest of the unknown heirs should be allowed a total fee of \$400.00.

It is ORDERED that Gregory W Sampson, the Attorney Ad Litem shall be paid \$400.00 on deposit with the Dallas County Clerk with the remainder of such fee to be paid from the assets of the Decedent's Estate and is hereby discharged of ~~her~~ [his] services.

SIGNED this 8th day of July, 2019.

/s/ [Illegible]

JUDGE MARGARET
JONES JOHNSON
PRESIDING JUDGE

App. 9

**ASSOCIATE JUDGE,
IN AND FOR THE
PROBATE COURTS,
DALLAS COUNTY,
TEXAS**

Mail Check to:

Gregory W Sampson
Gray & Reed
1601 Elm St, Suite 4600
Dallas __, Tx 75201

/s/ Margaret Jones-Johnson

MARGARET JONES-JOHNSON PRESIDING JUDGE DALLAS COUNTY, PROBATE COURT #3

DALLAS COUNTY JOB DESCRIPTION

(April 2019)

JOB TITLE: Full-Time Associate Judge

Reports To: Presiding Judge, **Position No. 8270**
Probate Court No. 3

Department: Probate Courts

Summary of Functions: Conducts hearings, jury trial proceedings, status conferences, and special settings for Probate Court No. 3 court cases, as well as for Mental Illness Court. Works closely with the staff for Probate Court No. 3 and Mental Illness Court staff regarding case settings and scheduling of pending cases. Performs case evaluations, preparation, and management of cases as delegated. "Make recommendations for case resolutions to be approved by the Presiding Judge." The work performed by the Associate Judge will be with direction and guidance from the Probate Court No. 3 presiding judge, as needed.

Management Scope: Trains and delegates research tasks, projects, and other assignments to law clerks and legal interns, as needed.

Duties and Responsibilities:

Responsible for all administrative functions of the Associate Judge's office including supervising interns, and training future administrative support staff; preparing or overseeing preparation of the budget allocated for the Associate Judge, attends management meetings, attends conferences for CLE requirements, provides input on policies and procedures.

App. 11

Consults and confers with Probate Court No. 3 staff and Mental Illness Staff in order to resolve docketing matters or emergency scheduling needs.

Evaluates assigned cases or lawsuits by: reviewing documentation, conducting legal research on applicable laws, and determining most appropriate action(s) to be taken. Responds to necessary motions, briefs or other legal documents for trials and/or hearings.

Trains and assists in the training of legal interns, and performs other duties as assigned.

Minimum Qualifications:

Mental Illness Court Required Qualifications and Experience: JD licensed in the State of Texas in Good Standing, with a minimum of 5-7 years defending or prosecuting patients in Competency, Commitment, and Forced Medication Cases. A thorough understanding of the Texas Health and Safety Code, Diagnostic SM and the classes of psychoactive medications and the associated side effects. Have a working knowledge of the psychiatric hospitals, ability to manage travel to and from all hospitals to conduct hearings at the facilities. Knowledgeable of the statutory time constraints for emergency detention, evaluations upon admission for psychiatric or medical treatment, knowledge of the requirements of a qualifying expert for an involuntary commitment. The ability to work well with others, including court staff, attorneys, hospitals, and hospital staff.

Probate Court Required Experience: JD licensed in the State of Texas in Good Standing, with a minimum of 5-7 years defending or prosecuting Guardianships, Contested Guardianships, Testate and Intestate Administration and Trusts, involving extensive experience in motion practice in litigation, inclusive of Jury Trials. Thorough understanding of the Texas Rules of Civil Procedure and Rules of Evidence, and knowledge of ethical qualifications and disqualifications of fiduciaries.
