

No.

IN THE
Supreme Court of the United States

IN RE SUPERVISED ESTATE OF AL KATZ:

LAWRENCE T. NEWMAN
Petitioner,

v.

ROBERT W. YORK
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF INDIANA

PETITION FOR A WRIT OF CERTIORARI

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July 11, 2019

QUESTIONS PRESENTED

1. Whether the impositions of appellate attorney fees twice by the Indiana Court of Appeals and a third time by the Indiana Supreme Court without any stated legal or factual grounds violate the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.
2. Whether the Indiana Supreme Court's imposition of appellate attorney fees in the absence of jurisdiction violates the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.

RELATED CASES

Indiana Supreme Court
Case No. 49A05-1710-ES-2475

Supervised Estate of Al Katz
Lawrence T. Newman, Appellant,
v.
Robert W. York, Appellee

Date of entry of Order denying transfer:
April 12, 2019

Indiana Supreme Court
Case No. 18A-ES-01721

In re the Estate of Al Katz, Deceased
Lawrence T. Newman, Appellant
v.
Robert W. York, Internal Revenue Service,
and State of Indiana, Appellees

Date of entry of Order denying transfer:
June 18, 2019

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Lawrence T. Newman, respectfully requests that this Court issue a writ of certiorari to review the judgments of the Indiana Court of Appeals and of the Indiana Supreme Court imposing appellate attorney fees against Newman without stating legal and factual bases for said awards as required by law, and, in the case of the Indiana Supreme Court, without jurisdiction to make such award.

OPINIONS BELOW

The order of the Indiana Court of Appeals imposing appellate attorney fees dated September 12, 2018, is set forth in Appendix A. The order of the Indiana Court of Appeals denying Newman's Petition for Rehearing and imposing additional appellate attorney fees dated November 19, 2018, is set forth in Appendix B. The order of the Indiana Supreme Court denying transfer and imposing additional appellate attorney fees dated April 12, 2019, is set forth in Appendix C.

JURISDICTION

This cause arises from the award of appellate attorney fees to attorney Robert York, as Personal Representative and attorney for the Estate of Al Katz. The Indiana Court of Appeals imposed said fees on Newman on September 12, 2018, denied rehearing and imposed additional fees on Newman on September 12, 2018, and the Indiana Supreme Court denied transfer but assessed additional appellate attorney fees on Newman on April 12, 2019.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following Constitutional provisions, the pertinent portions of which are set forth below:

Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

No person shall ... be deprived of life, liberty, or property, without due process of law

U.S. Const. amend. V.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

.... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, Section 1.

STATEMENT OF THE CASE

From 2003-2005, Petitioner Lawrence Newman ("Newman") worked as an associate attorney in the law office of Robert York ("York") in Indianapolis, Indiana. Newman was terminated by York in 2005 after York had demanded by ultimatum that Newman and his wife, Dr. Beverly Newman, agree not to sue the Indianapolis Jewish Community Center, where Dr. Newman had witnessed serious child abuse by a 350-pound male counselor lying on top of a child trapped on the floor against the wall, which Dr. Newman immediately reported and for which the JCC systematically retaliated against her and defamed her. When Newman refused to cover up the child abuse, York fired him. Several years later, York represented one of Newman's former clients against Newman in a fee dispute and thereafter was appointed as the attorney and Personal Representative for the Estate of Al Katz, Dr. Newman's father.

In late 2005 or early 2006, the Newmans were also advised of on-going sexual abuse of Jewish children close to the JCC, and they attempted to depose the mother of a convicted serial child predator in their Jewish community. The deposition subpoena was quashed by trial court Judge Steve David, fining Dr. Newman \$60,000.00 for appealing his order to quash, and later becoming Indiana Supreme Court Justice, serving on the panel of four that issued the subject Supreme Court Order.

In 2010, Dr. Newman's father, Al Katz, a domiciliary of Indianapolis, passed away in Florida, and Dr. Newman opened his Estate in the Marion

County, Indiana, Probate Court, which appointed her as Personal Representative of the Al Katz Estate in October 2010.

In January 2015, Dr. Newman was removed as Personal Representative largely due to her disabilities and the court appointed York as the successor Personal Representative and Estate attorney and retained him in said positions despite its knowledge of York's decade-long and intense conflict of interest with and hostility against Lawrence and Beverly Newman. Further, York has been hired for years upon appointment by the Indiana Supreme Court as a hearing officer for the Court, a position for which his compensation by the Supreme Court has been scores of thousands of dollars.

As Estate Personal Representative, Dr. Newman had filed four damage lawsuits in Florida against persons and entities for their wrongdoings against Al Katz while he was in Florida during the last year of his life, which lawsuits were credibly anticipated to provide hundreds of thousands of dollars in damage awards/settlements by insurance/surety bonds to the Estate, which had otherwise been insolvent since its opening.

On May 11, 2015, York conducted a six-hour hearing until 9:00 at night personally arranging for four Florida-licensed opposing counsels in the Estate damage lawsuits to represent their respective Florida clients, who/which had caused injuries to Al Katz while in Florida.

At the May 11, 2015, hearing, consistent with York's express goals to influence the trial court to blanket-terminate all of the Estate's damage lawsuits, each of which was covered by bonds or insurance amounting *in toto* to at least many hundreds of thousands of dollars, each opposing counsel, all of whom were unlicensed to practice law in Indiana, provided legal information and/or opinion relative to Florida law, upon which the court terminated all of the Estate's damage lawsuits. Prior to and following the May 11, 2015, hearing, York for months gave and received legal information and opinions to and from said four Florida opposing counsels plus numerous others as well, involving up to ten counsels in various electronic communications, which actions constituted unlicensed practice of law in Florida.

During the May 11, 2015, six-hour hearing concluding at 9:00 PM, York described the Estate's lawsuits as "spurious lawsuit claims," against the interests of the Estate he was sworn to represent as its fiduciary.

After the court ordered York to abandon the four Florida lawsuits, York, an Indiana-licensed attorney, never licensed in Florida, engaged in the unlicensed practice of law in Florida by making four separate filings in various Florida courts to effect the dismissal of the Estate's lawsuits and further committed the unlicensed practice of law by providing to and receiving from numerous Florida counsels legal assistance/opinions for many months. Despite his serial unlicensed practice of law documented to the trial court, York was never sanctioned by the court.

Although York filed a motion to withdraw as Personal Representative and attorney in July 2015, the court never acted upon it and permitted York to continue to serve for over four years hence through the present day. Thereafter York strenuously opposed the Newmans' repeated motions to have York removed for cause, including his unlicensed practice of law in Florida and with Florida counsels relative to the Estate.

In violation of the rules applicable to all Indiana personal representatives, the court permitted York to administer the Katz Estate for over four years without (1) York filing the mandatory annual request for the Court to extend the time to close the Estate and (2) without requiring York to file the mandatory annual Estate interim accounting, even denying Newman's motion to require an accounting by York, which accounting has never been filed in well over four years.

After the initial judge was recused for cause and the Indiana Supreme Court appointed Judge Rosenberg as successor judge, from 2013 through 2016, Newman filed hundreds of paid receipts and six motions for payment of Estate administrative expenses, totaling \$104,441.01, and Newman repeatedly sought to have the court hear and determine said motions. Over \$50,000.00 of said administrative expense claims were for Newman to be reimbursed for amounts he had voluntarily paid out-of-pocket to financially support his father-in-law's Estate, which had opened insolvent with only approximately \$400.00 in total liquid assets. Another approximately \$50,000.00 was claimed by Newman as

legal fees during the time he had represented Dr. Newman as Personal Representative. Dr. Newman never sought compensation for her years as Personal Representative.

After Judge Rosenberg last set Newman's first four expense motions for hearing on May 2, 2014, Judge Rosenberg adjourned said hearing without hearing Newman's motions and thereafter refused to reset said hearing or otherwise hear any of Newman's expense motions.

On July 13, 2016, Judge Rosenberg and his supervising judge both recused themselves for cause, and the Indiana Supreme Court thereupon appointed Judge James Joven, a legal colleague of Robert York from the small town of Lawrence, Indiana, as successor judge on July 20, 2016.

Although Judge Rosenberg had never heard or determined any of Newman's six administrative expense claims, Judge Joven erroneously and repeatedly ruled that the court had previously denied or dismissed Newman's claims without ever citing to any actual court order so denying or dismissing Newman's claims, notwithstanding Newman's repeated documentation that no such order(s) had ever been issued at any time by the court and notwithstanding that Judge Joven himself had previously listed as unheard and undetermined Newman's claim for administrative expense attorney fees.

Upon motion made by Newman, on August 27, 2017, Judge Joven was removed as judge by the Chief

Administrative Officer of the Indiana Supreme Court under Rule 53.1 of the Indiana Rules of Trial Procedure, effective August 27, 2017, for Judge Joven's failure to timely rule on a pending motion; notwithstanding said removal for cause, the Indiana Supreme Court reappointed Judge Joven as Estate judge by order dated September 12, 2017, and by said order retroactively approved of all actions taken by Judge Joven during the period of his loss of jurisdiction between August 27, 2017, and September 12, 2017, which jurisdictional action by the Supreme Court violated Ind. Trial Rule 53.1E(2).

On December 15, 2016, the Newmans filed a lawsuit against York in the Florida courts relative to damages caused to them by York's actions in Florida, including his illegal filings in the Florida courts and his legal assistance/opinions to opposing Florida counsels. On March 30, 2017, Judge Joven issued an Order compelling Newman to prove to Judge Joven why York did not have absolute judicial immunity from the Newmans' Florida lawsuit, even though no motion relative to immunity had been filed before Judge Joven and the Florida lawsuit was outside of the Indiana trial court's jurisdiction. Although York, through his Florida attorneys, had vigorously defended against Newman's Florida lawsuit in the Florida court since January 2017, he had never yet raised the defense of absolute judicial immunity. Within two weeks of Judge Joven's order, York filed on April 12, 2017, in Judge Joven's court, York's "Personal Representative's Application for Temporary Restraining Order and for Further Injunctive Relief Regarding Florida Lawsuit," first raising the defense of absolute judicial immunity, and

thereafter, on May 18, 2017, York first raised the defense of absolute judicial immunity in the Florida court.

On August 28, 2017, Judge Joven issued an injunction enjoining the Newmans from further litigating their Florida lawsuit against York.

Newman, acting *pro se*, appealed the injunction in the Indiana Court of Appeals, and filed his Brief of Appellant in paper form on April 19, 2018, filed his Corrected Brief in electronic form on May 14, 2018, correcting specified defects identified by the Clerk relative to the paper filing, and filed his Second Corrected Brief on May 23, 2018, correcting new additional defects identified by the Clerk relative to the electronic filing.

York thereafter moved in the Court of Appeals to strike Newman's appellate brief and further moved to dismiss Newman's Appeal.

On September 12, 2018, the Court of Appeals issued its order striking Newman's Second Corrected Brief, dismissing Newman's Appeal with prejudice, and granting appellate attorney fees to York, omitting any factual or legal grounds for said striking, dismissal, or assessment of attorney fees, ruling:

Appellee's request for appellate attorney's fees is granted. This case is remanded to the trial court to calculate the amount of appellate attorney's fees Appellee is entitled to recover.

On September 23, 2018, Newman filed his "Verified Motion for Reconsideration of Order Striking Second Corrected Brief of Appellant" in the Court of Appeals, and on October 12, 2018, Newman filed his "Verified Petition for Rehearing."

On November 19, 2018, the Court of Appeals issued its Order: (1) denying Newman's Motion for Reconsideration; (2) denying Newman's Petition for Rehearing; and (3) granting additional appellate attorney fees to York, omitting any factual or legal grounds for both denials and for the dual impositions of attorney fees:

Appellee's request for additional appellate attorney's fees is granted. This case is remanded to the trial court to calculate the amount of appellate attorney's fees Appellee shall recover for responding to the Verified Motion for Reconsideration of Order Striking Second Corrected Brief of Appellant, the Verified Petition for Rehearing, and the Verified Motion to Strike Appellee's Brief in Response to Petition for Rehearing Due to Untimeliness.

On December 19, 2018, Newman filed his Petition To Transfer the Appeal to the Indiana Supreme Court. On January 23, 2019, York filed a motion to dismiss Newman's Petition To Transfer.

On April 12, 2019, the Indiana Supreme Court issued an Order denying Newman's Petition To

Transfer jurisdiction, but nonetheless ordering Newman to pay additional appellate attorney fees "related to the transfer proceedings":

Being duly advised, the Court DENIES the "Petition to Transfer of Appellant." As to "Appellee Robert York's Verified Motion to Dismiss Petition to Transfer," the Court DENIES the motion with the exception of GRANTING the appellee's request for attorney's fees related to the transfer proceedings.

REASONS FOR GRANTING THE WRIT

1. The impositions of appellate attorney fees twice by the Indiana Court of Appeals and a third time by the Indiana Supreme Court without any stated legal or factual grounds violate the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.

This case concerns first impression issues of denials of due process in the imposition of appellate attorney fees by the Indiana appellate courts. In the first issue, both the Court of Appeals and the Supreme Court imposed appellate attorney fees upon Newman omitting any of the required findings of fact and law to justify the award of said fees to comply with established law. In a second novel issue, the Indiana Supreme Court assessed appellate attorney fees against Newman, having first denied jurisdiction over the case by denial of transfer.

Accordingly, as the law in Indiana now stands, appellate courts can impose attorney fees without jurisdiction and without factual or legal basis, setting a dangerous precedent of denial of due process rights.

In this case of first impression, due process was abandoned by the Indiana appellate courts contravening Indiana law that sets forth exacting standards for the imposition of appellate attorney fees against a litigant, which standards were not stated grounds by the courts to impose such fees against Newman, thereby denying him due process. In this respect, Ind. Appellate Rule 66E provides in pertinent part:

The Court may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees....

Long-standing caselaw sets forth the strict standards which the Court of Appeals must follow in assessing appellate attorney fees. As held in *Ballaban v. Bloomington Jewish Cmty., Inc.*, 982 N.E.2d 329,339-340 (Ind.App. 2013) (citing *Orr v. Turco Mfg. Co., Inc.*, 512 N.E.2d 151 (Ind. 1987)), (emphasis added):

Our discretion to award attorneys' fees under Ind. Appellate Rule 66(E) is limited to instances when "an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." In addition, while Ind. Appellate Rule 66(E) provides this court with discretionary

authority to award damages on appeal, we must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right to appeal. A strong showing is required to justify an award of appellate damages and the sanction is not imposed to punish mere lack of merit but something more egregious.

....To prevail on a substantive bad faith claim, the party must show that "the appellant's contentions and arguments are utterly devoid of all plausibility." Procedural bad faith, on the other hand, occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court.

In short, to establish substantive bad faith, the appeal must be permeated with "meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." To establish procedural bad faith, all three prongs of the test must be met:

- (1) flagrant disregard of form and content rules;
- (2) omission and misstatement of material facts;
and
- (3) briefs are written in a manner to require maximum expenditure of time by both the opposing party and the reviewing court.

Critically, courts "must use extreme restraint" and "a strong showing is required to justify an award of appellate damages."

In Newman's case, neither the Court of Appeals nor the Supreme Court justified its award of fees: no strong showing was established; extreme restraint was not documented; no finding was made that Newman had violated all three (or even one) of the procedural bad faith factors; and no finding was made that Newman had violated any of the substantive bad faith factors. In short, regrettably, the documented "flagrant disregard" of laws and rules was by the Indiana courts themselves, demonstrating a repetitive pattern of punitive actions against Newman and an intentional "chilling effect upon [his] exercise of the right to appeal."

In Newman's Petition To Transfer, he specifically raised the issue of the appellate court's refusal to articulate legal grounds for imposing appellate attorney fees. Not only did the Indiana Supreme Court decline to hold the Court of Appeals accountable for its deprivation of Newman's due process rights, it intensified the pattern of punitive actions with intentional inescapable "chilling effect upon [Newman's] exercise of the right to appeal" by awarding its own appellate attorney fees after denying jurisdiction over the case, likewise omitting evidentiary justification, as required by law for imposing such fees. This deprivation of cornerstone Constitutional rights to due process and cornerstone jurisdictional law by the state's highest court compels review by this court of last resort.

The Court of Appeals' two-fold imposition of appellate attorney fees upon Newman in the absence of any legal grounds under settled law is a direct assault upon Newman's due process rights under the Fourteenth Amendment.

The United States Constitution is applicable to the courts of the several states, including the state courts of Indiana:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
U.S. Const. art. 6.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. *Marbury v. Madison*, 5 U.S. 137 (1803).

First, there is no question that the appellate attorney fees imposed upon Newman serve as a serious deprivation of his property under the Fourteenth Amendment. Civil costs imposed by a state court are considered a deprivation of the property of the assessed litigant. *Giaccio v. State of Pennsylvania*, 382 U.S. 399 (1966). "Both liberty and property are specifically protected by the Fourteenth Amendment against any

state deprivation which does not meet the standards of due process" *Id.*

Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce. *Id.*

In the instant case, the appellate courts found no "necessity [to] expound and interpret" legal grounds for their punitive excessive burdens imposed upon Newman.

Although Indiana law requires exacting standards for imposing appellate attorney fees, neither the Court of Appeals nor the Supreme Court referenced any standards, nor did they indicate that they had considered, applied, and followed such standards in imposing said fees.

Further, even if said courts had applied such standards, their failure to articulate the standards and to specify under which standard they found Newman to be liable made it impossible for Newman to address said basis in further appellate litigation, as in Newman's Petition for Rehearing and his Petition To Transfer, as so asserted by Newman in each of said filings, thus further depriving Newman of his due process rights:

Further, the complete absence of such stated grounds by the Court of Appeals for imposing "punitive appellate attorney fees" violates

Newman's due process rights, as the total absence of stated factual and legal grounds for imposing appellate attorney fees severely impedes Newman's ability to further appeal the Court of Appeals decision on the merits because Newman cannot know any factual and legal grounds upon which the Court of Appeals acted and consequently he cannot articulate to higher courts errors in the decision by the Court of Appeals.

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), this Court considered the issue of due process in the context of a pre-deprivation hearing for welfare recipients, ruling in pertinent part:

... the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on. *Id.*, at 271.

Thus, it was not sufficient for the Indiana appellate courts to have simply followed the proper "legal rules"; they were required to "state the reasons for [their] determination[s] and indicate the evidence [they] relied on." Having failed to do so, both the Court of Appeals and the Supreme Court omitted "procedural protections" of Newman's due process rights, denied said rights, and sent a "chilling," unprecedented message to Indiana's citizens to forego their rights to appeal in fear of unbearable financial hardships incurred thereby. In other words, middle class

and lower class citizens, unable to bear large financial loss, cannot consider seeking appeals in the Indiana court system without trepidation and overpowering intimidation emanating from the very judicial bodies funded by the taxpayers to protect the rights of the taxpayers.

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases. *Id.*, at 344.

Due process is flexible and calls for such procedural protections as the particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471,481 (1972).

By refusing to articulate their reasons for imposing attorney fees, the Indiana appellate courts critically deprived Newman of any realistic opportunity to challenge their assessment of fees on the basis that said assessments were not supported by either facts or law; since the courts failed to give Newman any notice of the case against him:

The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." *Joint Anti-Fascist*

Committee v. McGrath, 341 U.S. 123,171
(1951) (Frankfurter, J., concurring).

The Indiana appellate courts' three separate refusals to state legal and factual grounds for imposing fees were exactly the type of "secret, one-sided determination of facts" decried by this Court nearly 70 years ago as denying the fairness required to provide due process to a litigant:

[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123,170 (1951).

Unquestionably, the three separate "secret" impositions of appellate fees placed Newman "in jeopardy of serious loss [of property without] notice of the case against him and opportunity to meet it."

Secrecy is the foundation for this probate case in which York's management of Estate assets for well over four years has been kept secret by the trial court's Order against annual accountings by York; the purported orders denying Newman's administrative expense motions have never been identified by York or the trial court; transcripts and recordings of purported hearings do not exist; and York's unlicensed practice of law in Florida has been secreted and concealed from the public and authorities.

Necessary due process protections demanded that the Indiana appellate courts specify in their written determinations both the particular procedures they used as well as their specific findings of facts in imposing appellate attorney fees. The courts' written determinations, bereft

of such procedures and findings, compel the logic that the mandated legal procedures were not used and that the necessary factual grounds for findings were not found to exist. This is especially so since, given the opportunity via Newman's Petition for Rehearing and his Petition To Transfer, the respective courts nonetheless still declined to justify the legal sufficiency of their respective determinations in their subsequent Orders.

The proper standard of review of an attorney fee award is abuse of discretion. *Blum v. Stenson*, 465 U. S. 886,896 (1984). Under applicable Indiana precedents, a court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it. *Wright v. Mount Auburn Daycare/Preschool*, 831 N.E. 2d 158,162 (Ind.Ct.App. 2005), *trans. denied*. An abuse of discretion also occurs if the trial court misinterprets or misapplies the law. *Id.* Further, a ruling based on an error of law is reversible, and a court has no discretion to reach the wrong result. *MacLafferty v. MacLafferty*, 829 N.Ed. 2d 938,941 (Ind. 2005).

This Court has considered the issue of the appropriate limits of a court's discretion, emphasizing the necessity for a court to base any discretionary decision upon sound legal principles and legal standards. "A motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *United States v. Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall D.J.). Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike. See Friendly, Indiscretion About Discretion, 31 Emory L.

J. 747,758 (1982), *Martin et ux. v. Franklin Capital Corp, et al.*, 546 U.S. 132 (2005).

In *Flight Attendants v. Zipes*, 491 U.S. 754,758 (1989), this Court correctly noted that "in a system of laws discretion is rarely without limits."

This Court has long recognized the absolute need for articulated standards for the imposition of an attorney fee award, decrying the use of unrestrained and unchecked discretion in imposing such fees, as in the "private attorney general" rubric.

Finally, the Court suggests that the policy questions bearing on whether to grant attorneys' fees in a particular case are not ones that the judiciary is well equipped to handle, and that fee shifting under the private-attorney-general rationale would quickly degenerate into an arbitrary and lawless process. *Alyeska Pipeline Service Company v. Wilderness Society*, 421 U.S. 240,273 (1975), J. Marshall, dissenting.

It is unthinkable that, under the rulings of this case, "that like cases [in Indiana] should be decided alike," without legal grounds and without jurisdiction, and even more unthinkable that such a legal precedent could spread its destructive effects to judicial systems beyond the borders of Indiana throughout the United States.

The Indiana appellate courts' dispensing of all identified and acknowledged limits on their discretion is in

direct contravention to this Court's primacy in determining the Constitutional dimensions of due process, as discussed above. This Court, "by force of the Constitution" is "the ultimate arbiter" of constitutional and federal law. *United States v. Reynolds*, 235 U.S. 133,148 (1914); see also U.S. Const. Art. VI, Cl. 2. State courts are "bound by this Court's interpretation of federal law." *James v. City of Boise*, 136 S. Ct. 685,686 (2016) (per curiam); see also *Nitro-Lift, LLC v. Howard*, 568 U.S. 17,21 (2012), "It is this Court's responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law."

Indeed, this Court should speak in this case about impositions of attorney fees that "quickly degenerate[d] into an arbitrary and lawless process," and it is the duty of the Indiana "courts to respect that understanding of the governing rule of law" that prohibits secret rulings placing those seeking to redress grievances "in jeopardy of serious loss [of property without] notice of the case against [them] and opportunity to meet it."

Indeed, the failures of the Indiana Court of Appeals and of the Indiana Supreme Court to afford Newman the most rudimentary aspects of due process are direct affronts to the basic characteristics of due process long established by this Court. "Due process guarantees a "fair hearing in a fair tribunal." *In re Murchison*, 349 U.S. 133,136 (1955). It is fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). Due Process requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S.

319,333 (1976). The "Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged". *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982).

In the present case, Newman was denied the opportunity to have his case regarding the imposition of appellate attorney fees heard "in a meaningful manner" and to "have its merits fairly judged," because the Indiana appellate courts acted in complete secrecy in their imposition of said fees upon Newman. Notwithstanding the lack of any record before the Supreme Court justifying the Court of Appeals' imposition of fees in accordance with established law, the Supreme Court effectively approved and sanctioned the Court of Appeals' abandonment of due process principles, and then further intensified Indiana's deprivations of Newman's Constitutional rights by punitively imposing its own fees upon Newman without jurisdiction over the case and without stating bases therefore and thus without its own consideration of due process requirements.

This Court has long ruled against local practices which seek to defeat superior federal rights, such as the federal Constitutional right to due process in all court proceedings, which the Indiana appellate courts have sought to override. "Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 U.S. 22, 24 (1923).

Due process rights are considered as so fundamental that they are guaranteed in multiple clauses in the United

States Constitution. See *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002) (holding the right to be “grounded in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses.”). See also *id.* at 415 (access to the courts is a “fundamental right” that is a “separate and distinct right to seek judicial relief for some wrong.”).

Due process has been interpreted by this Court as preventing the states from denying litigants use of established adjudicatory procedures, when such an action would be “the equivalent of denying them an opportunity to be heard upon their claimed right[s].” *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971). In the instant case, the refusal of the Indiana appellate courts to document in their respective subject Orders the legal and factual grounds for their imposition of appellate attorney fees, which documentation is an “established adjudicatory procedure” under the strictures of *Orr v. Turco Mfg. Co., Inc.*, 512 N.E.2d 151 (Ind. 1987) and *Ballaban v. Bloomington Jewish Cmty., Inc.*, 982 N.E.2d 329, 339-340 (Ind.App. 2013), as cited above, violates Newman’s due process rights as denying him the right to be heard upon his claimed right to protect his property from wrongful state deprivation actions.

The Due Process Clause is particularly implicated in this case as Newman seeks to protect his property from unwarranted seizure by the Indiana courts, who have acted to wrongfully deprive Newman of his property by coercive court action of imposing appellate attorney fees without affording Newman his fundamental due process protections. “[T]he Due Process Clauses protect civil

litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422,429 (1982).

The concepts of justice for the individual and restraint of government inherent in the Due Process Clause date back to the English Magna Carta, as described in *Bank of Columbia v. Okely*, 4 Wheat. 122. 126 (1819), "As to the words from Magna Charta . . . after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.". In this respect, due process rights are the type of "fundamental rights" that are both "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702,720-21 (1997).

Indiana's requirements that appellate attorney fees may be assessed only upon specific findings as set forth in law is meant to assure judicial impartiality, which impartiality is a basic norm in this country's legal order. "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law...." *Marshall v. Jerrico*, 446 U.S. 238,242 (1980).

In this case, justice for the individual and restraint of government cannot be found amidst the "arbitrary and lawless process" of secret punitive legal decision-making by appellate courts, establishing dangerous precedent by which "like cases should be decided alike."

Finally, irrespective of the Indiana baseline requirements which must be met before imposing punitive appellate attorney fees, the Due Process Clause in and of itself can be viewed as requiring a baseline procedure for protecting citizens' Constitutional rights, as discussed by Justice Thomas in his dissent in the recent case of *Nelson v. Colorado* (2017). The Indiana appellate courts' collective failure and refusal to state any factual or legal basis for their imposition of fees, thereby acting in total secrecy and without any baseline procedures, is an affront to the Due Process Clause:

[T]he Due Process Clause may have originally been understood to require only "that our Government . . . proceed according to the 'law of the land'—that is, according to written constitutional and statutory provisions"—before depriving someone of life, liberty, or property I assume that the Due Process Clause requires some baseline procedures regardless of the provisions of [state] law. *Nelson v. Colorado*, 581 U.S. ___, 137 S. Ct. 1249, 197 L. Ed.2d 611 (2017) (J. Thomas, dissenting).

2. The Indiana Supreme Court's imposition of appellate attorney fees in the absence of jurisdiction violates the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.

In its Order denying transfer, the Indiana Supreme Court assessed additional appellate attorney fees against Newman. Because the Indiana Supreme Court did not accept transfer, it lacked jurisdiction to issue an order

imposing fees upon Newman. The imposition of attorney fees against Newman by the Indiana Supreme Court in the absence of jurisdiction deprived Newman of his Constitutional due process rights.

The jurisdiction of the Indiana Supreme Court is established in Article 7, Section 4 of the Indiana Constitution, which provides in pertinent part:

The Supreme Court shall have no original jurisdiction except in admission to the practice of law; discipline or disbarment of those admitted; the unauthorized practice of law; discipline, removal and retirement of justices and judges; supervision of the exercise of jurisdiction by the other courts of the State; and issuance of writs necessary or appropriate in aid of its jurisdiction. The Supreme Court shall exercise appellate jurisdiction under such terms and conditions as specified by rules

Indiana statute further defines the limits of the Supreme Court's jurisdiction, setting forth in Ind. Code § 33-24-1-2 in pertinent part as follows:

- (a) The supreme court has jurisdiction in appeals coextensive with the state and has jurisdiction as provided by the Constitution of the State of Indiana.
- (b) The supreme court has exclusive jurisdiction to:

- (1) admit attorneys to practice law in all courts of the state; and
- (2) issue restraining orders and injunctions in all cases involving the unauthorized practice of the law;

under rules and regulations as the supreme court may prescribe.

Indiana statute further sets forth the powers of the Indiana Supreme Court to adopt its own rules specifying the limits of its jurisdiction. Indiana Code § 33-24-3-1 provides in pertinent part:

The supreme court shall adopt and publish rules in conformity with IC 33-24-1-2(b) specifying the terms and conditions under which the supreme court and the court of appeals exercise jurisdiction.

The Indiana Supreme Court has recognized in its own decisions that the Legislature, in creating courts pursuant to its Constitutional authority, can, and necessarily must, in that process define the scope of their powers and authorities, including, of necessity, its own jurisdiction.. *State v. Pollitt*, 220 Ind. 593, 45 N.E.2d 480,482 (1942).

Nearly 80 years ago, in *Warren v. Indiana Telephone Co.*, 217 Ind. 93, 26 N.E.2d 399 (Ind. 1940), the Indiana Supreme Court recognized the Constitutional and statutory limits of its own jurisdiction, that such limits are subject to "strict construction," that the issue of its jurisdiction must be considered "with due appreciation of its gravity," that "When a court from which there may be

no appeal undertakes to speak with regard to its own powers, it ought to exercise great caution and restraint," and that "In the final analysis, this court must be the judge of its constitutional jurisdiction."

The Constitution of Indiana provides that: ... "The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer" (Article 7, § 4); "All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay" (Article 1, § 12); These provisions of the Constitution are a part of the fundamental law of the state, declared by the people themselves acting in their sovereign capacity. *Ellingham v. Dye* (1913), 178 Ind. 336, 99 N.E. 1, Ann. Cas. 1915C 200. As such they are entitled to strict construction. *Lafayette, Muncie, and Bloomington R.R. Co. and Another v. Geiger* (1870), 34 Ind. 185. It has been said that the language of each provision of the Constitution is to be considered as though every word had been hammered into place. *State ex rel. Hovey v. Noble* (1888), 118 Ind. 350, 353, 21 N.E. 244.

This requires us to reconsider a great many things that have been said by this court respecting its own jurisdiction. We approach the subject with due appreciation of its gravity. When a court from which there may be no appeal undertakes to speak with regard to its own powers, it ought to exercise great caution and restraint....

Uniformity in the interpretation and application of the law is the keystone of our system of jurisprudence....

In the final analysis, this court must be the judge of its constitutional jurisdiction.

Id., 217 Ind. 93 at 107-112, 26 N.E.2d 399 (Ind. 1940).

In the instant case, Newman, "for injury done to him in his property" has had no "remedy by due course of law"; certain "provision[s] of the Constitution [are] ... as though ... [only some words] had been hammered into place"; and there is not "uniformity in the ... application of the law [as] the keystone of our system of jurisprudence."

Indeed, pursuant to its Constitutional and statutory powers as enumerated above, the Indiana Supreme Court has, by Rule, limited its jurisdiction with respect to cases over which it has discretionary review to only those cases to which it has granted transfer. Pursuant to Rule 4A(2) of the Indiana Rules of Appellate Procedure (emphasis added):

The Supreme Court shall have discretionary jurisdiction over cases in

which it grants Transfer under Rule 56
or 57 or Review under Rule 63.

Thus, since the Indiana Supreme Court "shall have discretionary jurisdiction over cases in which it grants Transfer," it follows that the Indiana Supreme Court has no jurisdiction over cases for which it denies transfer, such as Newman's subject Appeal.

The Indiana Supreme Court itself drafts/approves its own rules pursuant to its Constitutional authority, and thus creates the rules to which it must comply. The Indiana Supreme Court's authority to draft rules applicable to itself in the Indiana Rules of Appellate Procedure is documented in its preamble to amendments of the Indiana Rules of Appellate Procedure, in which it states in standard form:

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, the Indiana Rules of Appellate Procedure are amended as follows

Since the Indiana Supreme Court drafts its own rules of jurisdiction pursuant to its Constitutional authority, violation of said rules is tantamount to a violation of its Constitutional authority.

The applicable Indiana Rules of Appellate Procedure regarding transfer of appellate jurisdiction from the

Indiana Court of Appeals to the Indiana Supreme Court are as follows (emphasis added):

Rule 56. Requests To Transfer To The Supreme Court

... Petition After Disposition by the Court of Appeals; Filing Fee. After an adverse decision by the Court of Appeals, a party may file a Petition under Rule 57 requesting that the case be transferred to the Supreme Court....

Rule 58. Effect Of Supreme Court Ruling On Petition To Transfer

A. Effect of Grant of Transfer. The opinion or memorandum decision of the Court of Appeals shall be final except where a Petition To Transfer has been granted by the Supreme Court....

Upon the grant of transfer, the Supreme Court shall have jurisdiction over the appeal and all issues as if originally filed in the Supreme Court.

B. Effect of the Denial of Transfer. The denial of a Petition To Transfer shall have no legal effect other than to terminate the litigation between the parties in the Supreme Court.

As an example of the Indiana Supreme Court's recognition that its assumption of jurisdiction in a case is fully dependent upon its grant of transfer is its language upon granting a petition to transfer, as set forth in *Lloyd Johnson v. State of Indiana*, Cause No. 47S04-0110-PC-478 (2001) (emphasis added):

We grant transfer of jurisdiction and pursuant to Appellate Rule 58(A), vacate the Court of Appeals' opinion and remand the appeal to the Court of Appeals for further proceedings consistent with this order.

The Indiana Supreme Court's disregard for a bedrock Constitutional right of due process was exacerbated by the fact that it lacked jurisdiction "over the appeal and all issues" therein, including, *inter alia*, imposing appellate attorney fees on Newman for any reason. Presented with the opportunity to assume jurisdiction over the Appeal by acceptance of Newman's Petition To Transfer, the court opted to eschew assumption of jurisdiction by denying Newman's Petition, thereby estopping the Supreme Court from taking any further additional action "over the appeal and all issues" therein.

The actions of the Indiana Supreme Court in imposing appellate attorney fees upon Newman after denying its jurisdiction over his Appeal, by denying his Petition To Transfer, are the culmination of a years-long series of decisions in this probate case, now nine years old, involving the insolvent estate of a Holocaust Survivor, whose family, the Newmans, reported serious and serial child abuse to Indiana authorities, including now-Indiana Supreme Court Justice Steve David, who fined Lawrence Newman's wife \$60,000.00 for appealing David's order quashing the deposition subpoena of the mother of a convicted violent serial sexual predator, who mutilated the doll of a child-victim and then set her dolls on fire. This predator's family is very influential at the Indianapolis JCC as well as the family of former Subway spokesman, Jared

Fogle, now in federal prison for sexual abuse of boys and girls around the world.

Robert York, a prolific hockey coach who competed for years around the world with young children, fired Newman for refusing to secrete eyewitness accounts of serious child abuse at the JCC, yet was hired by the Indiana Supreme Court, including Justice Steve David, as a hearing officer for the Supreme Court, paid scores of thousands of dollars of taxpayer funds despite his intimidation of child abuse reporters and his unlicensed practice of law in Florida, over which unlicensed practice of law the Indiana Supreme Court has Constitutional jurisdiction, that it has never exercised against York.

The glaring omissions of law and logic in the trial and appellate court actions in this probate case, setting dangerous precedent, inexorably point to a bias in the Indiana courts in favor of Robert York against Newman.

Said biased and punitive actions by the Indiana courts include, *inter alia*: (1) appointment of Robert York and his acceptance in January 2015 as successor Personal Representative and attorney for the Estate of Al Katz, notwithstanding his decade-long severe conflicts of interest and documented history of actions against and deep conflicts with the Newmans; (2) the trial court's retention of York despite the Newmans' immediate notification to the court of York's long-term history of deep conflicts with the Newmans and subsequent repeated motions for removal of York for cause; (3) the trial court's refusal to remove York from his Estate positions after York had filed a motion to

withdraw in July 2015 as Personal Representative and Estate attorney; (4) the trial court's refusal to require York to file an annual accounting of his management of the Estate in 2015, 2016, 2017, 2018, or 2019, in violation of Indiana statutes and court Rules, which require such accountings to be filed every year; (5) the refusal of the trial court, Court of Appeals, and Supreme Court to take any disciplinary actions against York for his documented unlicensed practice of law in Florida in making multiple filings on behalf of the Indiana Estate in various Florida courts without a license to practice law in Florida or *pro hac vice* admission and for the unlicensed practice of law by York and four opposing Florida-licensed counsels, representing their Florida clients, at the May 11, 2015, hearing at which York and the Florida opposing counsels provided legal information and opinions regarding Indiana and Florida law; (6) the repeated failure and refusal of the Indiana Court of Appeals to state factual and legal bases for assessing appellate attorney fees against Newman; (7) the Indiana Supreme Court's imposition of appellate attorney fees upon Newman without jurisdiction to do so, as it had denied transfer of jurisdiction; and (8) the failure and refusal of the Indiana Supreme Court to state factual and legal bases for imposing appellate attorney fees upon Newman in favor of York, a long-time appointee by said court as attorney disciplinary hearing officer for the Indiana Supreme Court.

Both the appearance and the reality of impartial justice are necessary to the public legitimacy of judicial rulings and therefore to the rule of law itself. *Williams v. Pennsylvania*, 136 S. Ct 1899, 1910 (2016).

In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868,876 (2009), this Court stated that due process requires an objective inquiry into judicial bias, and where there is an objective risk of actual bias on the part of the factfinder, it is a due process violation.

This case additionally invokes the protections of the Eighth Amendment, which prohibits "excessive fines imposed." The Indiana courts' lack of legal and factual grounds for imposing appellate attorney fees upon Newman render such fees "excessive" in any amount. The 2019 case of *Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682 (2019), incorporates the Eighth Amendment against the states, emphasizing the clause's purpose as one that "limits the government's power to extract payments ... as punishment for some offense." In this case, Newman has never been notified by any court as to the nature of his "offense" which allows the courts to "extract payments" from him.

Under the Eighth Amendment, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Directly at issue here is the phrase "nor excessive fines imposed," which "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" Indiana explains that its own Supreme Court has held that the Indiana Constitution should be interpreted to impose the same restrictions as the Eighth Amendment Exorbitant tolls undermine other

constitutional liberties Protection against excessive punitive economic sanctions secured by the Clause is, to repeat, both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition." *Id.*

This Court has stated that "some errors are so fundamental and pervasive that they require reversal without regard to the facts and circumstances of the case." *Young v. U.S. ex rel. Vuitton*, 481 U.S. 787,810 (1987). An error is fundamental if it undermines confidence in the proceeding. *Id.*, at 812-813.

This probate proceeding is so fundamentally and pervasively ridden with errors, so biased on the parts of the factfinders, and so deficient in judicial impartiality that it threatens, especially as the current rule of law for the State of Indiana, "the public legitimacy of judicial rulings and therefore ... the rule of law itself."

The current rule of law in the State of Indiana, as established by this case, is that:

- a. no evidence is necessary to punitively impose or "extract payments" of overwhelming appellate attorney fees on a party;
- b. no legal grounds are necessary for a court to impose appellate attorney fees;
- c. no jurisdiction is required for a court to impose appellate attorney fees;
- d. no appellate court, reminded via a motion for rehearing to comply with established

law, must correct its own errors in order to obey the law;

- e. bias can form the sole basis for "excessive punitive economic sanctions" imposed by courts for "punishment for some [unidentified] offense," thereby punitively imposing enormous insurmountable financial penalties on parties seeking redress of grievances and protection of property rights under the U.S. Constitution and the Indiana Constitution.

There can be no due process, redress of grievances, protection of property rights, access to the courts, and equal treatment under the law when taxpayers are intimidated repeatedly by imposition of punitive appellate fees without legal grounds or jurisdiction, against the public good.

In the present case, the imposition of "excessive punitive economic sanctions" upon Newman by the Indiana Supreme Court in the complete absence of any jurisdiction to do so, having denied transfer of appellate jurisdiction of the case, is an error that is "so fundamental and pervasive" that it "undermines confidence in the proceeding" and requires reversal by this Court. Of critical import is the fact that, under Rule 58B of the Indiana Rules of Appellate Procedure, set forth above, the Supreme Court's denial of transfer ends the present litigation in the Indiana courts, and Newman has no recourse in the Indiana courts to correct the "fundamental and pervasive" errors of the Indiana Supreme Court except in this Court by grant of Newman's Petition for Writ of Certiorari.

CONCLUSION

Under current Indiana rule of law, after the subject decisions of the Indiana Court of Appeals and the Indiana Supreme Court, a litigant can be assessed "excessive punitive economic sanctions ... as punishment for some [unidentified] offense" as impositions of overwhelming appellate attorney fees without any justification given by the appellate courts, notwithstanding contrary law and Constitutional due process requirements, and the Indiana Supreme Court likewise can assess appellate attorney fees in the absence of jurisdiction, a direct affront to due process principles. Such a perverse state of the law will irreparably damage "the rule of law itself" if it is allowed to intimidate our middle and lower classes from redressing their grievances in the appellate system.

The Petition for Writ of Certiorari should be granted to correct the "fundamental and pervasive" errors of the Indiana appellate courts that have made the rule of law in Indiana unbearable and unthinkable for middle class and lower class citizens, in particular, to safely seek redress of their grievances and protection of their property rights through the appellate courts.

Respectfully submitted,

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