20-1310

No. 21-

In The
Supreme Court of the United States

Supreme Court, U.S.
FILED
MAR 05 2021
OFFICE OF THE CLERK

Genet McCann,

Petitioner,

v.

The Supreme Court of the State of Montana

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Montana

PETITION FOR WRIT OF CERTIORARI

Genet McCann
P.O. Box 160492
Big Sky, MT 59716
(406) 220-0352
62BigSky@gmail.com

Petitioner Pro Se

March 5, 2021

QUESTIONS PRESENTED

1. Is the Due Process Clause of the Fourteenth Amendment violated where a judge persisted in non-disclosure and presided over the final 2019 hearing—after being presented in court with an oral motion to recuse based upon newly discovered, indisputable evidence that he independently investigated material facts and suborned false testimony, in collusion with his *undisclosed* life-long close friend in an earlier 2015 Rule 11 hearing, in which he initiated and presided over to suppress the truth of Petitioner's 2015 recusal allegations and impose a pre-filing requirement that intentionally impeded and block Petitioner's 1st and 14th Amendment rights to petition and participate in the six year proceeding as natural daughter and successor beneficiary of her mother's guardianship and conservatorship estate, and again suborned the same false testimony as adverse witness in an attorney disciplinary proceedings in 2018 to have her disbarred—to ultimately rush the approval of his *undisclosed* friend's accounting, block Petitioner's personal liability claims against the misappropriation of over $20 million in estate assets, transfer the remaining estate to the other conservator, as the *ex parte* appointed personal representative of Anne Marie's *intestate* estate in disregard of her properly executed written Last Will & Testament, and finally to serve upon Petitioner a new 2019 *ex parte* Rule 11 order, without notice or opportunity, that blocks Petitioner's participation in the probate of her mother's estate before another sitting judge.

PARTIES NOT MENTIONED IN CAPTION

Douglas J. Wold and Paul McCann, Jr.

PROCEEDINGS DIRECTLY RELATED

The February 28, 2014 Order *Nominating* Doug Wold, *In re A.M.M.,* in the Twentieth Judicial District, Lake County, for the State of Montana (DG 14-2/14-3).

March 14, 2014 FOF/COL/Order, *In re A.M.M.,* in the Twentieth Judicial District, Lake County, for the State of Montana (DG 14-2/14-3).

The June 24, 2015 Rule 11 Order, *In re A.M.M.,* in the Twentieth Judicial District, Lake County, for the State of Montana (DG 14-2/14-3).

In re Genet McCann, ODC No. 15-078/PR 16-0635, before the Commission On Practice in ODC No, 15-078 and the Montana Supreme Court in PR 16-0634 (June 5, 2018).

McCann v. Taleff, et al, before the U.S. District Court of the State of Montana, Great Falls Division, CV 18-115-BMM-JTJ (July 23, 2019), *appealed denied in* 19-35730, before the Ninth Circuit Court of Appeals, (9th Cir., Dec. 11, 2020), *pending anticipated appeal before* U.S. Supreme Court, (due May 10, 2021).

McCann v. The Montana Supreme Court, before the U.S. District Court of the State of Montana, Helena Division, CV-18-42-H-SEH (Apr. 16, 2018)

In the Estate of Anne Marie McCann, (DP 19-47), in the Twentieth Judicial District Court, Lake County, in the State of Montana, (pending).

TABLE OF CONTENTS

Appendix

TABLE OF AUTHORITIES

Montana Statutes and Rules

Montana Cases

Other State Law Authority

Other Sources

PETITION FOR WRIT OF CERTIORARI

Petitioner, Genet McCann, respectfully prays for a writ of certiorari to issue to review and reverse the judgment of the Montana Supreme Court entered into on October 6, 2020 that affirmed the state District Court's refusal to disclose and disqualify and vacate all orders and judgments upon being presented with the indisputable evidence in the public record that he intentionally suborned false testimony twice, independently investigated material facts to preside over and adjudge Petitioner guilty of Rule 11 charges he initiated to knowingly suppress the truth of Petitioner's recusal allegations that due process mandated disclosure and disqualification from day one of a six year long proceeding in DG 14-2/14-3.

OPINION AND ORDERS BELOW

On October 23, 2019, Genet McCann made oral request for a 60 day continuance on the conservators' petitions for approval of the final accounting and termination of the conservatorship,

to conduct discovery, file pre-trial motions, and prepare personal liability claims against the conservators for the misappropriation of over $20 million dollars in estate assets. (Ap-1, p.7:4-11; 8:1-6; 10:9-18) Judge Manley denied the request and set the hearing four weeks out, even though, the conservators' final inventory of estate assets and petition for termination had not yet been filed and served. (Ap-1,p.2:18-22) Judge Manley determined that Genet McCann had through November 13, 2020 to conduct discovery and file pre-trial motions for the November 27, 2019 final hearing on both of the conservators' petitions. (Ap-1, pp. 12:24-25—13:1-9; 15:11-15)

On November 13, 2020, Genet filed an Affidavit to Disqualify Judge Manley, pursuant to Mont. Code Anno., §3-1-805, M.C.A., based upon newly discovered evidence. (Ap-2)

Judge Manley directed the Office of the Clerk of District Court to remove the certified filed and docketed Affidavit to Disqualify, and then issued a November 21, 2019 *ex parte* order changing his October 23, 2019 order, stating Genet could not file, unless attorney certified. (Ap-3) On November 26, 2019, Judge Manley issued a second *ex parte* Rule 11 Order that stated that Genet's Affidavit to Disqualify was never filed. (Ap-4,p.1) (According to §3-1-805, M.C.A., upon the filing of the Affidavit to Disqualify, subject matter jurisdiction is automatically transferred to the Chief Justice of the Montana Supreme Court to make the determination whether

or not to assign district court judge to hear the disqualification matter.)

However, because Judge Manley directed the Office of the Clerk of District Court to remove the certified filed and docketed Affidavit to Disqualify, the Affidavit to Disqualify was never transferred to the Chief Justice of the Montana Supreme Court for determination, even though, at the time of the issuance of the two *ex parte* orders, Judge Manley did not have subject-matter jurisdiction to act. (Ap-5: 6:20-25—7:1-25)

At the November 27, 2020, final hearing in the guardianship and conservatorship of A.M.M., Genet McCann made the oral motion to recuse Judge Manley and to vacate all his prior orders and judgments in the six year long proceeding in DG 14-2/14-3 based upon the newly discovered evidence that she averred in her affidavit to disqualify and re-asserted at the hearing. (Ap.-5, pp.6:22-25—12:1-25)

Judge Manley denied Genet's motion to recuse and to vacate his prior orders at the hearing. (Ap-5,p.13:1-2) He also denied Genet's request for discovery and disclosure of the conservators' management records of estate assets held in the corporations that they seized from the estate during the course of the conservatorship, and denied her the constitutional opportunity and statutory right under §72-5-436(2),(4), M.C.A. to make personal liability claims against the co-conservators in their individual capacities. (Ap-5, pp.33:10-12;pp.50-53;pp.58-60) Judge Manley approved the conservators' final accounting and management of the estate,

terminated the Guardianship and Conservatorship of A.M.M. and closed the case. (Ap-6) He also served upon Genet the November 26, 2019 *ex parte* Rule 11 order that banned her communications with the clerks of district court and imposed a pre-filing requirement that impeded Genet's access to the pending probate of her mother estate (*In re Estate of Anne Marie McCann*, DP 19- 47), lodged in the same judicial district court but before another sitting district court judge. (Ap-5, pp.4-5) (Ap-4)

On May 15, 2020, Genet McCann appealed Judge Manley's denial of her motion to recuse and to vacate all orders and judgments, appealed his two ex parte Rule 11 Orders and appealed final judgment in DG 14-2/14-3 that denied her statutory rights to the conservators' management records of estate assets held in the conservator-controlled corporations, denied her statutory right to assert personal liability claims against the conservators for misappropriation of over $20 million in estate assets and approved conservators' final accounting and closed the case. (Ap-7)

On October 6, 2020, the Montana Supreme Court entered an unpublished opinion in DA 20-21 affirming Judge Manley's final Judgment, the issuance of two Rule 11 *ex parte* orders and Judge Manley's refusal to disclose and recuse. (Ap-8) *In re Guardianship and Conservatorship of A.M.M.*, 2020 MT 257N, 472 P.3d 1204 (2020)(In re A.M.M., IV).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257(a). The final judgment of the Montana Supreme Court was entered on October 6, 2020. This petition seeks review of the denial of Ms. McCann's recusal motion by Judge James A. Manley, as well as the October 6, 2020 opinion by the Montana Supreme Court denying all relief and refusing to consider several of the issues raised.

On March 19, 2020, this Court granted 150 days from the date of the lower court judgment to file petition for writ of certiorari due on or after March 19, 2020, until further notice by this Court. No further notice given as of the date of this petition.

CONSTITUTIONAL PROVISION

The First Amendment to the United States Constitution provides that Congress shall make no law ... prohibiting [] the right of the people [] to petition the Government for a redress of grievances." U.S. const. amend. I.

The Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. const. amend. XIV §1.

STATEMENT OF THE CASE

A. Introduction

The facts of this case cry out for this Court's intervention. This case demonstrates the egregious disregard to the federal Constitution that occurs in state courts, especially in sparsely populated states, when personal interests and close relationships take precedence over the rule of law. The phenomenon demonstrates the need for this Court to exercise its discretionary duty and intervene for the sake of the federal Constitution and the integrity of the Nation's judicial system, and the sanctity of family life.

B. Trial and Direct Appeal Proceedings

Timothy McCann, (brother to Petitioner) cared for both of their aging parents for seven years, without complaint, however, within six months after his father's death, Timothy's mother, Anne Marie McCann (A.M.M.) received notice from her attorney that her adult children Paul McCann, Jr., Sheila McCann and Bill McCann intended filed a petition for guardianship over her person and conservatorship over her multi-million dollar estate that she acquired upon her husband's death. (Ap-9,p.2) ("Sheila and Paul have hired attorney Bog Long in Polson to bring an action to appoint a guardian and conservator. [] In our conversation you stated, unequivocally, that you trusted Tim and that you wanted him to serve as your agent." "I stated that you have told me that you want Tim to serve in this capacity.") In response, Tim filed a (counter) petition. A.M.M. filed her Affidavit to *Nominate*

Timothy McCann on the same date, and, on January 15, 2017, the consolidated proceedings began in *In re Guardianship and Conservatorship of A.M.M.* (hereinafter *In re A.M.M.*). (Ap-10)

On February 28, 2014, District Court Judge James A. Manley accepted assignment over the consolidated cases, and immediately issued a notice to the parties that he was personally *nominating* Doug Wold (his *undisclosed* close life-long friend) for the position of conservator to be determined at the hearing on the two family petitions. (Ap-11).

According to Montana Code Anno., §72-5-410, *nomination* is not the role of the presiding judge. Rather, only those who have either personal knowledge of, or personal relationship with A.M.M, are qualified to nominate; such as, A.M.M. herself, her immediate family members or those who have worked closely with her. See §72-5-410, M.C.A.

At the time of his nomination, Judge Manley did not disclose to the parties that his *nominee*, Doug Wold, is his life-long personal friend of over 53 years and father of his personal judicial assistant on the case, Chantel McCauley, who is also a life-long personal friend of his, and as the case unfolds, post-judgment evidence surfaced that indicated that she was also working for her father on the case. (Ap-12, Exs. 6-7)

Over parties' objections to his *nomination*, on March 14, 2014, Judge Manley summarily denied A.M.M. her counsel, took judicial notice of hearsay non-medical expert report, relied upon *undisclosed*

friend Casey Emerson's lay opinion and determined A.M.M. was incapacitated and appointed his *undisclosed* life-long friend, Doug Wold, as a co-conservator to the Estate of A.M.M. and after the close of the hearing accepted the previously undisclosed *nomination* of Casey Emerson and appointed her guardian, without due process, because he "trusts her." (Ap-13,pp. 145:18—146:6) (Ap-14,p.10, ¶1) Neither were petitioners, neither presented evidence to support their *unauthorized* nominations, nor appeared for the statutory and constitutional purpose that guarantees A.M.M.'s right to cross-examine them. See. §72-5-315(4), M.C.A. (The allegedly incapacitated person is entitled "to be present by counsel, to present evidence, to cross-examine witnesses".). The compelling *undisclosed* truth was that they were his people, set in place for their personal financial interests in the multi-million dollar estate.

Timothy McCann appealed the order, and Montana Supreme Court affirmed judgment *In the Matter of the Guardianship and Conservatorship of A.M.M.,* 2015 MT 250, 380 Mont. 451, 356 P.3d 474 (2015)(*In re A.M.M., I*).

Timothy's Affidavit To Disqualify

After filing an appeal in DG 14-2/14-3, Timothy learned of undisclosed disqualifying facts and filed his Affidavit to Disqualify pursuant to Mont. Code Ann. §3-1-805, on September 10, 2014. (Ap.-12,¶17)

Therein, Tim McCann averred, *inter alia,* that Judge Manley had an undisclosed long-time association with Doug Wold, his nominee-turned-conservator appointee, key witness and attorney on the case. (Ap-12, ¶51) He also averred that "[i]t has come to light that Judge Manley's clerk of judicial chambers, Chantel (Wold) McCauley, is the daughter and clerk/secretary to Doug Wold and his law firm Doug Wold Law Firm." . (Ap-12, ¶18, ¶52) He produced corroborating evidence that Judge Manley's personal judicial assistant on the case is also working for her undisclosed father, Doug Wold, and the Doug Wold Law Firm, on the case. (Ap-12, ¶52, Ex. 6: Insty print invoices, attention to Chantel Wold McCauley of the Doug Wold Law Firm, for work on the McCann cases; Ex. 7: Recording of the Wold Law Firm's Phone message: "*Press line 1, for Doug Wold, press line 2, for Chantel*".)

He averred that he discovered post-judgment that Judge Manley has undisclosed long-time association with Ms. Casey Emerson, through her father, Clint Fischer, an attorney of record in subsequent proceedings in the case. (Ap-12,¶¶16-17) Her post-judgment guardian invoices to A.M.M. revealed that just two days before the hearing, Casey Emerson had an undisclosed 30 minute *ex parte* communication with opposing petitioner's counsel of record Robert Long, and that one day before the hearing, she had a 15 minute undisclosed communication with Judge Manley. (Ap-12, ¶¶24-27)

The next day, Casey Emerson testified as an independent court appointed investigator—a position referred to as a "visitor", and, pursuant to §72-5-313, M.C.A., required her to have no personal stake in the outcome of the proceeding. *See* §72-5-313, M.C.A. She nonetheless testified, without disclosing her personal stake in the outcome of the proceeding as the secret *nominee* for the shoe-in appointment of guardian after the close of the evidentiary hearing. (Ap-13, pp.145-146) In particular, she testified that A.M.M. was incapacitated, indicated Tim was engaging in undue influence and therefore, A.M.M. was in need of a guardian, indicating a person who is independent of family members. (Ap-15,pp. 15-30)

After the close of the evidentiary hearing, Judge Manley permitted the unauthorized nomination of Ms. Casey Emerson and appointed her. (Ap-14,p.10,¶1) At that time, he did not disclose his personal association with Casey Emerson nor did he disclose the 15 minute ex parte communication he had with her one day before the hearing that appears to have been the subject-matter of the ex parte communication that she had one day before with Paul McCann, Jr.'s attorney Bob Long, and appears to have been an arrangement to have her nominated after the close of the evidentiary hearing, after she testified as an independent investigator, to have Judge Manley appoint her guardian because he "trusts her". (Id.)

According to Section 3-1-805, M.C.A. the filing of Timothy's Affidavit to Disqualify automatically transferred jurisdiction to the Chief Justice of the

Montana Supreme Court to make a determination of whether or not to assign a district court judge to hear the matter. (See §3-1-805, M.C.A.) On September 17, 2014, Chief Justice determined that it was unnecessary to appoint a district judge to hear the matter since Timothy's allegations are based solely on the ruling which can be addressed in an appeal. (Ap-16)

Petitioner's March 2, 2015 Motion to Recuse

By operation of §3-1-805, Timothy's allegations were not raised before the trial judge in DG 14-2/14-3. Therefore, to preserved allegations for appeal, on March 2, 2015, Genet filed motion to recuse, and alleged, *inter alia,* that there are disqualifying close personal relationships between Judge Manley, his judicial assistant, Chantel McCauley and Doug Wold, the key attorney, witness and co-conservator on the case, including corroborating evidence that Judge Manley's judicial assistant is also working on the case for father Doug Wold and the Doug Wold Law Firm. (Ap-17)

Judge Manley Initiates Rule 11 Proceedings

Despite the resulting inquiry into Judge Manley's neutrality, Judge Manley did not disclose his personal life-long relationships with Doug Wold or Chantel McCauley or the familial (and professional) relationship between his two friends. Rather, before briefing closed and before he ruled upon Ms. McCann's recusal motion, Judge Manley, *sua sponte*, instituted Rule 11 proceedings against Ms. McCann on the grounds that she made frivolous

Comm'n on Jud. Qualifications, 532 P.2d 1209 (Cal. 1975). (Ap.-19,pp.5-7)

Judge Manley Presides Over Rule 11 Hearing

At the Rule 11 hearing, Judge Manley then initiated, from the bench, the testimony to rebut the corroborating evidence that Chantel was working for both her father and Judge Manley on the case. Judge Manley testified —and Doug Wold, opposing witness, confirmed— that by the time Genet McCann filed her March 2015 motion to recuse, she knew that her recusal allegations were false and frivolous since Doug Wold had testified at an earlier hearing in August/September, 2014 that he had taken Chantel's name off of his law firm's account at Insty Print and also had taken her name off his firm's recorded phone message that says you have reached "*the Wold Law Firm, line 1, Doug Wold, Line 2 Chantel.*" (Ap-20,p. 34:3-20)

To wit:

> THE COURT: Actually, as I recall back, there was testimony at that time that you [speaking to Doug Wold] had learned in August of the accusation that Chantel was still working for you because of this phone message and so you changed your phone message and you also, when you found out her name was still on the old Insty-Print

> account, you changed that. It's my recollection that all of that was disclosed in September.
>
> MR. WOLD: Yes, your Honor.

(Ap-20, p.34:3-20)

Genet was not a party or attorney of record to the proceeding in August or September 2014, but after the Rule 11 hearing, Genet thoroughly reviewed the records and discovered that Doug Wold had *not* testified regarding the matter in August or September of 2014, or, for that matter in *any* other prior proceeding to Genet filing her March 2, 2015 Motion to Recuse. (Ap-21, pp.6-9) The only hearing in August or September was the August 28, 2014 Hearing and there is no testimony remotely related to the matter. (Ap-22)

On June 24, 2015, Judge Manley convicted her and issued Rule 11 Order that imposed approximately $13-14 grand in attorney fees awarded to Judge Manley's undisclosed friends, Doug Wold, for appearing as opposing witness, and Casey Emerson, for sitting in the audience. (Ap-23, p. 2,¶1) The Order also imposed a pre-filing requirement that required a Montana licensed attorney to certify Genet's petitions are well-grounded in fact and law under Rule 11(b), M.R.Civ.P. (Ap-23, p.3,¶2) Judge Manley, however, applied the Rule 11 pre-filing requirement to strike all of Genet's filings, even with attorney certification.

(Ap-24) The attorney who was certifying Genet's filings averred that she received a call from a local Polson attorney and was warned that "things would not go well with her", if she continued to certify my filings. (Ap-25,¶7)

Ms. McCann filed an appeal and amended it as these orders were rendered. She contended on appeal, *inter alia,* that she discovered post-Rule 11 hearing and order that the testimony of Judge Manley in concert with Doug Wold's testimony was gained extra-judicially since the court records confirmed that Doug Wold never gave the testimony regarding Chantel's name being taken off his firms' account at Insty Prints and his firm's recorded phone message, not in August nor September 2014, nor, for that matter in any other proceeding in DG 14-2/14-3 prior to her filing her March 2, 2015 Recusal Motion. (AP-21)(Ap-22) She, thus, further contended that the newly discovered facts reveal that Judge Manley gained personal knowledge of material facts in dispute through extra-judicial, ex parte, means which demonstrates the truth of her allegations that Judge Manley's undisclosed close personal friends, one his judicial assistant, Chantel McCauley, the other, her father, Doug Wold, the conservator, key opposing witness, and attorney on the case creates an unconstitutional risk of actual bias.

Moreover, the Judge initiated testimony conflicted with the indisputable documentary evidence since if it was true as Doug Wold and Judge Manley asserted, that the reason Chantel's name was on the Wold Law Firm's Invoice was because it

was still on it after Chantel went to work for Judge Manley in 2013, the first Insty Print Invoice to the Doug Wold Law Firm for work on the McCann case would have Chantel's name on it, but it does not. Her name was added to the Wold Law Firm's account with Insty Prints sometime after Doug Wold was appointed conservator in DG 14-2/14-3. (Ap-19: last Ex.)

The Montana Supreme Court affirmed Judge Manley's decision not to recuse, ignoring the truth of Genet's assertions on appeal that Judge Manley has personal knowledge and personal interest in the case and engaged in extra-judicial communications with material witnesses regarding material facts, that support the truth of Genet's allegations that their close personal relationships create an unconstitutionally risk of actual bias. It also disregarded all the federal due process constitutional arguments against a judge presiding on a case where he acted as accuser, has personal knowledge and personal interest in the dispute. *In re Murchison*, 49 U.S. 133, 138-39, 75 S.Ct. 623 (1955) ("A judge's interest in a conviction makes the proceedings inherently prejudicial and thus constitutionally invalid.").

Rather, the Court, ignored the federal due process arguments and held that "[w]e agree with the District Court that there is no evidence in their record supporting Genet's allegations that Judge Manley violated either Rule 2.12 or Rule 2.13 of the Code of Judicial Conduct. It held that Genet did not file an affidavit alleging *bias or prejudice* or

otherwise comply with §3-1-805, M.C.A. "The requirement of an affidavit is therefore not dispensable. We conclude the District Court did not err by denying Genet's motion to recuse." *In re A.M.M., II*, ¶23. It also ignored its own case law — that Genet timely raised on appeal— that permits a party to raise disqualification claim in a motion to recuse. *See Draggin'y Cattle Co. v. Addink*, 2016 MT 98, ¶22 (Claim for disqualification may be raised by motion before the district court at the day of trial.)

Judge Manley An Adverse Witness at Disciplinary Proceedings

Within 5 days of Judge Manley's June 24, 2015 Rule 11 Order, Doug Wold initiated attorney disciplinary complaint against Ms. McCann. As a result, the Office of Disciplinary Counsel (ODC)(the prosecutorial arm of the Montana Supreme Court who has exclusive jurisdiction over attorney disciplinary proceedings) filed formal complaint against Genet based upon charges that directly arise from Judge Manley's Rule 11 Judgment. *See In re Genet McCann*, ODC No. 15-078/PR 16-0635, before the Commission On Practice in ODC No. 15-078 and the Montana Supreme Court in PR 16-0634 (June 5, 2018).

As an adverse witness at the March 23, 2018 disciplinary proceedings, Judge Manley testified against Genet based on the Rule 11 proceeding. Genet was not present. *McCann v. The Montana Supreme Court,* before the U.S. District Court of the State of Montana, Helena Division, CV-18-42-H-SEH (Apr. 16, 2018)(dkt. 7: Am. Complaint)

The March 23, 2018 testimony of Judge Manley, however, revealed four new pieces of evidence that establish additional grounds to request recusal in DG 14-2/14-3. First, Judge Manley intentionally suborned the false testimony against Genet, under oath, to recommend and cause her disbarment. Second, he had also intentionally suborned the same false testimony, in collusion with Doug Wold, at the Rule 11 proceeding in DG 14-2/14-3.

Genet realized that the record indisputably shows that Judge Manley *intentionally* suborned false testimony in both cases because He suborned the same false testimony after Genet, on appeal *in re A.M.M., II.*, exposed that the record shows that Doug Wold never testified about the matter in August/September 2014 in DG 14-2/14-3, as Judge Manley testified. (Ap-26, pp.36-28) Thus, the giving of the false testimony to convict Genet of Rule 11 charges and then again to cause her disbarment was not a mistaken slip of ex parte knowledge. It was deliberate.

To wit:

> JUDGE MANLEY: And could I add for the Commission, when those allegations were first made and I talked to Chantel about it, she explained, "This is probably an old account at Mailboxes or my old voicemail." I remember saying rather than

> contacting her dad or doing anything about it, at the next hearing we would see that there was testimony, and she may be called as a witness, if necessary, on that point so that it would be a matter of record.
>
> So at the next hearing, [] Doug Wold did testify – because he was on the stand as a witness regarding some other issue, but I asked him specifically and he did testify under oath that there was no basis, factual basis, and that those were false allegations, and he explained them. And yet, Genet continued to make those allegations even after that had been put on the record under oath.

(Ap-27, pp.78:4—79:4)

Third, Judge Manley's testimony also reveals that he engaged in his own *undisclosed* investigation with a material witness (Chantel) regarding material facts determined in his Rule 11 Judgment. ("[W]hen those allegations were first made and I talked to Chantel about it, she explained, "This is probably an old account at Mailboxes or my old voicemail.") *Id.*

Finally, Judge Manley also testified, albeit inadvertently, for the first time to his life-long personal friendships with the Doug Wold family. He testified that he has known Chantel (Wold) McCauley—a woman of over 53 years—since he watched her grow up in Doug Wold's family. (Ap-27,p.88: 21-25)("I watched her grow up.").

Genet's 2019 Affidavit to Disqualify

On October 23, 2019, Genet McCann made oral motion for a continuance on the conservators' petitions for approval of the final accounting and termination of the conservatorship, to conduct discovery, file pre-trial motions, and prepare personal liability claims. (Ap-1,p.8:2) As customary, Doug Wold requested hearing in 30 days, give or take a day or two, and his daughter, the judicial assistant for Judge Manley, always complied with her father's request that rushed the hearings to approve the conservators' annual accounting 30 or so days later. (Ap-1, pp.8:20-22; p.12:24-25;p.13:1-5)

Judge Manley denied Genet's request and rushed the final hearing on conservators' petitions, even though one of the petitions was not yet filed. (Ap-1, p.2:18-22) However, Judge Manley issued oral order that Genet McCann had through November 13, 2020 to conduct discovery and file pre-trial motions for the November 27, 2019 final hearing on the conservators' petitions. (Ap-1,pp.13:7-9; 15:13-15) It would be the final hearing where all unsettled personal liability claims against the conservators had to be made or forfeited pursuant to §72-5-438(2), M.C.A. Genet had four weeks to conduct discovery,

write pre-trial motions, gather witness, including expert witnesses required to present personal liability claims for the violation of trustee-conservator duties to disclose conservator management records and the fraudulent misappropriation of over $20 million dollars in estate assets concealed in conservator seized corporations.

On November 13, 2020, Genet filed an Affidavit to Disqualify Judge James A. Manley, pursuant to Mont. Code Anno., §3-1-805, M.C.A., based upon newly discovered evidence discussed, *supra.* (Ap-2) However, Judge Manley directed the Office of the Clerk of District Court to remove the certified filed and docketed Affidavit to Disqualify, and then issued a November 21, 2019 ex parte Rule 11 order changing his October 23, 2019 oral order, stating Genet could not file unless attorney certified. (Ap-3) (Ap-5,pp.6-7) (Ap-6)

On November 26, 2019, Judge Manley issued a second *ex parte* Rule 11 Order that stated that Genet's Affidavit for Disqualification was never filed. (Ap-4) (According to §3-1-805, M.C.A., upon the filing of the Affidavit to Disqualify, subject matter jurisdiction is automatically transferred to the Chief Justice of the Montana Supreme Court to make the determination whether or not to assign district court judge to hear the disqualification matter.) However, because Judge Manley directed the Office of the Clerk of District Court to remove the certified filed and docketed Affidavit to Disqualify, the Affidavit to Disqualify was never transferred to the Chief Justice of the Montana Supreme Court for determination,

even though Judge Manley, at the time, per §3-1-805, did not have the power to act in the case. (Ap-5,p.9)

At the November 27, 2020 hearing, and in response to Judge Manley stating that Genet's Affidavit to Disqualify had never been filed, she stated that it was certified filed and docketed. He threatened Genet three times with contempt of court for asserting that she had proof that it had been filed and wanted to enter it into the record as a hearing exhibit. (Ap-5,pp.7-8) When she produced it to enter it into the record, he refused. (Ap-5,p.8:25) He also refused Genet's request to enter into the record the 2018 transcripts of his testimony as adverse witness against Genet regarding facts in this proceeding. (Ap-5p.9:22-25;11:4-9).

Genet sought to assert the certified filed and docketed Affidavit to Disqualify as proof that it was filed and that he no longer had subject-matter jurisdiction over this case, per §3-1-805 since November 13, 2019, the date her Affidavit to Disqualified was filed. (Ap-2,p.1)(Ap-5, pp.33-34)

Nonetheless, Genet motioned at the final hearing to recuse Judge Manley and to vacate all his prior orders and judgments in the six year long proceeding in DG 14-2/14-3, based upon the newly discovered evidence, *inter alia,* that Judge Manley had personal knowledge, personal interest, twice suborned false perjured testimony against Petitioner regarding the conduct and events in DG 14-2/14-3. She also asserted recusal because of newly discovered evidence that Judge Manley investigated material facts in DG 14-2/14-3 and persisted in his

intentional non-disclosure of his life-long friendship of 53+ years with Doug Wold and his daughter, Chantel McCauley, who, as a result of these close personal familial ties became Judge Manley's personal judicial assistant on the case, and the evidence that she is working for both. (Ap-5,pp.9-12)

Genet further contended that Judge Manley has a direct, substantial, personal financial interest in the outcome of the November 27, 2019 hearing because a favorable outcome protects his and his undisclosed life-long friend's financial fortune from Genet's personal liability claims against the conservators. *Id.* By presiding over the final hearing to block Genet's personal liability claims against the conservators, he created an order that the conservators and his attorney would use to collaterally estop Genet's pending civil RICO charges against them for their participation in the enterprise-in-fact to use the conservatorship and the estate corporations to further their scheme to take over the estate corporations and misappropriate over $20 million in estate assets, including his suborning perjured testimony in collusion with Doug Wold, to intentionally hinder, impede and block the due administration of justice in both DG 14-2/14-3 and ODC No.15-078/PR 16-0635, in violation of 18 U.S.C. §1503. (Ap-5,pp.6-12)

Judge Manley denied Genet's oral motion to recuse and to vacate his prior orders. (Ap-5, p.13:1-2) He denied Genet's request for discovery and disclosure of the co-conservatorship management records of estate assets held in the corporations that

they seized from the estate during the course of the conservatorship, and denied her the opportunity to assert her unsettled personal liability claims against the conservators for violating their trustee duties to disclose their management records of estate assets held in the conservator-controlled corporations and for the fraudulent misappropriation of over $20 million dollars in estate assets concealed in estate closely-held corporations seized by the conservators. (Ap-5, pp.33:10-12;pp.50-53;pp.58-60)

Judge Manley approved the conservators' final accounting and signed Doug Wold's proposed order that terminated the guardianship and conservatorship and closed the case. (Ap-6) Judge Manley served upon Genet two ex parte Rule 11 orders, stating that they are expansions of his June 24, 2015 Rule 11 order, without *any* due process notice or opportunity. (Ap-5, pp.4-5)(Ap-4,p.2)(Ap-3) The November 26, 2019 *ex parte* order amended the Rule 11 order to enjoin *all* of Genet's communications with the Office of the Clerk of District Court in Lake County, and directed the same office *not* to accept *any* of Genet's filings in *any* case in the Twentieth Judicial District Court, unless attorney certified. *Id.*

Final Appeal in DG 14-2/14-3

On May 15, 2020, Genet McCann appealed Judge Manley's denial of her motion to recuse and to vacate all orders and judgments, the denial of discovery and statutory rights to the management records of estate assets held in the conservator seized and controlled corporations, and appealed his two *ex parte* Rule 11

Orders and appealed final judgment in DG 14-2/14-3. (Ap-7)

On October 6, 2020, the Montana Supreme Court entered an unpublished opinion in DA 20-21 affirming Judge Manley's final Judgment, the issuance of two Rule 11 *ex parte* orders and Judge Manley's refusal to disclose and recuse. (Ap-8) *In re Guardianship and Conservatorship of A.M.M.*, 2020 MT 257N, 472 P.3d 1204 (2020)(In re A.M.M., IV)) The Montana Supreme Court unconstitutionally failed to consider several of the issues raised on appeal. The Court failed to consider Judge Manley's denial of Ms. McCann's oral motion to recuse Judge Manley at the final hearing on November 27, 2020. It also failed to consider whether Judge Manley's November 27, 2019 Judgment was rendered without subject-matter jurisdiction pursuant to Section 3-1-805, M.C.A., since the Affidavit to Disqualified was certified filed and docketed. The Court also failed to consider the denial of her §72-38-813 statutory requests for disclosure under the conservators' trustee duty to disclose the conservators' management of 98% of the estate assets that are held in the conservator-controlled corporations. The Court also failed to consider the denial of Ms. McCann's right to pursue her unsettled personal liability claims against the conservators at the final hearing.

Finally, the Court affirmed the unconstitutional issuance of two *ex parte* Rule 11 orders, in disregard of both constitutions and case law interpreting Rule 11, to affirm the on-going ban

upon Genet's fundamental 1st & 14th Amendment rights to petition and participate in her mother's pending probate proceeding.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW AND REVERSE JUDGE MANLEY'S FAILURE TO DISCLOSE AND RECUSE AND VACATE HIS ORDERS.

"The principal purpose of this Court's exercise of its certiorari jurisdiction is to clarify the law," and to correct contraventions to its Constitutional Precedents, especially egregious ones. *Caperton v. A.T. Massey Coal Col,* 556 U.S. 902 (2009)(Scalia, J., dissenting).

The judicial conflicts of interests in extreme contravention to this Court's due process precedent and its fundamental commitment to impartial justice emphasizes the gross maladministration of justice that flourishes when the state judiciary is allowed to benefit their close friends. In 2004, Justice Scalia in his memorandum surveyed the law on the issue of friendship recusal, brilliantly indicating the standard is amorphous. (*Cheney v. U.S. District Court for the District of Columbia*, 541 U.S. 913 (2004) (mem.) (Scalia, J.) He surmised that "[i]f friendship is basis for recusal (as it assuredly is when friends are sued personally) then activity which suggest close friendship must be avoided. But if friendship is *no* basis for recusal (as it is not in official-capacity suits) social contacts that do no more

than evidence that friendship suggest no impropriety whatever." *Cheney*, 541 U.S. at 926; see also Jeremy M. Miller, *Judicial Recusal and Disqualification: The Need for a Per Se Rule on Friendship (Not Acquaintance),* Pepperdine Law Review vo. 33, Iss. 3, 4-20-2006, p. 577. ("There is a glaring gap in the law on the issue of when a judge must recuse himself or herself because a party or advocate in the case is a friend.").

In a respected poll of judges, the judges themselves indicated that they did, in fact, desire more guidance and specificity in recusal decisions." *See* Jona Goldschmidt & Jeffrey M. Shaman, *Judicial Disqualification: What Do Judges Think?,* 80 JUDICATURE Sept.-Oct. 1995, at 68-72.

The importance of hearing from this Court to establish a clear outer-boundary on *close* friendship recusal is long sought both by this Petitioner, the legal community as a whole and the public, so that under no circumstance is the judiciary's commitment to impartial justice placed in disrepute by the temptations common to all men and women.

A. This Case Exposes A Pattern of Violations Against the Due Process Clause of the Fourteenth Amendment To Overlook Indisputable Evidence in the Record, Timely Preserved and Asserted On Appeal, To Affirm A Judge Persisted Non-Disclosure of Disqualifying Facts After Presented in Open Court with the New Indisputable Evidence That He Independently Investigated Material Facts and Suborned False Testimony, In

Collusion with His *Undisclosed* Life-Long Close Friend, in an Earlier 2015 Rule 11 Hearing—He Initiated, As Accuser, and, Adjudged Guilty, as Presiding Judge—And Again At an Attorney Disciplinary Proceedings in 2018, to Suppress the Truth of Petitioner's 2015 Recusal Allegations and Block Petitioner, throughout the Six Year Proceeding with His Fraudulently Obtained Rule 11 Pre-Filing Order—And Continue To Preside Over and Rush the Approval of the Conservators' Accounting of over $20 Million in Diminished Assets, Transfer the Rest of the Estate to the Other Conservator, as the *Ex Parte* Appointed Personal Representative of Ann Marie's Intestate Estate, in Knowing Disregard of Anne Marie's Properly Executed Written Last Will & Testament, to Keep Concealed the Misappropriation of over $20 Million Estate Assets under Judge Manley's Oversight.

The "Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *accord In re Murchison,* 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."). The "requirement of neutrality" as to bias and interest is central to the 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,* 446 U.S. at 242. An individual, the Court

wrote, must be assured "that the arbiter is not predisposed to find against him." *Id.*

This due process right "has been jealously guarded by this Court" because it "preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done." *Id.*

Therefore, it is axiomatic that the reviewing Court ask "whether, as an objective matter, 'the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias." *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016)(quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881, 29 S.Ct. 2252, 173 L.Ed.2d 1208 (2009)); *see also Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986) (recusal required where the circumstances "would offer a possible temptation to the average . . . judge to . . . lead him to not to hold the balance nice, clear and true" (ellipses in original) (quoting *Ward v. Vill. of Monroeville,* 409 U.S. 57, 60 (1972)).

This Court's precedents applied the Due Process Clause in circumstances of varying degrees of interests or relationships, where "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable". *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876-77, 29 S.Ct. 2252, 2259, 173 L.Ed.2d 1208 (2009) (citing *Withrow v. Larkin,* 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712(1975)).

For example, this Court found that, in *Aetna Life Ins. Co. v. Lavoie,* the *judge's self-interest in establishing a legal precedence* in the case he was presiding over unconstitutionally benefitted him in his pending personal lawsuit and therefore required disqualification under the Due Process Clause. *Caperton,* 556 U.S. at 879, 29 S.Ct. at 2260-61 (citing *Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813, 823-825, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986)). It held recusal was required because the judge had an "interest" or "direct stake" in the matter—in having the case unfold in a manner that "enhance[es] both the legal status and the settlement value of his own case." *Caperton,* 556 U.S. at 821, 824.

Another key case emerged in the criminal contempt context, where a judge had no pecuniary interests in the case but nonetheless was found to have a conflict of interest presiding over the trial where he acted as accuser in an earlier single-judge grand jury proceeding wherein he charged a witness with contempt because he believed the witness was lying, and then presided over to convict the witness. *Caperton,* 556 U.S. at 880, 29 S.Ct. at 2261 (citing *In re Murchison,* 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955). The Court noted that disqualifying criteria "cannot be defined with precision. Circumstances and relationship must be considered." *Id.* In reliance upon the guiding principle that "[n]o man can be a judge in his own case," to add that "no man is permitted to try cases where he has an interest in the outcome," the Court determined that, "[h]aving been part of the [one-man grand jury accusatory] process, the judge could not preside over

the witness's contempt proceedings because it was improbable the judge could be "wholly disinterested." *Murchison,* 349 U.S. at 136-37 (Emphasis added).

The Court explained that the judge's participation in the earlier, secret accusatory process made him "more familiar with the facts and circumstances" and deprived the defendant of the ability to call relevant witnesses, including the judge, who "might himself . . . be a very material witness." *Id.* at 138. Independently investigating a fact not introduced into evidence, violates the judicial obligation as the finder of fact to refrain from seeking or obtaining evidence outside that presented by the parties during trial. *Price Bros. Co. v. Phila. Gear Co.,* 629 F.2d 444, 447 (6th Cir. 1980) ("Unquestionably, it would be impermissible for a trial judge to deliberately set about gather facts outside the record of a bench trial over which he was to preside.").

In surveying these U.S. Supreme Court cases, the *Caperton* Court re-iterated the controlling principle enunciated as early as 1927 in *Tumey v. Ohio*:

> "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and

> true between the State and the accused, denies the latter due process of law."

Caperton , 556 U.S. at 878, 29 S.Ct. at 2260 (citing *Tumey v. Ohio,* 273 U.S. 510, 535, 47 S.Ct. 437, 71 L.Ed. 749 (1927).

In 2016, this Court reverse judgment under the Due Process Clause because there was "an impermissible risk of actual bias when [the Justice] earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016). "Having been a part of [the accusatory] process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused." *Id.* (citing *In re Murchison,* Id. at 137, 75 S.Ct. 623, 99 L.Ed. 942). "In addition, the judge's 'own personal knowledge and impression' of the case, acquired through his or her role in the prosecution, may carry far more weight with the judge than the parties' arguments to the court." *Id.* (citing *In re Murchison,* at 138.)

The next year, this Court vacated judgment where the judge refuse to recuse and presided over to rush a murder trial to conviction and chose not to disclose that he was a witness to the investigation or his association with the weapon, even though the release of the weapon was relevant to Petitioner's defense. *Lacraze v. Louisiana,* 138 S.Ct. 60 (2017) (vacated and remanded in light of *Rippo v. Baker*, 580 U.S. ___, 137 S.Ct. 905, 197 L.Ed.2d 167 (2017)

(Allegations that the presiding judge was a target of a bribery investigation by the prosecutor required reversal.)

Court reversed denial of recusal motion without opportunity for discovery, since petitioner alleged specific fact suggesting *the judge may have colluded with defense counsel to rush the petitioner's case to trial.*" *Rippo v. Baker*, 580 U.S. ___, 137 S.Ct. 905, 197 L.Ed.2d 167 (2017) (citing *Bracy v. Gramley,* 520 U.S. 899, 909 (1997) That is, the judge took the case to trial quickly was specific, objective indicia of intent to "deflect suspicious" of bias.). *Id.*

Finally, Justice Scalia's memorandum, he unequivocally stated, in dicta, that under the Due Process Clause"[f]riendship is grounds for recusal [] where the personal fortune [] of the friend is at issue." *Cheney v. U.S. District Court for the District of Columbia*, 541 U.S. 913, 916 (2004) (mem., J. Scalia)("If friendship is basis for recusal (as it assuredly is when friends are sued personally) then activity which suggest close friendship must be avoided.") (emphasis added).*Id.* , 541 U.S. at 926.

The principles on which these precedents rest dictate the rule that must control in the circumstances here.

After Judge Manley was presented with his own 2018 testimony in the related attorney disciplinary proceedings –that he not only independent investigated material facts and did not disclose, but also intentionally suborned false testimony from the bench at the 2015 Rule hearing

in DG 14-2/14-3, in collusion with his *undisclosed* personal life-long friend, Doug Wold, and again at the 2018 attorney disciplinary proceedings, to retaliate and suppress *the truth* of Petitioner's 2015 recusal allegations (that he also inadvertently admitted in 2018 proceeding)—Judge Manley remained silent, denied leave to admit his own transcribed 2018 testimony into the record, and presided over the hearing to rush approval of his *undisclosed* friend's diminishment in estate assets by over $20 million and block Petitioner's personal liability claims against his *undisclosed* friend, and served his November 26th *ex parte* Rule 11 Order, to intentionally block her Petitioner's 1st and 14th Amendment rights to petition and participation in the pending probate of Anne Marie's Estate, before another judge. (Ap-5)

A judge who intentionally suborned the same false testimony twice against the Petitioner, once in the present case as the presiding judge and the other in a proceeding based upon the facts and circumstances of this case, to suppress the truth of her recusal allegations and recommend Petitioner's disbarment, it could be fairly said, objectively, that the risk of actual bias would be too high to be constitutionally tolerable. *Lacraze v. Louisiana,* 138 S.Ct. 60 (2017) (judgment vacated and remanded where the judge presided over a murder trial and chose not to disclose that he was a witness to the investigation, his involvement in it, or his alleged association with the weapon, but rather continued

his nondisclosure even though the release of the weapon was relevant to Petitioner's defense.)

The fact that he was also the *undisclosed* independent investigator of material facts when he was presiding judge of his own accusation against Petitioner, "an unconstitutional potential for bias existed." *Williams v. Pennsylvania,* 136 S.Ct. at 1905 (citing *In re Murchison,* 349 U.S. at 138). When the same person serves as both accuser and adjudicator in a case" it could fairly be said that Judge Manley violated the maxim that that "[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." *Caperton,* 556 U.S. at 876, 29 S.Ct. at 2259 (citing The Federalist No. 10, p.59 (J. Cooke ed. 1961) (J. Madison).

"Having been a part of [the accusatory] process [he] cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused." *Williams,* 136 S.Ct. at 1906 (citing *In re Murchison,* Id. at 137). "In addition, the judge's 'own personal knowledge and impression' of the case, acquired through his or her role in the prosecution, may carry far more weight with the judge than the parties' arguments to the court." *Id.*

Moreover, the intentionally suborning of false testimony in collusion with Doug Wold, another officer of the court, to obtain a Rule 11 pre-filing order to bar Petitioner's participation in the case is fraud upon the integrity of the court demonstrates

the actual bias against Petitioner and the truth of her allegations that the two work in tandem on the case to undermine the integrity of the administration of justice in DG 14-2/14-3. The intentional suborning of a material misrepresentation, under oath, by officers of the court constitutes fraud upon the court since it is subverts the integrity of the court to perform its functions. *United States v. Sierra Pac. Indus., Inc.,* 862 F.3d 1157, 1167-8 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 2675 (2018) (internal citations omitted).

These facts support an objectively ascertainable self-interest in non-disclosure of his close personal friendship with Doug Wold, whom he *nominated* the first day on the case, to then appointed as conservator over a multi-million dollar estate that would provide his *undisclosed* close friend with a lucrative stream of wealth for as long as control over the estate assets continued. Upon *nominating* Doug Wold, as an objective matter, he became psychologically wedded to appointing and ensuring that his life-long friend would be benefitted financially without risk of personal liability. The average judge in his position would not hold the balance, nice, clean and true.

It would "have prompted an average judge to disclose and recuse. *Cheney v. U.S. District Court for the District of Columbia*, 541 U.S. at 916, 926 (Friendship is grounds for recusal where the personal fortune of the friend is at issue. As it assuredly is when friends are sued personally.)*; see also Liljeberg v. Health Servs. Acqusition Corp.* 486

U.S. 847, 866 (1988) (recognizing nondisclosure is a "fact[] that might reasonably cause an objective observer to question [a judge's] impartiality" and finding it "inexcusable" and "remarkable" not to provide "[a] full disclosure" to "completely remove[] any basis for questioning the judge's impartiality"); *Commonwealth Coatings Corp. v. Continental Cas. Co.,* 393 U.S. 145, 149-50 (1968) (an adjudicator's nondisclosure of facts that "might create an impression of possible bias" give rise to "evident partiality").

Thus, when Petitioner filed March 2015 Motion to Recuse, Judge Manley was far from "wholly disinterested" or "detached" from the matter before him—he had a direct stake in the non-disclosure of Petitioner's recusal allegations.

At the final hearing, Petitioner also asserted that Judge Manley has a stake in the outcome of the final hearing since denying Genet's liability claims and approving conservators' accounting, he created an order that would be used to collaterally estop and dismiss the civil RICO charges Genet instituted in federal court in CV 18-115-BMM-JTJ, that was pending upon appeal in the 9th circuit in 19-35730.

The service of Judge Manley's November 26, 2019 Rule 11 *ex parte* order at the close of the conservatorship that bans all communications with the clerk of district court and orders the clerks not to file any of Genet's pleadings in any case in the Twentieth Judicial District, reveals Judge Manley's interests in the estate beyond the conservatorship to intentionally impede and block Genet's participation

in the probate of her mother's estate, *In re Estate of Anne Marie McCann,* pending before a different judge in the same district. The issuance of an ex parte Rule 11 order, without notice or opportunity, to intentionally block the administration of justice in the probate proceeding pending before another sitting judge, objectively, shows that Judge Manley has a personal interest in the *estate* that far exceeds the average judge and has actual bias against Petitioner.

For these reasons, the Due Process Clause warrants reversal of the Montana Supreme Court's judgment that failed to consider Petitioner's oral motion timely made at the final hearing.

B. The Failure to Disclose Disqualifying Facts that Establish Unconstitutional Failure to Recuse is a Structural Error that Requires Vacation of all prior judgment and orders.

A Judge has a duty to disclose disqualifying facts. Judicial silence as to disqualifying facts wholly inappropriate and requires vacation of final judgment. *Liljeberg v. Health Services Acquistion Corp.,* 486 U.S. at 858-61, 108 S.Ct. 2194. "[A]n unconstitutional failure to recue constitutes structural error" requiring reversal since "a due process violation arising from the participation of an interested judge is a defect "not amenable" to harmless-error[]". *Williams v. Pennsylvania*, 136 S. Ct. at 1909.

As early as February 28, 2014, the date when Judge Manley accepted assignment of the case and

nominated Doug Wold and failed to disclose that Doug Wold is his life-long personal friend of over 53 years (and father to the Judge's personal judicial assistant working on the case) and failed to recuse himself from the proceeding to determine incapacity and appointments (among contending McCann nominees), Judge Manley had imposed his self-interest into the case to have his *nominee(s)* who are his undisclosed friend(s)[1] appointed to take custody of A.M.M. and title and possession to her multi-million dollar estate to their substantial financial benefit, without risk of personal liability and without disclosure.

Because Judge Manley had imposed his self interest in financially benefitting his friends without personal liability, and failed to disclose and recuse, the entire six year proceeding in DG 14-2/14-3 is constitutionally defective, requiring vacation of all orders and judgments in DG 14-2/14-3.

When Judge Manley, acting as adverse witness, suborned false testimony in collusion with Doug Wold at the 2015 Rule 11 hearing, to subvert the integrity of the entire six year proceeding, he engaged in fraud upon the court to fraudulent bar Genet 1st and 14th Amendment rights to petition and

---

[1]He also had a stake in appointing Casey Emerson another undisclosed friend, in which he had a 15 minute ex parte communication with one day before the hearing on capacity and appointments and failed to disclose it and recuse, but rather accepted her unauthorized *nomination* after the close of the evidentiary hearing, and appointed her guardian.

participate in the proceeding since the date of the June 24, 2015 Rule 11 Order.

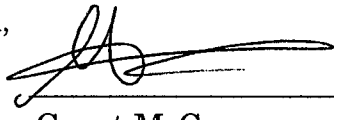
This Court opened a nine year old judgment because it found that a party in collusion with their attorneys "deliberately planned and carefully executed fraud amounted to a 'wrong against the institutions set up to protect and safeguard the public." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238, 246, 46 S.Ct. 997, 88 L.Ed. 1250 (1944); *United States v. Sierra Pacific Industries, Inc.,* 862 F.3d 1157, 1168 (9th Cir. 2017) (Suborning false testimony by officers of the court may constitute fraud upon the court.)

On this separate and existing ground, vacation is warranted for all orders and judgments, including and after, the June 2015 Rule 11 Order. *Barrows v. Hunton,* 99 U.S. 80 (1878) (a judgment is a nullity if "obtained through fraud".).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Genet McCann
PO Box 160492
Big Sky, MT 59716
(406) 220-0352
2BigSky@gmail.com

March 5, 2021 *Pro Se Petitioner*