

No. 20-6672

IN THE SUPREME COURT OF THE UNITED STATES

ADAM COLEMAN,

Petitioner,

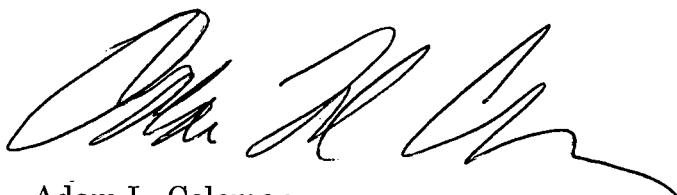
v.

EPHRAIM McDOWELL REGIONAL MEDICAL CENTER, INC.

Respondent.

*On Petition for a Writ of Certiorari to the Supreme Court
of Kentucky*

REPLY BRIEF AGAINST OPPOSITION
ON BEHALF OF ADAM COLEMAN



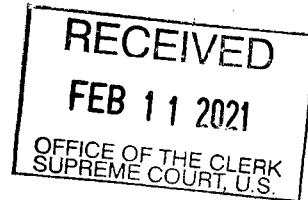
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QUESTIONS PRESENTED FOR REVIEW

- I. Can a state pass legislation that jeopardizes legal representation of a Wrongful Death or Medical Malpractice asserted claim that would otherwise be guaranteed to any U.S. citizen under the Equal Protections Clause found in Amendment XIV?
- II. Can a court appointed administrator of the estate represent a Wrongful Death claim while acting “Pro se” if he or she is the only heir entitled to the estate, and then should a court be made to determine so on a case by case basis, for who is the beneficiaries as it is not known?
- III. Where state legislation enacts a new law with considerable amounts of constitutional challenges present, is there an exception to an “Unauthorized Practice of Law- where it is “allowed” to preserve statute of limitations, if otherwise the same person who is statutorily allowed to prosecute a wrongful death action files suit?
- IV. Should a person be able to recover for Wrongful Death damages past the age of majority?
- V. When a clearly established constitutional right is recognized to be violated by the determination of such state supreme court by prior former case, and its citizen presents such a decision from a lower court to a court of

appeals, should that verdict be reversed regardless of legal representation and should it only be based upon a valid U.S. Citizenship that “everyone” is protected by the Equal Protection Clause?

VI. If other U.S. States recognize a cause of action for recovery of Wrongful Death past the age of majority, should not all states in their adoption of their own state constitution be included such right; especially whereas state age determinations defeat its purpose by undermining a relationship at any age as one that is not “harmed” or “deprived of”: Loss of Companionship, Loss of Financial Support or even love itself?

VII. Where a state’s statute does not specifically state otherwise to its designated beneficiaries and administrator of the estate, that one must obtain a lawyer to prosecute a Wrongful Death claim rather than a(n) administrator can prosecute a Wrongful Death action; should a state statute be more precise and clear to even the common citizen?

VIII. If all U.S. States were allowed to determine age distinctions for what is to be considered the age of majority, then by so being associated, Wrongful Death would be the pleasure of those wrongdoers. Should a state be excluded from making age determinations for Wrongful Death, and if not may it rather focus its emphasis on the relationship to the decedent that those specifically identified as beneficiaries or administrator of the estate had to the decedent?

IX. Should a state court avoid passing a new precedent that is otherwise presumptively discriminatory against its citizens of that state by assuming that each state has more than one beneficiary available, without first determining by a matter of law to those beneficiaries to whom they may be entitled, or to those who choose to waive their rights to an estate?

X. **Whether a decedent's personal representative may proceed pro se in a Wrongful Death action under Kentucky law despite constituting the unauthorized practice of law?**

RELATED PROCEEDINGS

There are no related proceedings.

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OPINIONS AND ORDERS BELOW

The Kentucky Court of Appeals' dismissal below is reproduced at Appendix 7. It was not published. The Supreme Court of Kentucky's Order denying discretionary review is reproduced at Appendix 7. It was also not published.

JURISDICTIONAL STATEMENT

The Petitioner, has timely filed the petition for the Writ of Certiorari. The petitioner was allotted additional time, to file make or amend the writ per statement of the U.S. Supreme Court clerk responsible (SEE APPENDIX 1). Additional time for delivery via mail, must be understandable given the COVID-19 pandemic and those public services who are also working with delays at hand. The United States Postal Service, is still operating and delivering mail. While it may be delivering later than usual. Holiday's such as Christmas Eve and Christmas day, must surely have added additional delays to delivery expected dates along with arrival dates. The Respondent should, refrain from making commentary statements found it's Brief in Opposition.

The U.S. Supreme Court and its respected staff and Honorable Justices, have been working diligently and at a pace that is acceptable and understandable to the Rules of the U.S. Supreme Court.

STATUTORY AND REGULATORY PROVISIONS

1. KY. REV. STAT. (“KRS”) § 411.130 provides:

(1) Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased.

(2) The amount recovered, less funeral expenses and the cost of administration and costs of recovery including attorney fees, not included in the recovery from the defendant, shall be for the benefit of and go to the kindred of the deceased in the following order:

- (a) If the deceased leaves a widow or husband, and no children or their descendants, then the whole to the widow or husband.
- (b) If the deceased leaves the widow and children or husband and children, then one-half (1/2) to the widow or husband and the other one-half (1/2) to the children of the deceased.
- (c) If the deceased leaves a child or children, but no widow or husband, then the whole to the child or children.
- (d) If the deceased leaves no widow, husband or child, then the recovery shall pass to the mother and father of the deceased, one (1) moiety each, if both are living; if the mother is dead and the father

is living, the whole thereof shall pass to the father; and if the father is dead and the mother is living, the whole thereof shall go to the mother. In the event the deceased was an adopted person, "mother" and "father" shall mean the adoptive parents of the deceased.

(e) If the deceased leaves no widow, husband or child, and if both father and mother are dead, then the whole of the recovery shall become a part of the personal estate of the deceased, and after the payment of his debts the remainder, if any, shall pass to his kindred more remote than those above named, according to the law of descent and distribution

2. **Kentucky Supreme Court Rule 3.020** provides:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out to be a practicing attorney from drawing any instrument to which he is entitled he is a party without consideration unto himself therefor. An appearance in a small claims division of the district court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or

partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law.

3. **Civil Procedure Rule 56** provides:

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense- or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) PROCEDURES.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) **WHEN FACTS ARE UNAVAILABLE TO THE NON-MOVANT.** If a non-movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or
- (4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a non-movant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties' material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

4. **Section 1 (6) of Kentucky's Constitution** provides:

Section 1 Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, peaceable assembly, redress of grievances, bearing arms. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties. Second: The right of worshipping Almighty God according to the dictates of their consciences. Third: The right of seeking and pursuing their safety and happiness. Fourth: The right of freely communicating their thoughts and opinions. Fifth: The right of acquiring and protecting property. **Sixth: The right of assembling together in a peaceable manner for their common good, and of applying to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance.** Seventh: The right to bear arms in defense of themselves

and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.

5. **KY SCR 3.530(6)** provides:

- (1) The Ethics Committee and the Unauthorized Practice Committee are authorized to issue informal opinions, and to submit to the Board for its action formal opinions, on questions of ethics or unauthorized practice, as applicable.
- (2) Any attorney licensed in Kentucky or admitted under SCR 3.030(2), who is in doubt as to the ethical propriety of any professional act contemplated by that attorney may request an informal opinion. The President shall designate members of the Ethics Committee to respond to such requests. Ordinarily, the request shall be directed to a member of the requestor's Supreme Court district. Such request shall be in writing or by telephone followed by a request in writing. The committee member to whom the request is directed shall attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to the ethical propriety of the act or course of conduct in question. A copy of any such informal opinion shall be provided to the Director for safekeeping and statistical purposes, and to the Chair of the Ethics Committee, to determine whether the informal opinion has broader application.

(3) Communications between the requesting attorney and the Ethics Committee member shall be confidential, but confidentiality may be waived by the requesting attorney. However, the requesting and giving of advice under this Rule does not create an attorney-client relationship. In order to promote uniformity of advice, redacted copies of informal opinions may be circulated among members of the Ethics Committee, as applicable, provided that such confidentiality is preserved.

(4) If the Ethics Committee determines an ethical issue to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve of the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

(5) Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act performed by that attorney in compliance with an informal opinion furnished by the Ethics Committee

member pursuant to such attorney's written request, provided that the written request clearly, fairly, accurately and completely states such attorney's contemplated professional act.

(6) Any attorney licensed in Kentucky or admitted to practice law in another state who is in doubt as to the propriety of any course of conduct or act of any person or entity which may constitute the unauthorized practice of law in Kentucky may make a request in writing, or in emergencies, by telephone, to the Chair of the Unauthorized Practice Committee, or such other members of the Unauthorized Practice Committee as are designated by the Chair, for an advisory opinion thereon. Local bar associations may also request advisory opinions. The Committee member to whom the request is directed shall bring this matter to the attention of the Committee at its next meeting. The Committee may attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law. A copy of such informal opinion shall be provided to the Director and the Chair of the Unauthorized Practice Committee. Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law in Kentucky shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry

between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential.

(7) Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential.

(8) The requesting and giving of advice by the Unauthorized Practice Committee under this Rule does not create an attorney/client relationship.

(9) If the Unauthorized Practice Committee determines an issue regarding the unauthorized practice of law to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve the opinion as written, then the Board may return the matter to the Committee for further review and consideration or may

modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

(10) Ethics Committee and Unauthorized Practice Committee members shall be immune from suit for advice given in the performance of duties under this Rule. Ethics Committee and Unauthorized Practice Committee members shall be immune from process and shall not otherwise be compelled to testify or give an opinion in connection with any advice given in the performance of duties under this rule.

(11) All formal opinions of the Board arising from either Committee shall be published in full or in synopsis form, as determined by the Director, in the edition of the KENTUCKY BENCH & BAR next issued after the adoption of the opinion.

(12) Any person or entity aggrieved or affected by a formal opinion of the Board may file with the clerk within thirty (30) days after the end of the month of publication of the KENTUCKY BENCH & BAR in which the full opinion or a synopsis thereof is published, a copy of the opinion, and, upon motion and reasonable notice in writing to the Director, obtain a review of the Board's opinion by the Court. The Court's action thereon shall be final and the Clerk

shall furnish copies of the formal order to the original petitioner, if any, the movant and the Director. The movant shall file a brief in support of the review, and the Director may file a response brief thirty days thereafter.

(13) The filing fee for docketing a motion under paragraph (7) of this Rule 3.530 shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court.

6. **KY KRS 216C** provides:

A copy of the statute is not readily available, where is has been overturned. Instead, please refer to the Kentucky Supreme Court's decision of *Commonwealth of Kentucky v. Claycomb*, 566 S.W. 3d 202, 210 (Ky. 2018).

RESTATEMENT OF CASE

The petitioner filed suit on March 1st, 2018 in Boyle Circuit Court.

Beforehand however, the Petitioner politely filed a complaint with the patient representative of Ephraim McDowell Regional Medical Center, Inc. The petitioner realized something was wrong when he along with his sister Ashley Coleman witnessed several negligent events that had occurred to their late mother, Linda Coleman. Linda Coleman, is the decedent of this matter and as of all prior legal proceedings.

When filing a formal complaint of issues with the Patient Representative, the petitioner simply just wanted Ephraim McDowell to take accountability first-hand without the need for litigation. But they failed to uphold their promise to quality patient care along with respect to prior patient's family members making the inquiry. In another attempt to deny any allegations and take responsibility, the Patient Representative informed the petitioner that an investigation will be conducted on the petitioner's complaint of the decedent's "bedsores". The Patient Representative, also informed the Petitioner that it could take up to two-weeks to get the final report and or conclusion back, related to the investigation.

The results came back, and in the report was Ephraim McDowell's conclusion admitting:

“We investigated your complaint of your mother’s pressure ulcers, and that the staff responsible, has noted that there was no documentation of pressure ulcers on the time of admission nor time of transport.”

Even before the confrontation with the patient representative, at that time the petitioner had already gathered enough evidence to support his claim of his mother’s bedsores linked to her stay at Ephraim McDowell Regional Medical Center. Prior medical records from UK-Chandler Hospital, took pictures of the decedents “bedsores” that were present on time of arrival from Ephraim McDowell Regional Medical Center.

The Petitioners, case not only cites one cause of negligence on behalf of Ephraim McDowell, but many others as well. Most of this evidence is already attached to the Petitioners Writ of Certiorari. The petitioner remembers very well, since him and his sister Ashley were always present with their mother when she was admitted to Ephraim McDowell. When the petitioners’ mother was admitted to Ephraim McDowell Regional Medical Center, both the petitioner and his sister were co-power attorneys because both the petitioner and his sister were in college. At this time, the petitioner and his sister Ashley were in Finals Test Week for college-related studies. Because of this reason, the Petitioner and his sister decided to alternate stays at the hospital to be with their mother. This supports the fact that there was always someone with her day and night.

During the petitioners stay, along with his sisters; together they witnessed the neglect firsthand. As it is unnecessarily mentioned by the Respondent, our mother had Stage-Four “bile-duct” cancer. When admitted to Ephraim McDowell Regional Medical Center, the decedent had to be catheterized due to “kidney disease” that was a direct result from having chemotherapy for her cancer.

Many times, throughout the night, while the petitioner was too tired from all the college exams, and care for his mother during the day; he witnessed his mother ask for help “re-positioning or turning” as she was sore. There was a nurse-help button the petitioner even told his mother to press if she needed help while he was asleep. Over several times the petitioner had witnessed, his mother ask to be turned and no staff responsible would come. On very rare occasions, were there would be a response, the decedent was told they would send someone, but no one ever came.

This was the first “red-flag” for the Petitioner and his sister Ashley, as they began to get concerned whether their mother was getting the appropriate attention to her medical needs as should be required. As time and days progressed, the petitioner and his sister began to self-examine their mother as she further complained of her bottom “hurting”. The petitioner and his sister, then discovered the bedsores. The Petitioner also mentioned that his mother had “bedsores” to medical staff at Ephraim McDowell Regional Medical Center.

As you have read in the above text, and the conclusion of an investigation conducted by Ephraim McDowell:

“There was no documentation, of bedsores on admission nor at the time of transport.”

The Medical Standard in Healthcare has always been un-notably argued as:

“If you didn’t document, then you didn’t do it!”

This very old standard applies and has applied before in tons of Medical Malpractice asserted claims.

By now, it's understandable to note one very-concerning reason why the healthcare treatment the decedent received was “unacceptable”. There was also many other reasons why the petitioner and his sister Ashley Coleman were persistent in transferring their mother to another hospital. As evidence provides in the Petitioners Writ of Certiorari on the decedents Death Certificate lists the other two-preventable causes of death that Ephraim McDowell Regional Medical Center contributed to. Those causes of death on the Death Certificate include: Pneumonia and Sepsis that was directly related to the bedsores.

All in all, the Respondent's argument in Opposition is not against the negligence that led to the premature death of the petitioner's mother, but instead it is solely based “only” on the consideration of an Unauthorized Practice of Law. The Respondent unnecessarily mentions remarks to the court

that is inappropriate, such as disputing the quality of care someone deserves.

As the Respondent makes special note that the Petitioner's mother had cancer in his footnote (Pg. 1) of the Brief in Opposition.

Every person, whoever goes to a medical facility always has a underlying health condition hence the reason for medical treatment. It just so happened that the Petitioner's mother Linda Coleman had cancer. If you re-look closely at the decedent's death certificate for the causes of death, the decedents cancer is listed as the last cause for death whereas as the first two were linked to the Hospital Acquired Pneumonia and Sepsis linked to the "Bedsores" she got while in care.

This is not the only time Ephraim McDowell Regional Medical Center, Inc. has acted negligently. It is quite obvious from Hospital Ratings you find on "Google", or even legal precedents such as *Ephraim McDowell Hospital, Inc. v. Minks*, 529 S.W. 2d 360 (Ky. Ct. App. 1975). Negligence at Ephraim McDowell Regional Medical Center, has been occurring for decades. No one, just believes it until it happens to them, that or they are a local attorney residing in the area were Ephraim McDowell Regional Medical Center is the only hospital. Even then it becomes a "conflict of interest". Specifically speaking in *Ephraim McDowell Hospital, Inc. v. Minks*, 529 S.W. 2d 360 (Ky. Ct. App. 1975), it cited that Minks, an elderly lady that was given sedative drugs during her stay at Ephraim McDowell; fell down a flight of stairs fracturing both of her legs. This was ultimately because Ephraim McDowell's responsible staff did not follow

proper guidelines that would specifically be needed for Mink's care. *Ephraim McDowell Hospital, Inc. v. Minks*, 529 S.W. 2d 360 (Ky. Ct. App. 1975), cited its analysis on a specific requirement that required more medical attention if given sedative drugs as Mink was on. *Vick v. Methodist Evangelical Hospital, Inc.* (Ky. 1966) 408 S.W. 2d 428.

Time and Negligence hasn't changed for Ephraim McDowell and the Petitioner's mother is just another example of their negligence that resulted in death. The Petitioners mother, was given narcotics while in the care of Ephraim McDowell Regional Medical Center, for that reason alone besides the high-risk category she was in for having cancer, she should have been monitored and given adequate and safe effective care.

Cancer is not a death sentence. Cancer is not an excuse or an inappropriate mention in this court or any-court of that matter, as one to describe a justifiable reason to inadequately treat a patient and prolong patient suffering. If the petitioner may recall correctly its Honorable Justice, Ruth Bader Ginsburg had cancer on several different occasions. During those occasions, she didn't fail to perform. She wasn't an excuse for receiving inadequate healthcare, because she had cancer. She was a person, just like you and me.

As part of the closing argument of the restatement of my case, the Petitioner directly mentions that he is not an attorney, he is a *pro se* litigant, he is not a paralegal but instead a college student. Lastly, and most importantly the petitioner would not ask this courts honorable judges presiding in the U.S.

Supreme Court to decide on a case such as this, if not for it being the Petitioners own mother, if not for the love the petitioner has shared in the relationship that surely exists, no matter the age.

REASONS FOR GRANTING REVIEW OF THE PETITION

The court should grant the petition for several obvious reasons. First, the Petitioner is entitled to seeking immediate redress of its courts given that in both Kentucky law and Federal Law the petitioner is entitled given constitutional rights to seek redress as found in: Section 1(6) of Kentucky's Constitution, and U.S. Constitution under the given right to Assemble and right to Petition (Amendment 1).

I. THE PETITION STATES COMPELLING REASONS FOR REVIEW

The Respondent only refutes in an attempt to deny that the Petitioner cannot appear *pro se* in a representative capacity on behalf of his mother.

There is no legal basis for why else the compelling evidence such as photographic evidence, opposing hospital records along with investigative statements from Ephraim McDowell Regional Medical Center admitting they failed to document and thus therefore treat the decedent with adequate and safe effective healthcare. (SEE APPENDIX 2).

With overwhelming evidence such as this, that was also presented on all levels of legal proceedings in Kentucky before making its way to the U.S. Supreme Court, the Boyle Circuit Court (Case No. 18-CI-00074), should

have awarded the Petitioners motion for Summary Judgment as provided in CR 56:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

The Respondent is at no liberty to admit their guilt in a legal proceeding, yet the evidence included therein is not disputable as it has undoubtedly happened and did occur.

After the Petitioner raised a complaint in the original court action in Boyle Circuit Court (Case No. 18-CI-00074), Ephraim McDowell Regional Medical, Inc and counsels for Ephraim McDowell Regional Medical Center knowingly violated the petitioners Constitutional Rights. This was outrageous, because the petitioner before he even filed a lawsuit allowed Ephraim McDowell Regional Medical Center to investigate and take responsibility for the issues before litigation began.

The Constitutional overreach of the Petitioners rights began, the moment Ephraim McDowell Regional Medical Center and its counsel subjected the petitioner to the MRP ACT also formerly known as KRS 216C. On the original court action in Boyle Circuit Court, the petitioner raised issues with the state's MRP ACT along with its previous history declaring it unconstitutional in a Jefferson Circuit Court the day it enacted (SEE

APPENDIX 3) there is a court opinion along with order in that exhibit, attached is also a Video Transcript, providing this court for the record evidence that the issue was raised by the Petitioner and rudely ignored by both counsel and the judge presiding in Boyle Circuit Court.

While the Petitioner is not a lawyer nor judge, he knows his constitutional guarantees were violated. If such issue was raised in any legal proceeding a court must reason with the issue before first taking risks that could adverse consequences such as a constitutional violation. Many precedents explain, included in this is *Fiscal Court of Pendleton County v. Pendleton County Board of Education* (Ky. 1931) citing two major components:

“Legislative act should be sustained, unless clearly offending constitutional mandates.”

And:

“Every consistent effort is to be made to harmonize statute and constitution.”

Stiglitz v. Schardien 40 S.W. 2d further explains the issue with the MRP Act (KRS 216C) and the reason Jefferson Circuit Court granted “injunctive relief” as found in **(APPENDIX 3)**. Along with this, is the right to the Petitioner citing:

“Courts may declare void and ineffective for any purpose, all acts of general assembly in violation of express provisions of constitution.”

And:

“Citizens possesses political as well as pecuniary and personal rights which may be subject of action to prevent operation of unconstitutional legislation.”

Whereas:

“Where legislative act infringes constitutional right of citizen and taxpayer, and voter, he may invoke processes of court to prevent performance of duty attempted to be imposed by such void act.”

The Petitioner had a problem with how the Judge and the Respondent, who've both had extensive legal training and obtained licensure requirements of the state; didn't not see these legal issues at face value. *Coleman v. Greene* 40 S.W. 2d.

“Possible doubt, in construing statute, should be resolved in light of its judicial construction, as well as of its legislative history and administration.”

Given that at the time the Petitioner's lawsuit was filed in Boyle Circuit Court (Case No. 18-CI-00074) the MRP Act (KRS 216C) was being appealed from the Jefferson Circuit Court decision (**APPENDIX 3**), the decision of the

Kentucky Supreme Court was nevertheless the same citing violations of State and Federal Constitution. *Commonwealth of Kentucky v. Claycomb*, 566 S.W. 3d 202, 210 (Ky. 2018). (**APPENDIX 4**) for Kentucky Supreme Court opinion.

Because counsel for the Respondent filed a motion to hold in abeyance until the Petitioners compliance and or the Kentucky Supreme Court ruled the MRP Act “unconstitutional”, that in itself is the reason the petitioner’s rights were violated. In Exhibit 4, the Kentucky Supreme Court deemed the act was unconstitutional because it violated several sections of Kentucky’s constitution guaranteeing Due Process, Right to a Speedy Trial without unreasonable delays.

Counsel for the Respondent by seeking compliance of it’s Petitioner to the Act, knew that the Respondent would have to pay excessive fees in the amount of \$3000 to pay its panel members of the Medical Review Board Panels or that the Statute of Limitations for Wrongful Death in the state of Kentucky would run out in the process. *Saylor v. Hall* (Ky. 1973) 497 S.W. 2d 218.

Notably in the Kentucky Supreme Court’s decision (**APPENDIX 4**), it cited that because the MRP ACT (KRS 216C) required a person to file a complaint with the Medical Review Board Panels, first before a lawsuit could be filed in a court, it clearly violated Kentucky’s state Constitution because it would cause it’s citizens to not be able to seek immediate redress for grievances,

with is both provided for in Section 1(6) of Kentucky's Constitution as well as the Federal U.S. Constitution citing the 1st Amendment. Both of these two reasons is why the Petitioner has explained in its reply brief under the Jurisdictional Section as to why the Petitioners Writ must be heard.

Upon appealing the Boyle Circuit Court's decision citing the overreach of the Petitioners constitutional rights in the Boyle Circuit Court action (Case No. 18-CI-00074), The appeals court denied the Petitioners claim citing there is no common law right to recover from the Wrongful Death of another.

Reynolds v. Randolph, 2018 WL 5304451, at *5 (Ky. App. 2018), clearly there is because Wrongful Death cases, in Kentucky has always been heard and awarded.

The only problem the Court of Appeals had was; by doing so the Petitioner would considerably be engaging in attempt to practice law without a license. The Court of Appeals also mentioned that a person cannot appear where there is more than one interest at stake. *Bennett v. Nicholas* (Ky. App. 2007), this is why the petitioner has asked in the above mentioned questioned presented; Should a consideration of an "Unauthorized Practice of Law" be allowed in the exception legislative error had occurred and a lower court suggested by the Respondents counsel, clearly violated the Petitioners constitutional rights. *Filarsky v. Delia* (2012) 621 F. 3d 1069 citing to

separate concurrences, and whereas *Tower v. Glover* (1984) 467 U.S. 914 cites a private attorney can be sued:

HONORABLE, JUSTICE RUTH B. GINSBURG:

Qualified immunity is overcome when the government worker knew or should have known that his conduct violated a clearly established right. Justice Ginsburg instructed the lower court to consider this issue carefully on remand.”

HONORABLE, JUSTICE SONIA SOTOMAYOR:

Not every private individual who temporarily works for the government is protected by qualified immunity in all circumstances.”

Regardless of counsel, a citizen is guaranteed their constitutional rights. The fact that, that alone is violated is the reason the decision in this case must be reversed.

The Court of Appeals, nor any court cannot make an assumption that there is more than one beneficiaries' interest at stake, when by knowledge and notification of a court; it hasn't explicitly determined “who is the beneficiaries” to each estate therefore entitled. That precedent would not even apply to this case.

CONCLUSION

The Kentucky Supreme Court, should have upheld its prior decision of *Commonwealth of Kentucky v. Claycomb*, 566 S.W. 3d 202, 210 (Ky. 2018) in citing the immediate problems of constitutional violations of its citizens and it's states causes of action for Medical Malpractice and Wrongful Death. Because so, the Petitioner was left to proceed a claim for the Wrongful Death action of his late mother Linda Coleman.

If the Petitioner had not done so, his statute of limitations would have ran out, barring him from making the claims. The allowed statute of limitations for Wrongful Death in Kentucky is One-Year.

By legislative, and judicial error, the Petitioner had no other course of action for getting justice for his mother. The legislative error had superseded a judicial error in the fact that statute of limitations would have ran, and the only way to stop that was to file a claim *pro se* whereas the petitioner had tried numerous times to attain counsel for the matter, but because of adverse excessive fees and the legislative error found in the MRP Act (KRS 216C), attorneys were less unfortunate as the Petitioner to take on a claim with such high risks associated. (SEE APPENDIX 5) and APPENDIX 6, for additional evidence.

ANALYSIS

The Petitioner is Citizen of the United States, with certain special rights. *Stiglitz v. Schardien* 40 S.W. 2d providing:

“Where legislative act infringes constitutional right of citizen and taxpayer, and voter, he may invoke processes of court to prevent performance of duty attempted to be imposed by such void act.”

In this alone, it does not mention a(n) attorney or lawyer explicitly. Instead, a citizen is mentioned when referring to the right that exists to “invoke processes of a court”. This should be understood, to mean a person can appear *pro se* in any manner to do so, as the only way to do that is to have an existing claim in a court.

The Court of Appeals in Kentucky (Case No. 2019-CA-000577) cannot complain that a person: “may only represent himself or herself *pro se* but that ability is limited to one’s self.” *Baldwin v. Mollette*, 527 S.W. 3d 830, 835 (Ky. App. 2017), especially since the Petitioner was granted the right in *Stiglitz v. Schardien* 40 S.W. 2d and whereas the risks associated to the petitioner by having the claim subjected to KRS 216C by the Respondent presented excessive fees for the Medical Review Board Panels and potentially the possibility of having statute of limitations for the Wrongful Death claim to run out. The Petitioner on two different occasions has essentially moved on behalf of the estate of Linda Coleman to extend the estate deadline “*Pro Se*”, and such orders heard by the Commonwealth Attorney has been GRANTED. (APPENDIX 8).

That in evidence alone, supports the petitioners move to appear *pro se* on behalf of his late mother Linda Coleman. The Petitioner should be awarded the damages of \$10,000,000 for the Wrongful Death of his mother. The petitioner, has not had any assistance paying for legal fees up to this point, nor has he been reimbursed by any party. The Petitioner, has worked diligently on this case, not even grieving for his mother; but instead explaining to a court over and over how a negligent hospital such as the

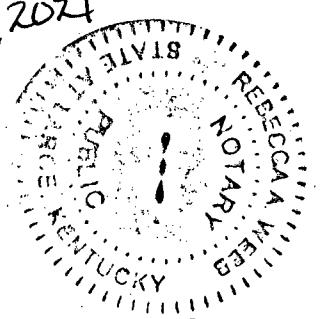
Respondent, killed his mother. The Petitioner has tried to seek counsel on this before and after the *Commonwealth of Kentucky v. Claycomb*, 566 S.W. 3d 202, 210 (Ky. 2018) ruling in the Kentucky Supreme Court, but because the implications it imposed attorneys were less likely to take on a case were Constitutional Violations arose, let alone whereas a person had to appear *pro se* on behalf of the estate to protect the statute of limitations on the claim.



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