

21-7602 ORIGINAL
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KARYN M. KELLEY,

FILED
APR 09 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Petitioner,

v.

MARY E. FEENEY,

Respondent,

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals
For The First Circuit

PETITION FOR A WRIT OF CERTIORARI

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April 11, 2022

I) QUESTIONS PRESENTED

Whether The State of New Hampshire Supreme Court erred when affirming the tribunal court's judgment that violated the requirement for Due Process under the Fifth or Fourteenth Amendment of the United States Constitution?

II) RELATED PROCEEDINGS

Hillsborough Superior Court Northern District
Mary E. Feeney v. Karyn M. Kelley
Case No. 216-2010-EQ-00191, FKA 10-E-191
Decided October 30, 2015

Hillsborough Superior Court Northern District
Mary E. Feeney v. Karyn M. Kelley
Case No. 216-2010-EQ-00192, FKA 10-E-192
Decided October 30, 2015

Hillsborough Superior Court Northern District
Mary E. Feeney v. Karyn M. Kelley
Case No. 216-2010-00193, FKA 10-E-193
Decided August 31, 2020

In the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida
Mary E. Feeney v. Karyn M. Kelley
Case No. 05-2010-CA-047193
Decided August 11, 2014

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2015-0049
Decided October 9, 2015

Hillsborough Superior Court Northern District
Mary E. Feeney v. Karyn M. Kelley
Case No. 216-2015-CV-00249
Decided April 9, 2018

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2017-0166
Decided January 16, 2018

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2018-0253
Decided February 27, 2019

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2018-0373
Decided October 25, 2018

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2018-0577
Decided November 30, 2018

Hillsborough Superior Court Southern District
Karyn M. Kelley v. Mary E. Feeney
Case No. 226-2019-CV-00270
Decided September 26, 2019

United States Bankruptcy Court District of New Hampshire
In Re: Karyn M. Kelley
Case No. 19-10567-BAH
Decided August 27, 2019

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2019-0228
Decided August 6, 2019

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2019-0586
Decided April 27, 2020

State of New Hampshire Supreme Court
Karyn M. Kelley v. Mary E. Feeney
Case No. 2019-0637
Decided March 18, 2020

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2020-0490
Decided November 12, 2021

State of New Hampshire Supreme Court
Mary E. Feeney v. Karyn M. Kelley
Case No. 2022-0048
Decided April 8, 2022

United States Supreme Court
Karyn M. Kelley v. Mary E. Feeney
Application No. 21A374
Decided February 1, 2022

III) TABLE OF CONTENTS

I.	Questions Presented	i
II.	Related Proceedings	ii
III.	Table of Contents	iv
IV.	Table of Authorities	vi
	Petition for a Writ of Certiorari	1
V.	Opinions Below	1
VI.	Jurisdiction	1
VII.	Constitutional and Statutory Provisions Involved	1
VIII.	Statement of The Case	2
IX.	Reasons For Granting The Writ	5
X.	Conclusion	31
	Appendices	
	Appendix A: Hillsborough Superior Court Northern District Final order on partition Dated November 18, 2010, subsequently, recorded at the Registry of Deeds	A-1
	Appendix B: Hillsborough Superior Court Northern District Final order on partition Dated: October 20, 2014 not recorded at the Registry of Deeds	B-1
	Appendix C: Kelley's Exhibits for Evidentiary Hearing and Trial Judge Anderson denied entry of approximately 98% Dated July 28, 2020	C-1
	Appendix D: Hillsborough Superior Court Northern District Final order Dated August 31, 2020	D-1

Appendix E: State of New Hampshire Supreme Court Affirmed tribunal court order dated August 31, 2020 Dated October 20, 2021	E-1
Appendix F: State of New Hampshire Supreme Court Denied reconsideration of order dated October 20, 2021 Dated November 12, 2021	F-1
Proof of Service	1

IV) TABLE OF AUTHORITIES

Bostock v. Clayton County 590 U.S. ____ (2020)	27
Brock v. Roadway Express, Inc. 481 U.S. 252 (1987)	25
Calloway v. Ford Motor Co. 281 N. C 496, 189 S. E.2d.484 (1972)	26
Goldberg v. Kelly 397 U.S. 254 (1970)	5,6,7
Ham v. South Carolina 409 U.S. 524 (1973)	26
Mathews v. Eldridge 424 U.S. 319 (1976)	7
State v. Crosman 125 N.H. 527 (1984)	26
State v. LaClair 121 N.H.74 (1981)	26
United States v. Nardi 633 F.2d 972 (1 st Cir. 1980)	26
United States v. Winston 477 F.2.d1236 (D.C. Cir. 1971)	26
<u>U. S. Constitution</u>	
U. S. Constitution, V Amendment	1,5,6,11,28
U. S. Constitution, XIV Amendment	2,5,6,11,26,28
<u>Statues</u>	
11 U.S.C 101	31
11 U.S.C. 523	5,30
11 U.S.C. 727	5,30,31

28 U.S.C. 1254	1
NH RSA 547-C	2,5
NH RSA 547-C:1	2,27,29
NH RSA 547-C:11	2,3,27,28
NH RSA 480:1	2,5
NH RSA 480:9	2,5

Rules

Fed. R. Bankr. P. 4003(b)	5,30
Fed. R. Bankr. P. 4004(a)	31
Fed. R. Bankr. P. 7001(4)	31

Other

“opening the door” doctrine	25,26
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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Karyn M. Kelley, respectfully petitions for a writ of certiorari to the United States Court of Appeals for the First Circuit to review the judgment of The Supreme Court for the State of New Hampshire.

V) OPINIONS BELOW

The Supreme Court for the State of New Hampshire, published in The New Hampshire Reports, under Case No. 2020-0490 issued on October 20, 2021 an Order that Affirmed, the lower court, New Hampshire Superior Court Northern District Order, Mary E. Feeney v. Karyn M. Kelley #216-2010-EQ-00193 (FKA 10-E-193)

The Supreme Court for the State of New Hampshire, published in The New Hampshire Reports, under Case No. 2020-0490 denied rehearing or reconsideration on November 12, 2021 that affirmed the October 20, 2021 Order.

VI) JURISDICTION

New Hampshire Superior Court Northern District under #216-2010-EQ-00193 (FKA 10-E-193) entered final judgment on November 18, 2010, conflicting final judgment on October 20, 2014 that erred in final judgment on August 31, 2020. The Supreme Court for the State of New Hampshire under Case No. 2020-0490 issued on October 20, 2021 an Order that Affirmed the lower court. The Supreme Court for the State of New Hampshire denied rehearing or reconsideration on November 12, 2021. The Court has jurisdiction under *28 U.S.C. 1254(1)*.

VII) Constitutional and Statutory Provisions Involved

U. S. Const., Amend V provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law [.]"

U. S. Const., Amend XIV section 1 provides in relevant part: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws[.]”

NH RSA 480:1 Homestead Right (2016), providing, in relevant part, that [e]very person is entitled to \$120,000.00 . . . which is owned and occupied as a dwelling by the same person.

NH RSA 480:9 Homestead Right (1998), providing, in relevant part, that a conveyance of real property by deed to one or more trustees of a revocable trust shall not result in the loss of homestead rights of any person executing the deed.

NH RSA 547-C:1 Parties (2001), providing, in relevant part, that “[a]ny person owning a present undivided legal or equitable interest or estate in real . . . property . . . shall be entitled to have partition or division in the manner hereinafter provided”.

NH RSA 547-C:11 Judgment for Partition (2001), providing, in relevant part, that “The court shall make such partition as it decrees by metes and bounds or other distinct description. The partition shall be recorded at the registry of deeds for the county where the real estate lies.”

VIII) STATEMENT OF THE CASE

This case was filed by Mary E. Feeney (hereafter Feeney), about 12 years ago in New Hampshire Superior Court Northern District on June 28, 2010 under a Petition to Partition, New Hampshire *RSA 547-C*. The partitioned property, in Merrimack, was purchased by Karyn M. Kelley (hereafter Kelley) on September 2, 1987, as her primary residence, recorded at the Hillsborough Registry of Deeds at *book 4375 page 0294*, (7) years prior to knowing Feeney, which Kelley for (33) years paid all associated costs of home ownership, which Feeney contributed (0). Feeney failed to qualify for a lower

mortgage note on her primary residence in Manchester which she demanded Kelley assist her to increase her assets. Reluctantly, Kelley made Feeney an owner of Kelley's homestead with the stipulation that Feeney waived all interest in Kelley's primary residence or homestead. Feeney and Kelley signed (3) different documents in which Feeney waived all interest in Merrimack, subsequently (2) of those documents were recorded at the Official Registry of Deeds.

LC: Refers to documents filed in the case summary for Hillsborough Superior Court Northern District #216-2010-EQ-00193
Numbers following *LC* refers to index.

Brief: Refers to Appellant's Brief filed with the State of New Hampshire Supreme Court
Numbers following *Brief* refers to pages.

T: Refers to Transcripts
Numbers following *T* refers to the date and page number.

BK: Refers to United States Bankruptcy Court District of New Hampshire Case history
Numbers following *BK* refers to the index

Book Page: Refers to recordings at the Hillsborough County Registry of Deeds
Numbers following *Book Page* refers to the index

The real property was granted to Kelley on November 18, 2010 by the tribunal Judge Abramson on Feeney's Proposed Order (*LC* #6) subsequently recorded at the Hillsborough County Registry of Deeds in Nashua New Hampshire (*book 8807 page 2607. NH RSA 547-C:11*). The November 18, 2010 order was never vacated, which was the Law of the case that Kelley solely owned her residence or real property. Judge Abramson (4) years later on October 20, 2014 ordered a 50/50 ownership in partitioned real property, without vacating the previous order, which was a competing order of

November 18, 2010 that Judge Abramson previously ordered Feeney transfer all her interest to Kelley in partitioned real property. On November 18, 2010 Feeney was ordered to record at the Official Registry of Deeds; vacate notice (*book 8787 page 2072*), order (*book 8807 page 2606*) transfer her interest to Kelley by Deed (*book 8864 page 0165*). Feeney failed to record timely subsequently all were recorded years later. Kelley by order of November 18, 2010 or Law of the case, owned her homestead then transferred to her Revocable Trust (*book 8883 page 0466*).

On May 2, 2018 Kelley filed motion for contempt and sanctions (*LC #165*), motion to compel (*LC #166*), motion for clarification, contempt and sanctions (*LC #169*). On May 23, 2018 Feeney was ordered to file a response within 10 days, which Feeney failed to timely file a response. Kelley continuously requested hearings on the motions for her process that was due, which had been overlooked.

Kelley on November 29, 2018 (*LC #224*) filed a motion to recuse Judge Abramson based upon bias or impartiality subsequently in December 2018 Judge Abramson retired but remained active.

Hearing on February 8, 2019 Judge Anderson, without adjudicated, denied Kelley's motion to recuse Judge Abramson as Moot since Judge Abramson retired whereby Kelley objected that Judge Abramson had the appearance of bias or impartiality, which the motion should be argued.

Kelley on April 26, 2019 filed for chapter 7 bankruptcy #19-10567-BAH, the case was closed in Tribunal on May 7, 2019 by retired Judge Abramson. Kelley's Petition accurately listed all schedules to include the partitioned property, which the bankruptcy court, by abandonment granted Kelley her residence or partitioned property under the

Revocable Trust (*BK* #9) with appropriated homestead exemptions in the amount of \$120,000.00, *NH RSA 480:1, 480:9*. Feeney failed to file; Exceptions to Discharge *11 U.S.C. 523*, objections *FRBP 4003(b)* or adversary proceedings, which Feeney was listed accurately in all schedules (*BK#9*). Kelley was granted discharge on August 27, 2019 under *11 U.S.C. 727 (book 9208 page 1170)*, whereby Feeney's claims were properly discharged without payment. Feeney failed to act in bankruptcy court therefore waived any rights, if any, to proceed in State court for the relief requested.

Tribunal upon Feeney's motion of July 10, 2019 (*LC #266*) re-opened the case in error which should have stayed closed as discharged in bankruptcy (*LC #289*). Tribunal Judge Anderson with an appearance of bias or impartiality, unjustly ordered Kelley vacate her homestead by order of August 19, 2019 (*LC #276*) which *NH RSA 547-C* is silent, further violated Kelley's Constitutional rights, *V, XIV Amendments*. Tribunal appointed a Commissioner to sell Kelley's homestead that deprived her of liberty or property that lead to homelessness, moreover violated Kelley's Constitution Rights that no one shall be "deprived of life, liberty or property without the due process of law."

IX) REASONS FOR GRANTING THE WRIT

This case presents issues of importance to individuals who face potential violations of Constitutional Rights, the *V and XIV Amendments* that no one shall be "deprived of life, liberty or property without the due process of law."

The questions to be reviewed under Writ of Certiorari are important questions that were determined adversely by the Supreme Court of the State of New Hampshire. The decision conflicts with the U.S. Const. *V and XIV Amendments* and *Goldberg v. Kelly*.

The ruling directly conflicted with *V and XIV Amendment*, due process. Due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly.

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be “deprived of life, liberty or property without due process of law.” The Fourteenth Amendment, ratified in 1868, used the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law (“legality”) and provide fair procedures.

The promise of legality and fair procedure. Historically, the clause reflects the Magna Carta of Great Britain, King John’s thirteenth century promise to his noblemen that he would act only in accordance with the law (legality) and that all would receive the ordinary processes (procedure) of law. The clause also promise that before depriving a citizen of life, liberty or property, government must follow fair procedures. Action denying the process that is “due” would be unconstitutional. Suppose, for example, state law gives students a right to public education, but doesn’t say anything about discipline. Before the state could take that right away from a student, by expelling her for misbehavior, it would have to provide fair procedures, i.e. “due process.”

The decision in *Goldberg v Kelly*, a case arising out of a state administrated welfare program. The Court found that before the state terminates a welfare recipients benefits, the state must provide a full hearing before a hearing officer, finding that Due Process Clause requires such a hearing.

Just as cases have interpreted when to apply due process, others have determined the sorts of procedures, which are constitutionally due. The *Goldberg* Court answered the question by holding the state must provide a hearing before an impartial judicial officer, the right to an attorney's help, the right to present evidence and arguments orally, the chance to examine all materials that would be relied on or to confront the cross-examine adverse witnesses, or a decision limited to the record thus made and explained in an opinion.

A successor case to *Goldberg*, *Mathews v Eldridge*, tried instead to define a method by which due process questions could be successfully presented by lawyers and answered by courts.

While there is no definitive list of "required procedures" that due process requires, Judge Henry Friendly generated a list that remains highly influential, as to both content and relative priority:

1. An unbiased tribunal
2. Notice of the proposed action and the grounds asserted for it
3. Opportunity to present reasons why the proposed action should not be taken
4. The right to present evidence, including the right to call witnesses
5. The right to know opposing evidence
6. The right to cross-examine adverse witnesses
7. A decision based exclusively on the evidence presented
8. Opportunity to be represented by counsel
9. Requirement that the tribunal prepare a recode of the evidence presented

10. Requirement that the tribunal prepare written findings of fact and reason for its decision

Kelley failed to have an impartial tribunal, that had the appearance of bias, which denied her process that was “due”; right to counsel, right to present evidence, right to present witness, right to cross-examine adverse witnesses, right to evidentiary hearing.

Brief 9,11,14,15,25.

Trial of July 28, 2020, Kelley’s was denied her right to counsel.

(Feeney): so the first one is an objection to her motion to continue . . .
T 7/28/2020 p10

Court: Okay, all right. And that leaves us with the objection that was filed the motion that continues. And you filed a motion I think on Friday, an emergency motion to continue the trial. Do you want to address your motion?

Kelley: I do, Your Honor, This motion is important to go forward with the trial to continue it. I was able to make contact finally. I’ve been attempting to make contact with an attorney for multiple months now. I have been unable due to COVID. And I finally was able to have an attorney that agreed to take this case on. *T. 7/28/2020 p11*

Court: And where is that attorney today? Why isn’t that person not here?

Kelley: That attorney agreed to it provided I can get this continued so that they can review the past – there is a lot of motions. There’s a lot of pleadings, a lot that has gone on. They felt as if they filed an appearance, which they will file appearance provided that have an opportunity of time to look at this case. They told me that if they filled an appearance, they had to be prepared to go today, which they could not. And they could not adequately represent me. Provided this is continued, they will be able to come in and represent me. I’m happy to make another phone call. I’m happy to reveal the name, but that was a contract, a verbal contract that they stated not to put their name in the pleading.

Court: it’s up to you. I’m not going to compel you to this close name, but I will say this motion is a lot less persuasive if you don’t have a name to go with it.

Kelley: And I’m happy to, you know, if we want –

Court: Were here. It's 10:30 or almost 10:30 already.

Kelley: I understand, Your Honor, I understand. I guess I feel I'm comfortable revealing name. I'm happy to, but I believe that's going to be a deal breaker if I reveal it that this unfortunately, due to COVID, it's been timing, and they cannot adequately represent me today by the time I was able to finally get in to see somebody.

Court: All right. And anything else?

Kelley: No, Your Honor. Just that request that this be continued, so I can have adequate representation with everything going on.

Court: Okay, I understand now.

(Feeney): My client traveled up here from the state of Florida to be here today . . . we object to this. . .

Court: Well, I thought about this . . . I'm going to deny the motion really for two reasons. The first is you haven't had counsel since 2016. . . I didn't get involved in this case until a little less than two years ago was my first involvement in this case. . . The second reason . . . the request was not made until two days before the trial. . . I think it would be unduly prejudicial to Plaintiffs at this point . . . *T. 7/28/2020 p12-14*

Kelley: Excuse me, Your Honor? I'm sorry to interrupt. Could I verbally file a motion to reconsider to continue this trial? I wanted to do this before we get going. I just received the message back from the attorney. He has allowed me to release his name, and he's going to represent me. It's in the best interest for me to have representation here. And he would –I can tell you his name. He's going to represent me, provided we can get this continued. And that's what I would request as a motion that having this trial without –

Court: Well, what is his name?

Kelley: Representation is going to prejudice me.

Court: what is his name?

Kelley: Attorney Craig

Court: First name?

Kelley: James *T. 7/28/2020 p82*

(Feeney): Yeah, we still object . . . My client came all the way to (indiscernible) from Florida . . .

Kelley: Your Honor, the fact that Ms. Feeney lives in Florida is her issue. I've made the trip probably a dozen times back and forth to Florida to come to hearings . . . *T. 7/28/2020 p83*

Court: Well, let me say this. If you had filed a motion prior to Friday, I might have viewed that differently as well. . . the other thing that concerns me about this, we're facing, you know, nothing really happened in this court in March and to some extent April . . . My schedule not it's hard to fit in a bench trial in the next few months so it would be an issue of continue this to a date uncertain. And I'd have to balance that against the prejudice suffered by it. . . *T. 7/28/2020 p84*

Kelley: Your Honor it has been a struggle to get anybody to take this case. I have tried for years. I've had no choice but to represent myself. It's either represent myself or totally get ambushed. And I was finally able to get somebody. But again, it's been extremely – I had four attorneys, but because of COVID, I couldn't come and see them. They -- *T. 7/28/2020 p86*

Court: And Mr. Craig hasn't seen the file yet, right?

Kelley: Mr. Craig has seen part of it. And –

Court: But he hasn't – once he sees the entire file, it's very possible he would take the same stance –

Kelley: Your Honor, I have a text right here. If the Court would like to see it, that he will represent me.

Court: It's just – from my view, and I don't say this lightly, because I think counsel's important. And you don't have a Constitutional right to counsel on a civil case, but I think it's important. . . I just don't think on these facts a continuance is warranted. Anyway, that's my final ruling.

Kelley: At Trial, January of 2014, I came up from Florida and I spend the entire day here, and it was continued. This has been continued constantly. And I do think that it is prejudice to me not being able to have an attorney. I mean, I should be entitled to have an attorney represent me. The pure fact that –

Court: I'm not changing my mind on this. I mean, you can file an appeal. I'm sure you will.

Kelley: I will

Court: And maybe the Supreme Court will agree with you on this and say, well, notwithstanding the situation, I should have continued the trial so you can retain counsel. You know, there's not a clear rule on this (indiscernible) so I'm not sure. And maybe you will win that, but that's were I am. *T. 7/28/2020 p88-90*

The *V* Amendment of the United States Constitution guarantees, a right to counsel, that an individual will not be deprived “of life, liberty, or property without the due process of law.” A granted evidentiary hearing requires due process since a denial of evidentiary hearing deprived Kelley her property, the process that was “due” was violated. Although the “right to counsel” is used in criminal cases, Kelley was deprived her primary residence or “property” therefore the court erred when it denied Kelley a continuance so counsel would have time to review (10) years of litigation to represent Kelley zealously. Kelley due to Covid-19 was unable to meet with counsel which Attorney Craig agreed to represent Kelley at Trial and evidentiary hearing provided a continuance was granted so he had time to review the over 500 pleadings on the docket, which the outcome would have been different with a seasoned trial attorney representing Kelley. The ruling conflicts with the *V, XIV Amendments* that no one shall be “deprived of life, liberty or property without the due process of law.”

Motions Hearing on February 8, 2019, Kelley requested to have the motion for clarification, contempt, and sanctions; motion for contempt and sanctions; motion to compel heard as they were pending since May 2018, which court refused to hear. *T 2/8/2019 p5*

Court stated that I would have an evidentiary hearing *T 2/8/2019 p21*

Court refused to hear Kelley’s granted motions of May 29, 2018 and again stated an evidentiary hearing. *T 1/3/2020 p46-47*

Kelley requested again a evidentiary hearing on the May 29, 2018 granted motions *T 2/10/2020 p27-30*

Court: So it's a motion to compel. The title is what, motion to compel, motion?

Kelley: I believe it was motion to compel. There's motion for sanctions, motion for clarification.

Court: Okay. All right. We will track those down. You don't need to refile those. And I will deal with those at the final hearing. . . . *T 2/10/2020 p30*

Court: Not originally in 2014. But in 2018 the court ordered the property sold.

Kelley: Well, in 2010, Your Honor, it was ordered to me. And that was a (indiscernible) case that is on record.

Court: All right.

Kelley: So everything that has gone forward is void.

Court: You know, I understand you feel that way Ms Kelley. And I understand you feel it very strongly. I get that. I do get that. And because you have felt this whole thing has been void from the very beginning dating back to 2010, that is what has cause *T 5/28/2020 p46-47*

Kelley: I am not inclined to do offers of proof. That's how we got into this fraudulent on the court. So this has been a rolling fraud since day one from Ms. Feeney. Any offers of proof is going to continue the fraud. I would like testimony. I would like a jury trial, Your Honor.

Court: Well, you're not entitled to a jury trial. This is a partition action. So you're not entitled to a jury trial. But I think, Mr. Proctor (Feeney), she is entitled to an evidentiary hearing. *T 5/28/2020 p52*

Kelley: Correct. Just clarification, Your Honor. The motion for the evidentiary hearing that – I filed yesterday. Just to make sure it didn't get lost.

Court: Yeah. Okay

Kelley: Okay. This was for all my motions to compel. This was under Judge Abramson, which you had ordered from the bench at out last hearing to have an evidentiary hearing. Was this going to be part of it, or is this going to be separate?

Court: Anything – what this is going to be about, this is a partition hearing. And under the partition statute, the court has broad discretion in

allocating the funds that result from the sale of the property, and that's what's happened here. . . You can make whatever argument you want as to why you think you're entitled to -- . . . *T 5/28/2020 p59*

Court: Now, we are here for a hearing, . . . I'm not going to go back before Judge Abramson's October 2014 order. . . . *T 7/28/2020 p5*

Kelley: That also conflicts with Judge Abramson's order . . . May 29, 2018. Some of those issues are going to be prior to '14. *T 7/28/2020 p6-7*

Kelley: That they had to respond to the motion to compel, motion for contempt and sanctions, and motion to compel. And some of those issues were prior to '14 so that if you're not going to hear that, it's conflicting with the order that she has already put in place. *T 7/28/2020 p7*

Court: No, because we're passed all that. I mean, . . . But you can argue whatever you want as to factors that happened or things that happened after October 2014. *T 7/28/2020 p7-8*

Kelley: Well, Judge, I do intend to, and it does include that order of May 2018.

Court: Well, that's fine. . . I mean, but all out fairly lenient, except for that date issue. I'm going to be strict on that. But otherwise I'll give you flexibility, Ms. Kelley, in terms of what you want to put into evidence. *T 7/28/2020 p8*

Direct by Proctor to Feeney

Q And what is your legal residence?

A Manchester, New Hampshire *T. 7/28/2020 p126*

Q At the time of the judgment, the place was rented to Ms. Kelley's mother. Have you ever received any portion of any rent since 2014?

A No, not a single dime -- never *T. 7/28/2020 p128*

Q Now, since 2014 have you paid any of the condo fees for this condominium?

A No, I have not. I have no history of paying condo fees

Q Have you paid any of the property taxes on this condominium?

A Again, No. I have no history of paying taxes on this condominium?
T. 7/28/2020 p131

Kelley on Cross to Feeney

Court: Well, we'll see how much is relevant. But let's take our break now. Can we focus on after 2014? I'm not going to let you get into anything before 2014.

Kelley: She opened the door.

Court: You can argue that, but I—

Court: You know what? I want to have this discussion now.

Kelley: All right. In her testimony, she just opened the door for me to go back. She had indicate that she did not pay 2014 any condo fees, any taxes, and she has no history of any payment of any of them. She opened the door for me to go back.

Court: No, I'm not going to let you do that . . . opening the door is generally meant to correct a misimpression of something that otherwise wouldn't be admissible. . . Judge Abramson's already ruled that it's going to be a 50/50 split as of October 2014. T. 7/28/2020 p133-135

Q Ms. Feeney, you live in Florida, you stated earlier?

A That's correct, at the moment.

Q You also stated you're caring for your parents?

A I am the primary caregiver of my elderly parents. My father has since passed.

Q That was my next question. Your father passed years ago?

A Three years ago

Q Is your mother residing with you in Florida?

A Does this question have something to do with the condo?

Q Can you answer the question?

(Feeney): I guess I'll object on the basis of relevance.

Court: What's the relevance?

Kelley: Well, first of all she stated her parents – her father was deceased three years ago and now she's saying she's in Florida only because of her mother. Her mother is not in Florida

Court: It's not relevant. I mean, I understand the point you're making.

Kelley: Well, it's relevant because she claims she has no key, no access to Merrimack. Yet, she lives in Florida, chooses to live in Florida and is making statements that are not truthful about reason that she's in Florida.

Court: I'm going to give you just a little bit of latitude on the grounds of impeachment to pursue this question of where the mother – where Ms. Feeney's mother is living, and then we're moving on.

A My mother at the moment is in assisting living in Maine, Just – this year.

Q Since when?

A Since July of '19—one year *T. 7/28/2020 p137-138*

Q You also testified, and this is where I am going to – you open the door again, that he has already – attorney Proctor has already questioned about rent with my mother. Therefore, I am going to ask Ms. Feeney about rent with my mother.

(Feeney) Objection . . .

Kelley: you opened the door because she filed rental income, and it was part of discovery

Court: When did she file for rental income?

Kelley: It was – I believe it was 2008

Court: Sustained . . .

Kelley: To make an argument I can't be restricted to 2014 and on. And I'm also, because of the motion to compel, contempt and sanctions from 2018, that has to do with the other issues that I can talk about prior to 2014.

Court: No

Kelley: It goes back to Abramson's order that Ms. Feeney was supposed to respond and produce information, which she did not.

Court: That's a final order that was appealed. That's (indiscernible) case. We're not going back. I am going to sustain any objections to questions before October 2014.

Kelley: That order was not appealed. That order was not.

Court: It got wrapped into the final judgment, so –

Kelley: It did not, Your Honor

Court: (indiscernible)

Kelley: May 28th, 2018, there's an order –

Court: Oh, May 28th 2018, okay

Kelley: Correct, there's an order

Court: Okay

(Feeney): There is no such order. . .

Court: I'm going to sustain the objection . . .

Kelley: I have the order right here, Your Honor.

Court: Well, then why don't you show it to the witness, and then you ask her questions about it?

Court: The date on the order is May 23rd. the notice on the top of the clerk's office is May 29th. *T. 7/28/2020 p141-144*

Q How many rooms is the condo?

A Well, I don't know how you count them. Open space – you had a dining room, a living room, a kitchen. Isn't that three? You have a bathroom, you have two bedrooms upstairs.

Q You just said you had, referring to myself as my place?

A There was no inference to that. You asked me how many rooms. . .

Q Right. And I'm just saying you just testified you had.

A I may have said that.

Q you do agree that the townhouse was mine?

(Feeney) Objection again

A Yeah

Court: Ms. Kelley, you know that question isn't appropriate based on my rulings, right?

Kelley: She just testified –

Court: It doesn't matter what she –

Kelley: -- your place

Court: this isn't, that's sort of, like, playing a game of gotcha, right? . . .
T. 7/28/2020 p147-148

Q You also testified, Ms. Feeney that, and I quote . . .

A That is correct

Q That is correct. When did Karyn Kelley say that to you?

A I must admit that was prior to 2014

Q Which would open the door for ongoing issues with Ms. Feeney
Court: It's not relevant. I'm going to sustain the objection . . . *T. 7/28/2020 p150*

Kelley: In the motion to compel and in the other motions for sanctions, production of documents, she failed to do that. She failed to respond. She'd respond just generally and absolutely said nothing produce absolutely nothing in the order. And this was supposed to be the evidentiary hearing that I was suppose to have, and then it got continued to trial. So this all has to do with that order and had to do with money.

Kelley: But it also has to do with previous order of the court . . . if you're not allowing me to produce anything or question her prior to 2014, that's in a direct con – con—directly conflict with these two motions that the order was granted she'd respond . . . I was granted to get the information from Abramson and you are saying that I cannot.

Court: But this isn't . . . You're taking orders that Judge Abramson issued in May of 2018 saying that certain responses were owed by Plaintiff and arguing those weren't responded to and that you're prejudiced by that . . .

Kelley: I have requested I can't tell you how many evidentiary hearings on it . . . With all due respect, Your Honor, back in February of 2019, I requested the same thing. . . again in 2020 *T. 7/28/2020 p151-153*

Court: She just said she paid zero for the condo. I mean, she's been very clear about that. *T. 7/28/2020 p157*

Kelley: So that's why there was a motion to compel . . .

Court: Why don't you ask those questions now? *T. 7/28/2020 p160*

Court: Your exhibits are here

Kelley: It's in the exhibits *T. 7/28/2020 p161*

Witness Feeney; Excuse me. May I ask my attorney one question before this laundry list comes out? Is that okay?

Court: Go ahead

(Attorney client confer)

Q In the motion to compel, which is based upon Judge Abramson's order, number 1, the 2005 motorcycle.

A Yes

Q Did you produce the information of who purchased it, the check, any of the registration –

(Feeney): Objection . . .

Kelley: Judge Abramson awarded 50/50. Judge Abramson said I had the motorcycle. Mary Feeney stole the motorcycle from my garage and sold it. That's what's in this motion to compel. It has to do with money. It has to do with deceit from the Plaintiff, and the court ordered she respond.

Court: Now, but see that's undoing the order. . .

Kelley: She's granted the motion to compel. That was granted subsequently. That's why I needed the evidentiary hearing on. I've tried

multiple times. And with all due respect, Your Honor, like I said twice in front of you, I tried to get this heard.

Court: Yeah, but I can tell you, with respect to the motorcycle, I'm not going to allow you to go back and undo – to the extent that Judge Abramson granted a motion to compel for the document about the motorcycle, I'm going to reverse that order at this point because the only thing you'd be entitled to on that is something showing the value of the motorcycle . . . *T. 7/28/2020 p163-165*

Kelley: In the motion to compel, she had to compel or be in contempt of court.

(Feeney): I'm going to make a preemptive here on the second item on the motion to compel involving the 1995 Lincoln Signature series . . .

Kelley: Ms. Feeney stole that car as well. Ms Feeney again –

Court: See, what you are trying to do is undo that order. And I'm not going to let you do that. *T. 7/28/2020 p167*

Kelley: Your Honor, there should be a new trial in this –

Court: No

Kelley: Because there's been so much fraud

Court: And –

Kelley: There absolutely should be

Court: This court is no going to revisit it . . .

Kelley: The final order is not the law of the case. It is November 18, 2010 order, Your Honor.

Court: (indiscernible)

Kelley: That's the law of the case

Court: You said November. Do you mean the May order? Is that what you (indiscernible)

Kelley: November 18, 2010, no. That is the previous order, which also goes in this paperwork. That was the law of the case.

Court: You've lost me at this point.

(Feeney): I'm lost too. . .

Kelley: I'm the only one here that is not lost or Ms. Feeney because she is the one that is committing perjury and has been. And I've already proved it with residence and her mother.

Court: I am denying the motion to compel . . . *T. 7/28/2020 p168-169*

Kelley: I object to that. I was entitled to an evidentiary hearing. I was granted the evidentiary hearing and now I'm being denied. *T. 7/28/2020 p173*

Kelley: I am entitled to an evidentiary hearing on the entire motion to compel *T. 7/28/2020 p174*

Q Number 5, Ms. Feeney. on the pool table –

A um-hum

Q did you remove throughout the entire house, all the accessories, remove things from the wall of the condo that I owned?

A Yes, I took things related to the pool table

Q Correct. But you removed those throughout the entire house of my condo. You just testified yes

A Not the entire house. They were in the basement

Q So you walked through the house?

A I was in the basement.

Q Correct. Did you have a court order for that?

A To enter the property, yes.

Q Did you have court order to be in the basement?

A I believe I did. *T. 7/28/2020 p174-175* [police escort for garage only existed Appendix A]

Court: Let's move past the pool table

Kelley: I was trying to ...make the point... she stole it

Court: You're going to get it back *T. 7/28/2020 p176*

Court: You filed a motion to compel. They filed an objection. . . you should've had a decision earlier on this, I don't disagree with that. . . so it wouldn't have mattered whether that was resolved in 2018 by Judge Abramson, me in 2019 or now today, you're not entitled to undermine the basis of her order. . .

Kelley: If that had gone years ago, there could've been a different outcome. And I believe that there would have been. I've never --
T. 7/28/2020 p189-190

Kelley: under the motion to compel and the sanctions

Kelley: They are based upon other entries at 2016 . . . with agreements that Ms. Feeney has signed with deeds.

Court: I'm going to sustain the objection to that line of questioning. . .
T. 7/28/2020 p190-191

Q You testified you paid enough, can you elaborate?

A I was referring to what I consider 10 years of legal expenses . . . I had nothing to do with that condo . . . *T. 7/28/2020 p192*

Q I'm asking the questions here Ms. Feeney. So Ms. Feeney did you initiate this complaint?

(Feeney): Objection . . .

Court: Move on . . .

Kelley: I want to reserve my right to recall Ms. Feeney

Court: I'm not going to . . . grant you that at this point in time.
T. 7/28/2020 p193

Kelley: Well, your Honor, you're tying my hands basically to asking her questions *T. 7/28/2020 p194*

Q And again, It's your testimony that you never made any improvements?

A I would say the improvement hat I made was in painting and moving, and helping replace rugs and moving furniture

Q What year?

A I don't know

Q What year Ms. Feeney?

A I don't know

Q Was it in 1999?

(Feeney): Objection

Kelley: It was in 1999...she has opened the door once again . . .

Court: I'm not going to go back before 2014 . . . I am not going to exercise my discretion to do so either. Move on *T. 7/28/2020 p196-198*

(Feeney): Yeah. I did not file a complaint for discharge ability here. . . .
T 7/28/2020 p198-199

Court: I'm not going to let you get into bankruptcy at this point . . .
T 7/28/2020 p199

Court: Okay. . . I went through Ms. Kelley, last night and this morning, the motion to compel back in May and the objection that was filed in June 2018 by Ms. Feeney. . . I am denying the motion . . . *T 7/29/2020 p209*

Kelley: I have a witness that to a recent filing with the police department last year.

Court: No, I'm not going to allow you to put that witness on. Is that police officer that's here today?

Kelley: Yes

Court: No. Sir, you're free to go. . . I'm not going to allow you to turn this into a prosecution . . .

Kelley: Your Honor, we have the right to revisit where she did open the door. . .

Court: No, . . . because Ms. Feeney .. refers to the past, that doesn't allow you . . . that is not how the doctrine works *T. 7/29/2020 p209-211*

Kelley; She perjured herself on the stand . . . this has to go with the credibility of Ms. Feeney *T. 7/29/2020 p211*

Kelley: my only witness is Mary Feeney

Court: I am not going to allow you to recall at this point . . *T. 7/29/2020 p214*

Kelley Sworn in

Kelley: I want to start with my exhibits *T. 7/29/2020 p216*

Kelley: Exhibit A, I testify that all were handed to me by Ms. Feeney, each and every one of them would indicate that she has absolutely no interest in my property. She refers to Indian Rock as mine.

(Feeney) Objection

Court denied all Kelley's exhibits from *T. 7/29/2020 p218-228*

Court: Yeah, I think we should do that, and that'll be a better use of your time. Look, you may have – I'm sure you're going to file an appeal. Maybe the Supreme Court will agree with you and say I should have considered all of the evidence and I should have taken a look back at Judge Abramson's order and looked at whether you can undo that for the various reasons that you're trying to make arguments you're trying to make today. And you're free to file that appeal. And if that happens, it will come back to me or another judge and that will happen at this point. . . *T. 7/29/2020 p228-229*

Kelley: So with the exhibits – and – and I do object to taking them out. I – you're ruled that you're not going to hear them. But for the record . . *T. 7/29/2020 p230*

Court: The floor is yours again

Kelley: The official deposition of Mary Feeney

Court: No . . .

Kelley: The official deposition of Kelley

Court: No . . . *T. 7/29/2020 p236-237*

The Court Denied 98% of Kelley's exhibits including all Transcripts
T 7/29/2020 p238-276

Kelley: Well, I was unjustly ordered to vacate my home *T 7/29/2020 p238-274*

Court: Okay. So what that leaves us with . . . so I'm going to exclude all. But we have NN-1—EE-1...we have BB-1, we RR

Court: Yeah, I think I'm not going in the right sequence. But anyway. NN-1, MM-1, EE-1, RR, GG and FF, and Z I'm sorry, one more Z. T.

7/29/2020 p276

Court: Okay, those are the exhibits that are entered from your side. . .

Court: Just so you know, I'm not going to consider any other transcripts from any other hearings...One we don't have those transcripts. They're not – so if you wanted them –

Kelley: Right. They were submitted. They were excluded, but I did question him – T 7/29/2020 p285

Kelley: On RR,the bankruptcy that was filed in April of 2019. It has the property. . . as disputed interest with the ownership records un the Trust of Karyn Kelley. . .next. . the bankruptcy court granted under 480:1 and 480:9, I had adequate homestead exemptions. T. 7/29/2020 p287-288

Kelley: The following page just shows the partition property with non-priority, unsecured claims with Mary Feeney for . . . and 45, 380. The following page has executory contracts with Mary Feeney. . . The bankruptcy records, also on the index, indicate that Mary Feeney failed to file any sort of exemptions of discharge or adversary proceedings disputing anything in the records. . . T. 7/29/2020 p289

Kelley on Cross

(Feeney): Why do you think it's fair that my client contribute . . . to your living expenses in the condominium after the judgment entered awarding my client had of the property?

Kelley: Your client paid zero dollars. I find it completely unfair that she has through fraud on the court unjustly enriched herself by stealing my home.

(Feeney): you were told again and again . . . it's half of my client's property. What part of that don't you understand and why?

Kelley: What I don't understand is in October of 2014, a order that granted 50/50 in my home without the previous partition order being vacated. Therefore, your client under the previous order, November 18, 2010, granted her interest to myself, Karyn Kelley. That's what I don't

understand, the proposed order by your client gave me my property. *T. 7/29/2020 p310-311*

Feeney Rests

Kelley: Your Honor, attorney Proctor just reopened going back to the --

Court: No

Kelley: -- the deed—

Kelley: -- and the transfer

Court: That doesn't open the door to the past. Okay . . .

Kelley: I object . . . he open the door because he's the one who asked me questions, and the answers led back to the order that is on record that I own my property.

Court: Okay

Kelley: It was never vacated

Court: Okay. . . both sides have rested at this point. . . *T 7/29/2020 p313-312*

The main reason to grant certiorari is Kelley's process that was "due" was violated or untimely held. Her granted evidentiary hearing to be heard at trial, on July 28 and 29, 2020, on her granted motions dated May 29, 2018 were abruptly denied at Trial that denied Kelley her due process; to submit evidence, cross-examine a witness, which the results would have changed the outcome of the Trial had Kelley had her evidentiary hearing been held prior to Tribunal selling her residence or at Trial, July 28, 2020. July 28, 2020, Feeney impeached herself and "opened the door" which Tribunal denied Kelley due process to cross-examine a witness which would have changed the outcome of the Trial. *T July 28, & 29 2020., Brock v. Roadway Express, Inc.* 481 U.S. 269-267, *Brief 20-22.*

In this case the orders conflict with *Ham v. South Carolina*. In *Ham*, the court held the trial court's refusal to question the jurors as to their racial bias after petitioner's timely request denied the petitioner a fair trial in violations of the Due Process Clause of the Fourteenth Amendment. The court applied U.S. Const. *Amend. XIV*. Kelley timely requested an evidentiary hearing on granted motions from May 29, 2018, subsequently untimely granted then abruptly denied at Trial by overruling another Judges order. The general rule is that one trial judge may not modify or overrule an order entered by another trial judge on a matter of law. *Calloway v. Ford Motor Co.*, 281 N.C.496, 501, 189 S.E.2d 484,488 (1972)

Kelley's right to cross-examine a witness was denied after Feeney "opened the door", which conflicts with other case law. Evidence, admissibility generally curative admissibility the doctrine of "opening the door" allows a trial judge, in his discretion, to admit otherwise inadmissible evidence in order to rebut prejudicial evidence which has already been erroneously admitted. *United States v. Nardi*, 633 F.2d 972, 977 (1st Cir. 1980), *State v. Crosman*, 125 NH 527 (1984) *Brief 22*.

In New Hampshire opening the door is often used to describe situations in which a misleading advantage may be countered with previously suppress or otherwise inadmissible evidence, "The doctrine is to prevent prejudice and is not to be subverted into a rule for injections of prejudice." *United States v. Winston*, 477 F.2d 1236, 1240 (D.C. Cir. 1971). The constitutional provision encompasses the fundamental right to cross-examine witnesses to impeach their credibility. *State v. LaClair*, 121 NH 74 (1981). *Brief 22*.

In a landmark case the United States Supreme Court stated that the Supreme Court “. . . normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, on the words on the page constitute the law adopted by Congress and approved by the President. If Judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the peoples representatives.” *Bostock v. Clayton County*, 590 U.S. ____ (2020)

Although the Supreme Court in *Bostock* analyzed the application of Title VII of the Civil Rights Act, the statutory construction used: “. . . From the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex” applies to this case. *Id*

In this case using the formulation and statutory construction that “from the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: the language in *NH RSA 547-C:1*, Parties, The words, [a]ny person owning a PRESENT undivided legal or equitable INTEREST or estate in real . . . property . . . shall be entitled to have partition were clear, unequivocal and not subject to alternative interpretation or discretion. *NH RSA 547-C:11*, Judgment for Partition, The words, the court shall make such partition as it decrees by metes and bounds or OTHER DISTINCT DESCRIPTION were clear, unequivocal and not subject to alternative interpretation or discretion. *NH RSA 547-C:11*, Judgment for Partition, The partition shall be RECORDED at the REGISTRY of DEEDS for the county where the real estate lies were clear, unequivocal and not subject to alternative interpretation or discretion.

The *V* or *XIV Amendments* words were clear that no one shall be “DEPRIVED of life, LIBERTY or PROPERTY without DUE PROCESS OF LAW”, were clear, unequivocal and not subject to alternative interpretation or discretion.

Kelley was untimely denied her evidentiary hearing or Constitutional Right to Due Process in 2018 or at Trial on July 28, 2020; denied her previously granted evidentiary hearing, denied cross-examination of a Feeney the witness, which resulted in the loss of her primary residence that made her homeless. Had Kelley been able to proceed with cross-examination of Feeney or present evidence then the results would have produced a different outcome. Feeney should have been ordered by the court to compel the documentation requested in the granted motion(s) by order of May 29, 2018 that Kelley was granted evidentiary hearing, however Kelley was abruptly denied at Trial to continue cross-examination of the witness, Feeney, under the process that was “due”. Feeney at Trial “opened the door” which Kelley was denied her right to cross-examine Feeney which would have changed the outcome of the Trial.

Due Process and fairness dictates that an individual should not have to guess as to whether a court is going to give an alternative meaning to unequivocal language and directives of statutes and orders of the court. Kelley was awarded her homestead 100% by Feeney’s Proposed Order Granted on November 18, 2010 (*LC #5, #5A, #6, #6A, NH RSA-C:11* which Feeney was ordered by the court to record (3) documents, document 1 was to record the vacate notice of November 18, 2010, document 2 was to record the order that granted the vacate notice of November 18, 2010, document 3 was that Feeney transfer all her interest to Kelley in partitioned property or Kelley’s homestead in Merrimack by recording a deed. Feeney disobeyed a court order subsequently years later

all (3) documents were recorded which lead to violations of Kelley's due process. Feeney was not a party in this case at the time of the 2nd conflicting partition order of October 20, 2014. Tribunal incorrectly ruled on partition of Kelley's residence, which neither party legally owned, by order of October 2014 that overlooked November 2010 order, the law of the case, recorded at the registry of deeds that granted Kelley her home. *NH RSA 547-C:1, Brief 65, 144-146*. To protect the rights of Kelley or the Revocable Trust sent to all parties or all potential parties, cease and desist letters that noticed a title problem *Brief 98-99*.

Kelley on Cross with Attorney Russell (Commissioner)

Q Did you attend the 341 hearing in bankruptcy?

A I think I did, yes.

Q Did you attend the abandonment property at bankruptcy?

A I attended another hearing

(Feeney): I'm going to object because I'm feeling just like we're going down a whole line, which again, has no relevance to the issue at hand.

Court: What's the relevance of going into the bankruptcy?

Kelley: The relevance is it went to bankruptcy. Ms. Feeney, Attorney Proctor, Commissioner, all failed to file any pleadings with the bankruptcy court. They were at the hearing where I was granted 120,000.00 dollar homestead. There's multiple pleadings that they were at, and they chose to not file under the federal rules to object to my discharge or object to ownership.

Court: Okay. How is that relevant?

Kelley: It's relevant because this effectively is discharged through bankruptcy.

Court: No, no. That would be an argument -- . . . You can't go down this road. The objection's sustained. You have to move forward. *T 7/28/2020 p111-112*

Q Is your Commissioner deed valid?

(Feeney): I'm going to object. What is the relevance of that again to the issue—

Court: Yeah the issue here is not whether Mr. Russell did a good job or that he was qualified to do the job.

Kelley: Is the Commissioner deed Valid?

(Feeney): Same objection

Court: I just sustained the objection. *T. 7/82/2020 p121-122*

Another reason why this Writ should be granted is the bankruptcy court noticed Feeney of Kelley's Chapter 7 Petition filed on April 26, 2019, Feeney's counsel filed an Appearance, had access to PACER, had all schedules that had Feeney properly listed as NON-PRIORITY UNSECURED claims, attended the 341 meeting of the creditors and attended the Hearing that the bankruptcy court by abandonment granted Kelley her homestead with appropriate exemptions in the amount of \$120,000.00. *BK9* Feeney failed to object by June 20, 2019 *Rule 4003(b)* or file a complaint by June 22, 2019 *11 U.S.C 523* therefore, all claims were appropriately discharged without payment.

"you must file a complaint: if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of *11 U.S.C 727 (a)(2) through (7)*."

In this case Feeney failed to object or file any complaint therefore all claims were property discharged under *11 U.S.C. 727* whereby Feeney the operative language was MUST file an objection by January 20, 2019 and MUST file a complaint by January 22, 2019.

Section 727 governs discharges in bankruptcy generally. Subsection (c)(1) of that provision specifically provides that "[t]he trustee, a creditor, or the United States trustee

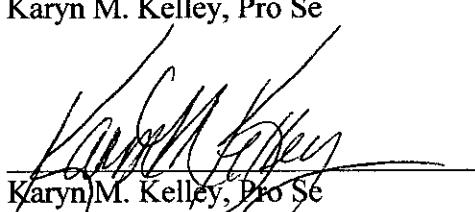
may object to the granting of a discharge under subsection (a) of this section.” *11 U.S.C 727 (c)(1)* (1994). A “creditor” in turn, is defined as an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.” *11 U.S.C 101 (10)(A)* (1994). A “claim” is a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” *11 U.S.C. 101(5)(A)* (1994). *Rule 7001 (4)* of the Federal Rules of Bankruptcy Procedure states that “a proceeding to object to or revoke a discharge” is an adversary proceeding. *Fed. R. Bankr. P. 7001(4)* (1994). As stated in *Rule 4004(a)*, an adversary proceeding objecting to a debtor’s discharge must be commenced within certain time limits. *See Fed. R. Bankr. P. 4004(a)* (1994).

X) CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court grant her petition for writ of certiorari.

April 11, 2022

Respectfully Submitted by Petitioner,
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