

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re the matter of Derek Windell Cole Trust,

Derek W. Cole – PETITIONER (*Pro se*)

vs.

Marcie R. McMinimee, in her capacity as Trustee of the

Derek Windell Cole Trust – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COLORADO COURT OF APPEALS, DIVISION III

Petitioner (*Pro Se*):

Derek W. Cole (*Pro se*)
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QUESTION(S) PRESENTED

Based upon "information, belief, and personal experience," Petitioner (respectfully) submits the following:

I.

In *NC DEPT. OF REV v. KIM RICE KAESTNER 1992 TRUST*, 139 S. Ct. 2213 (2019), this Court held the following (*verbatim*, with **emphasis** added):

In its simplest form, a trust is created when one person (a "settlor" or "grantor") transfers property to a third party (a "trustee") to administer for the benefit of another (a "beneficiary"). A. Hess, G. Bogert, & G. Bogert, Law of Trusts and Trustees § 1, pp. 8-10 (3d ed. 2007). **As traditionally understood, the arrangement that results is not a "distinct legal entity, but a 'fiduciary relationship' between multiple people.** *Americold Realty Trust v. Conagra Foods, Inc.*, 577 U. S. ___, 136 S.Ct. 1012, 1016, 194 L.Ed.2d 71 (2016). **The trust comprises the separate interests of the beneficiary, who has an "equitable interest" in the trust property, and the trustee, who has a "legal interest" in that property.** *Greenough v. Tax Assessors of Newport*, 331 U.S. 486, 494, 67 S.Ct. 1400, 91 L.Ed. 1621 (1947). In some contexts, however, trusts can be treated as if the trust itself has "a separate existence" from its constituent parts. *Id.*, at 493, 67 S.Ct. 1400.¹¹

Id. at 2218.

(Source, as of February 22, 2023:

https://scholar.google.com/scholar_case?case=5043212705732698421&q=+KIM+RICE+KAESTNER+1992+TRUST,+139+S.+Ct.+2213&hl=en&as_sdt=4,60]

II.

Question 1: Since *In re Marriage of Guinn*, 93 P.3d 568 (Colo. App. 2004) was/is (strictly) a “division of marital property” case (governed by “Title 14. Domestic Matters (§§ 14-1-101 to 14-15-119), Colorado Revised Statutes (C.R.S.) (2022)” -- and this case is a “testamentary trust” case (governed by “Title 15. Probate, Trusts, and Fiduciaries ((§§ 15-1-101 — 15-23-122), C.R.S. (2022)” -- did the Colorado Court of Appeals commit “reversible error” when it applied “division of marital property” law (under Title 14, C.R.S. (2022)) to this case?

Question 2: Based upon the holdings in *NC DEPT. OF REV v. KIM RICE KAESTNER 1992 TRUST [KAESTNER]* case, did the Colorado Court of Appeals commit “reversible error” when it applied “division of marital property” law (under Title 14, C.R.S. (2022)) to this case and ruled that “... Cole hasn’t established any constitutional deprivation. He doesn’t have a property interest in the undistributed funds from the trust”?

Question 3: Based upon the holdings in *KAESTNER*, what “constitutional rights” do “trust beneficiaries” have in their “equitable interests” in (inherited) “monies” – from (“probated”) “Last Wills and Testaments” – which are held in “testamentary trusts” for the “benefit” of “trust beneficiaries”?

Question 4: If the Colorado Court of Appeals did not commit “reversible error” in this case, do “trust beneficiaries” have (“legal” and/or “equitable”) “standing” to “protect” their “equitable interests” in (inherited) “monies” – from (“probated”) “Last Wills and Testaments” – which are held in “testamentary trusts” for their “benefit(s)” as “trust beneficiaries”?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

None

RELATED CASES

- *In the Matter of the Estate of: Morris E. Cole, a/k/a Morris Edward Cole and Morris Cole, Deceased., 2016-PR-030630*, Denver Probate Court, Denver County, State of Colorado.
- *In the Matter of the Trust: TRUST OF FOR DEREK WINDELL COLE., 2019-PR-31334*, Denver Probate Court, Denver County, State of Colorado. Ongoing. (See: **APPENDIX B**)
- *In the Matter of Derek W. Cole, Appellant v. Marcie R. McMinimee, Appellee, 2020-CA-842 (Unpublished)*, Colorado Court of Appeals, Denver, State of Colorado. (See: **APPENDIX A**)
- *In the Matter of Derek W. Cole, Petitioner, v. Marcie R. McMinimee*, in her capacity as Trustee of the Derek Windell Cole Trust., Respondent, **2022-SC-259 (Unpublished)**, Colorado Supreme Court, Denver, State of Colorado. (See: **APPENDIX C**)
- *In the Matter of Derek W. Cole v. Marcie R. McMinimee, as Trustee of the Derek Windell Cole Trust*, Application No. **22-A-554**, Supreme Court of the United States, Washington, DC.
- *In the Matter of Derek W. Cole, Appellant, v. Marcie R. McMinimee*, Appellee, in her capacity as Trustee of the Derek Windell Cole Trust., Respondent, **2022-CA-1396**, Colorado Court of Appeals, Denver, State of Colorado. (See: **APPENDIX F**, filed on: August 22, 2022)

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APPENDIX B Decision of the State Trial Court, 2019-PR-31334, dated “March 11, 2020.”

APPENDIX C Decision of the State Supreme Court Denying Review, 2022-SC-259 (Unpublished), dated “September 26, 2022.”

APPENDIX D Order of the State Supreme Court Denying Rehearing. None, as Colo. R. App. P. 54 states the following (*verbatim*, with *emphasis* added):

Rule 54 - Order Granting or Denying Certiorari

(a) **Grant of Writ.** Whenever a petition for writ of certiorari to review a decision of any court is granted, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. The order will direct that the certified transcript of record on file be treated as though sent up in response to a formal writ. A formal writ will not issue unless specially directed.

(b) **Denial of Writ.** No mandate will issue upon the denial of a petition for writ of certiorari. Whenever the court denies a petition for writ of certiorari, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. If, after granting the writ, the court later denies the same as having been improvidently granted or renders decision by opinion of the court on the merits of the writ, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40. No petition for rehearing may be filed after the issuance of an order denying a petition for writ of certiorari.

[Source (as of February 22, 2023):

<http://www.lexisnexis.com/hottopics/colorado/>

APPENDIX E Order the State Court of Appeals Denying Rehearing,
dated "March 17, 2022."

APPENDIX F *In the Matter of Derek W. Cole, Appellant, v. Marcie R. McMinimee, Appellee, in her capacity as Trustee of the Derek Windell Cole Trust., Respondent, 2022-CA-1396, Colorado Court of Appeals, Denver, State of Colorado. (Filed on: August 22, 2022)*

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment(s) below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at
Appendix ____ to the petition and is

[] reported at _____; or

[] has been designated for publication but is not yet reported;
or,

[] is unpublished.

The opinion of the United States district court appears at
Appendix ____ to the petition and is

[] reported at _____; or

[] has been designated for publication but is not yet reported;
or,

[] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the DENVER PROBATE (TRIAL) court appears at Appendix B to the petition and is

reported at _____; or

has been designated for publication but is not yet reported; or,

is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United State Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition of a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 22 A 554.

The jurisdiction of this court is invoked under 28U.S.C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 2-10-2022. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: 3-17-2022, and a copy of the order denying rehearing appears at Appendix E.

An extension of time to file the petition of a writ of certiorari was granted to and including 2-23-2023 (date) on 1-20-2023 (date) in Application No. 22 A 554.

The jurisdiction of this court is invoked under 28U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV5,

ARTICLE II [Bill of Rights], Colorado Constitution (2022)
[<https://advance.lexis.com/>]:5,

STATEMENT OF THE CASE

Petitioner -- on “information, belief, and personal experience” – (respectfully) “asserts” the following:

I.

Fundamentally, this case is the “result” of what happens when peoples’ (“fundamental”) “constitutional rights” – to “Due Process” and “Equal Protection” under both the United States Constitution, Amendment XIV and ARTICLE II [Bill of Rights], Colorado Constitution (2022) – are “violated” in estate, probate, and trust cases in the United States.

II.

Generally, this case is the “result” of what happens when judicial officers” (and courts) are allowed to “violate” their “Oaths-of-Office” and “duties” to “uphold” both the U.S. Constitution and the Constitutions of all 50 States.

III.

Specifically, this case is the “result” of what happens when peoples’ (“fundamental”) “constitutional rights” – to “Due Process” and “Equal Protection” under both the United States Constitution, Amendment XIV and ARTICLE II [Bill of Rights], Colorado Constitution (2022) – are “violated” in estate, probate, and trust cases in Colorado.

IV.

Due to the fact that, in its Opinion of February 10, 2022 (Appendix A (“The Opinion on Appeal”)), the Colorado Court of Appeals, Div. III, asserted that it “lacked jurisdiction” – (allegedly) because Petitioner failed to file a timely) NOTICE OF APPEAL -- Petitioner is “compelled” to submit the following timeline of court orders:

March 13, 2020: The date the Denver Probate Court Order issued (“**APPENDIX B**”), the trial court order which Petitioner appealed to the Court of Appeals in this case.

May 1, 2020: The date Plaintiff, by (mailed) extension motion, appealed **APPENDIX B** to the Colorado Court of Appeals.

May 22, 2020: The date the Colorado Court of Appeals “Granted” Petitioner – until “June 5, 2020” – to file his **NOTICE OF APPEAL** for **APPENDIX B.**

June 5, 2020: The date Petitioner filed, by mail, his **NOTICE OF APPEAL** for **APPENDIX B.**

June 16, 2020: The date the Colorado Court of Appeals stated – in its **“ADVISEMENT OF FILING NOTICE OF APPEAL”** – that “A Notice of Appeal was filed on 06/05/20 in the case designated above... .”

September 17, 2020: The date the Colorado Court of Appeals stated – in its **“NOTICE OF FILING OF RECORD ON APPEAL AND BRIEFING SCHEDULE”** -- that “Pursuant to C.A.R. 31(a), the opening brief of appellants(s) must be filed with the Clerk on or before 10/29/20... .”

October 30, 2020: The date the Colorado Court of Appeals stated – in its “**Order for extension of time for Opening Brief** -- that “The Opening Brief is now due 12/03/2020.”

December 3, 2020: The date Petitioner (personally) filed another extension motion for filing his **OPENING BRIEF**.

December 4, 2020: The date the Colorado Court of Appeals stated – in its “**Order for extension of time for Opening Brief** -- that “The Opening Brief is now due 12/31/2020.”

December 31, 2020: The date Petitioner (personally) filed his **OPENING BRIEF**.

April 29, 2021: The date Petitioner (personally) filed an extension motion for filing his **REPLY BRIEF**.

May 4, 2021: The date the Colorado Court of Appeals stated – in its “**Order for extension of time for Opening Brief** -- that “The Reply Brief is now due 05/13/201” (*sic*) with no further extensions.”

May 13, 2021: The date Petitioner (personally) filed his **REPLY BRIEF**.

May 20, 2021: The date Petitioner (personally) filed his **“(UNOPPOSED) C.A.R. “REQUEST FOR ORAL ARGUMENT.”**

May 24, 2021: The date the Colorado Court of Appeals noted -- in its “**Order for certificate of service**” – an error made by Petitioner in serving Respondent, and ordered it be “corrected” within 14 days or the Order. Further, it “Denied” Petitioner’s **“(UNOPPOSED) C.A.R. “REQUEST FOR ORAL ARGUMENT.”**

June 7, 2021: The date Petitioner filed, by mail, proof that he “corrected” the “error” in serving Respondent.

June 10, 2021: The date the Colorado Court of Appeals noted -- in its **“ORDER OF THE COURT”** – stated: “Accordingly, the Court ORDERS that its May 24, 2021, order for certificate of service is DISCHARGED, and that the case will now be put at issue.”

February 10, 2022: The date the Colorado Court of Appeals issued its (“NOT PUBLISHED PURSUANT TO C.A.R. 35(e)”) Order – **APPENDIX A** – the “Order on Appeal” in this case.

February 24, 2022: The date Petitioner (personally) filed his (JDF-650) **“MOTION FOR MORE TIME TO FILE”** his **“PETITION FOR REHEARING.”**

March 2, 2022: The date the Colorado Court of Appeals stated – in its **“Order for extension of time to file petition for rehearing”** -- that “The petition for rehearing is due March 10, 2022 with no further extensions.”

March 10, 2022: The date Petitioner (personally) filed his “**PETITION FOR REHEARING, PURSUANT TO: C.A.R. 40.**”

March 17, 2022: The date the Colorado Court of Appeals – in its “**ORDER DENYNG PETITION FOR REHEARING – “DENIED”** Petitioner’s **PETITION FOR REHEARING, PURSUANT TO: C.A.R. 40.**”

September 30, 2022: The date the Colorado Court of Appeals issued its “**MANDATE**,” and affirmed the Denver Probate Court.

V.

In his PETITION FOR WRIT OF CERTIORARI, filed on June 23, 2022, Petitioner “apprised” the Colorado Supreme Court of the following “(Advisory) Issues” (quoted *verbatim* below):

¶ 1 Since *In re Marriage of Guinn*, 93 P.3d 568 (Colo. App. 2004) was/is (strictly) a “**division of marital property**” case (“**governed**” by “**§ 14-10-113, C.R.S. 2003**”), and this case is a “**testamentary trust**” case (“**governed**” by **Title 15** [“**PROBATE, TRUSTS, AND FIDUCIARIES**”], Colorado Revised Statutes (2022)), did the Court of Appeals

commit “error” – by “mixing apples (i.e., “§ 14-10-113, C.R.S. 2003”) and oranges (i.e., Title 15 [“PROBATE, TRUSTS, AND FIDUCIARIES”], Colorado Revised Statutes (2022))” – when it “ruled” that “... Cole hasn’t established any constitutional deprivation. He doesn’t have a property interest in the undistributed funds from the trust”? (Opinion, ¶ 20)

- ¶ 2 Does Colorado law not hold that the “property interests of a trust beneficiary “vest” – immediately -- upon the death of the “testator”?
- ¶ 3 For the future, how do Coloradans – who, like Petitioner, are the “beneficiaries” of “testamentary trusts” – “protect” themselves from the “error(s)” made by the Court of Appeals in this case?
- ¶ 4 For “posterity,” how do Coloradans – who, like Petitioner, are the “beneficiaries” of “testamentary trusts” – “prevent” Colorado’s courts from “committing” the same (“mixing apples with oranges”) “errors” in future cases?
- ¶ 5 If the Court of Appeals’ (“no property interest”) “position” – “espoused” in this case (Opinion, ¶ 20) – is the “law,” do (“similarly-situated”) Coloradans have any “property rights” – under Colorado law -- which give them “standing” to “protect” their “interests” in their “testamentary trusts”?
- ¶ 6 If the Court of Appeals’ (“no property interest”) “position” – “espoused” in this case (Opinion, ¶ 20) – is the “law,” are “interests” of Colorado’s “testamentary trust beneficiaries” (still) “protected” by (both) the U.S. and Colorado Constitutions?
- ¶ 7 Did the Court of Appeals commit “error” when it “ruled” that Petitioner’s Notice of Appeal was “untimely” (Opinion, ¶¶ 14, 15, 16), on “June 5, 2020,” when “June 5, 2020” was the (precise) “due date” the Court of Appeals gave Petitioner – in its Order dated “May 22,

2020" – for Petitioner to file his Notice of Appeal? (See: 2020COA842, Order dated "May 22, 2020")

- ¶ 8 Did the Court of Appeals commit "error" when it "ruled" that it "lacked jurisdiction" (Opinion, ¶¶ 12, 13) to consider – even as a matter of "judicial notice" when conducting an "abuse of discretion" review and analysis -- Probate Judge Leith's ("historical" and "documented") "pattern and practice" of "mistreating" Petitioner, and (systematically) denying him of his ("constitutional") "rights" to "due process" and "equal protection"?
- ¶ 9 Did the Court of Appeals commit "error" by not attempting to conduct – whatsoever -- an "abuse of discretion" review and analysis into Probate Judge Leith's ("historical" and "documented") "pattern and practice" of "mistreating" Petitioner, and (systematically) denying him of his ("constitutional") "rights" to "due process" and "equal protection"? (Opinion, ¶¶ 14, 15, 16, 18, 19)
- ¶ 10 Did Probate Judge Leith "abuse her discretion" – during the Trust hearing on January 27, 2020 – by not granting a "continuance" (TR 1/27/20, pp. 20, 40) when Petitioner "objected" (TR 1/27/20, pp. 31, 42, 58) and/or "complained" (TR 1/27/20, pp. 1- 63), about being "forced" to continue without having yet received the (subject) "hearing documents," which Respondent (falsely) reported, to the court, that she had mailed to Petitioner the previous week? (TR 1/27/20, pp. 1- 63)
- ¶ 11 Did Probate Judge Leith "abuse her discretion" – during the Trust hearing on January 27, 2020 – by not granting Petitioner's (renewed) motion that she (again) "recuse" herself (TR 1/27/20, p. 15), for (again) "mistreating" Petitioner and (again) denying him his ("constitutional") "rights" to "due process" and "equal protection"; based upon Probate Judge Leith's ("historical" and "documented") "pattern and practice"

of “mistreating” Petitioner and (again) denying him of his (“constitutional”) “rights” to “due process” and “equal protection”? (TR 1/27/20, pp. 1- 63)

¶ 12 With respect to the Trust hearing on January 27, 2020, did Petitioner lose any of his (“constitutional”) “rights” to “due process” and “equal protection” when he entered Probate Judge Leith’s courtroom on January 27, 2020? (TR 1/27/20, pp. 1- 63)

¶ 13 When considered under a “totality of the circumstances” analysis, did Probate Judge Leith’s (“historical” and “documented”) “pattern and practice” of “mistreating” Petitioner – and (systematically) denying him of his (“constitutional”) “rights” to “due process” and “equal protection” – violate the (“impartiality”) “requirements” of Canon 2 and Canon 3 Colorado Code of Judicial Conduct? (TR 1/27/20, pp. 1- 63)

[...].

VI.

In his (PETITIONER’S) C.A.R. 53(d) REPLY BRIEF, filed on July 29, 2022, Petitioner “apprised” the Colorado Supreme Court of the following (additional) “issues” for the Court’s consideration (quoted *verbatim* below):

I. “COMPLAINT(S)” ABOUT JUDGE LEITH AND RESPONDENT

¶ 2 [Note: Due to the “sensitivities” and “confidentialities” involved, Petitioner requests this (Honorable) Court to contact the both the Colorado Commission on Judicial Discipline (CCJD) and the Office of Attorney Regulation Counsel (OARC) for further

information about what Petitioner has done. In particular, Petitioner requests that “judicial notice” be taken as to the number of REPORT OF PROFESSIONAL MISCONDUCT – under Colo. RPC 8.3 [Reporting Professional Misconduct] – Petitioner has sent to OARC about Respondent and her law firm.]

II. THE (“PRECEDENTIAL”) “FUNCTION(S),” IN COLORADO, OF THE “COMMON LAW” WRIT OF CERTIORARI

¶ 3 According to the “holding(s),” in the case of *Sutterfield v. District Court in and For Arapahoe County*, 438 P.2d 236, 239 (1968), this (Honorable) Court held the following -- with respect to the “function(s), in Colorado,” of the “...common law writ of certiorari...” [quoted *verbatim*, emphasis added.]:

While the issuance of a writ of certiorari is always discretionary, this Court has the power under Article VI, section 3, to issue such writs to review interlocutory orders of lower courts. The power has been exercised where the usual review by writ of error would not afford adequate protection to substantive rights of the petitioners. See Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064; Potashnik v. Public Service Co., 126 Colo. 98, 247 P.2d 137; Swift v. Smith, 119 Colo. 126, 201 P.2d 609. In this case, it appears that all parties would be put to unnecessary delay and expense were we to require that one or both of these claims be fully tried before determining whether the claims should have remained joined in the first instance. It is also evident that, should plaintiffs obtain a favorable judgment in both lawsuits, none of the parties will be in a position to raise the important procedural question posed by this proceeding. It is the function of the common law writ of certiorari to correct substantial errors of law committed by an inferior tribunal which are not otherwise reviewable. 14 Am.Jur.2d Certiorari § 2.” *Sutterfield*, at 239.

III. (ADDITIONAL) REASONS FOR GRANTING CERTIORARI

¶ 4 Since RESPONDENT’S OPPOSITION TO PETITION FOR CERTIORARI (falsely) “alleges” -- by stating: “1. Petitioner has not presented any special and important reasons as required by C.A.R. 49, for this Court to grant certiorari” – that the PETITION FOR WRIT

OF CERTIORARI has not presented the “requisite” reasons, under C.A.R. 49, “...for this Court to grant certiorari,” Petitioner offers the following additional (“legal,” “ethical,” “equity,” “public policy,” “public interest,” and “interests of justice”) “reason(s)” why the PETITION FOR WRIT OF CERTIORARI should be “Granted”:

a. Arguably, RESPONDENT'S OPPOSITION TO PETITION FOR CERTIORARI “implicates” and/or “evidences” (“systematic”) “violation(s)” of the “obligations” and/or “requirements” set forth in her “Oath of Admission”; administered to, and taken by, all attorneys – like (both) Respondent and Petitioner – in order to hold law licenses in Colorado [quoted below, verbatim, emphasis added.]:

OATH OF ADMISSION

I DO SOLEMNLY SWEAR (OR AFFIRM) that:

I will support the Constitution of the United States and the Constitution of the State of Colorado; I will maintain the respect due to courts and judicial officers; I will employ such means as are consistent with truth and honor; I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty; I will use my knowledge of the law for the betterment of society and the improvement of the legal system; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed; I will at all times faithfully and diligently adhere to the Colorado Rules of Professional Conduct.

[Source:

<https://coloradosupremecourt.com/Current%20Lawyers/Oath.asp>]

b. Arguably, RESPONDENT'S OPPOSITION TO PETITION FOR CERTIORARI “implicates” and/or “evidences” (“systematic”) “violation(s)” of the “obligations” and/or “requirements” set forth in her “Oath of Office”; administered to,

and taken by, “Public Administrators” – like Respondent -- in Colorado [quoted below, *verbatim*, with emphasis added.]:

I, -----, in accepting the position of the public administrator in and for the ----- judicial district of the state of Colorado, do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Colorado, and that I will faithfully perform the duties of the office of public administrator as required by law.

[Source: C.R.S. § 15-12-619. “Public administrator - appointment - oath - bond – deputy”]

c. Arguably, what has been done to Petitioner -- in his family’s trust and estate cases -- “implicates” and/or “evidences” (“systematic”) “violation(s)”, by Judge Leith, of the “obligations” and/or “requirements” set forth in her “Oath of Office”; administered to, and taken by, all judges in Colorado (See: Petitioner’s Exhibit (2)).

d. Arguably, RESPONDENT’S OPPOSITION TO PETITION FOR CERTIORARI “implicates” and/or “evidences” (“systematic”) “violation(s)” – by Respondent -- of the “obligations” and/or “requirements” set forth in the Colorado’s Code of Professional Conduct (R.P.C.).

[<https://www.cobar.org/rulesofprofessionalconduct>]

e. Arguably, what has been done to Petitioner -- in his family’s trust and estate cases -- “implicates” and/or “evidences” (“systematic”) “violation(s),” by Judge Leith, of Colorado’s Code of Judicial Conduct (C.C.J.C.).

[https://www.courts.state.co.us/userfiles/file/Code_of_Judicial_Conduct.pdf]

f. Arguably, this case is “*riddled*” and “*replete*” with (“*systematic*,” “*intolerable*,” and “*unacceptable*”) – “*constitutionally*,” “*judicially*,” and “*societally*” -- “*violation(s)*” of (multiple) sections of Colorado Revised Statutes Annotated, Title 15. Probate, Trusts, and Fiduciaries (§§ 15-1-101 — 15-23-122), Colorado Uniform Trust Code (Art. 5), Article 5. Colorado Uniform Trust Code (Pts. 1 — 14).”

[Source: [Colorado Legal Resources | Statutes Document Page \(lexis.com\)](#)]

g. Specifically -- due to all of her (“*overt*,” “*systematic*,” “*continuous*,” “*adversarial*,” “*unethical*,” and “*unlawful*”) “*mistreatment*” of Petitioner – Respondent has (“*clearly*,” if not “*arguably*”) “*violated*” her fiduciary duty/duties,” under C.R.S. § 15-5-802 [“*Duty of Loyalty*”], to “*...administer the trust solely in the interests of the beneficiaries*.” [Emphasis added.]

[Source: [Colorado Legal Resources | Statutes Document Page \(lexis.com\)](#)]

h. Arguably, what has been done to Petitioner -- in his family’s trust and estate cases -- “*implicates*” and/or “*evidences*” an (“*untenable*”) “*departure*,” by (both) the Denver Probate Court and the Colorado Court of Appeals, from the “law” set forth in the U.S. Supreme Court opinions cited, by Petitioner, in his PETITION FOR WRIT OF CERTIORARI.

i. Again, If this (Honorable) Supreme Court was to take “*judicial notice*” of the “*findings, conclusions, and recommendations*” of all of the following “Performance Audits” – “initiated” by the State Auditor pursuant to Section 2-3-103, C.R.S. -- it would (*clearly*) see that this case “*suffers*” from a multitude of the same “maladies,” “ethics problems,” “avarice,” “conflicts of interest,” and (“*kleptocratic*”) “*injustices*” which, for decades, have “*plagued*” this area of Colorado law; and which the

following Performance Audits, in fact, “exposed” to the “light of day” [...]

VII.

Additionally, Petitioner asserts -- “on information, belief, and personal experience” – that the State of Colorado has “violated” his “rights” under the following federal Acts and U.S. Code sections:

- a. The Civil Rights Act of 1866;
- b. 18 U.S.C. 242 ["Deprivation of rights under color of law"];
- c. 42 U.S.C. 1983 ["Civil action for deprivation of rights"]; and

VIII.

Further, Petitioner asserts that the State of Colorado has “violated” his “rights” under the following Colorado Statutes and (well-established) “edicts” of “the common law”:

- a. (“Implicated”) “violation(s)” of: Title 15 [“PROBATE, TRUSTS, AND FIDUCIARIES”], C.R.S. (2022)); and

b. The "common law" regarding: the "common law" of "testamentary interests"; the "common law" of "vesting" of "testamentary interests"; the "common law" of "trusts"; and the "common law" regarding the "fiduciary duties" trustees "owe" their "beneficiaries."

IX.

Finally, Petitioner that, effectively, the State of Colorado – when the Court of Appeals misapplied its own case law to Petitioner's case (to wit: "... Cole hasn't established any constitutional deprivation. He doesn't have a property interest in the undistributed funds from the trust. *In re Marriage of Guinn*, 93 P.3d 568 (Colo. App. 2004") – has "eviscerated" Petitioner's "constitutional rights" to his own ("lawful" and "vested") "testamentary inheritance."

REASONS FOR GRANTING THE PETITION

I.

Respondent is an attorney and, in her (“official”) “quasi-government” capacity, Respondent, Marcie R. McMinimee, is the “Assistant County Administrator” for the City & County of Denver, Colorado.

II.

Also “apprised, the following links (as of December 14, 2022) – to Colorado’s 2006, 2011, and 2017 Performance Audits into “Probate Cases (2006), “Guardianships and Conservatorships” (2011), and “Public Administrators” – which reveal that, since 2006, the Colorado Supreme Court has been “apprised” about the (“legal” and “ethical”) “problems” Colorado is experiencing in those areas of (Colorado) law and courts which have been audited:

September 11, 2006 (Colorado State Audit):

https://leg.colorado.gov/sites/default/files/documents/audits/1774_probatecases_perf_contr_sept_2006.pdf

September 1, 2011 (Colorado State Audit):

https://leg.colorado.gov/sites/default/files/documents/audits/2132_judbranchguardconservsept2011.pdf

August 30, 2017 (Colorado State Audit):

https://leg.colorado.gov/sites/default/files/documents/audits/1678p_public_administrators_0.pdf

III.

Also “apprised, the following links (as of December 14, 2022) – to (Colorado) television news coverage and newspaper articles – which reveal that, increasingly, Colorado’s media outlets are, as matters of “public interest,” reporting on the (“legal” and “ethical”) “problems” Colorado is experiencing in the areas of “guardianships,” “conservatorships,” and “judicial discipline”:

May 17, 2021 (Updated: May 18, 2021) (Channel 7 Report):

<https://www.thedenverchannel.com/news/investigations/colorado-guardianships-can-bleed-estates-with-little-to-no-oversight>

July 9, 2021 (Last Updated: July 12, 2021) (Channel 7

Report):

<https://www.thedenverchannel.com/news/investigations/colorado-lawmaker-wants-more-accountability-transparency-in-states-guardianship-system>

October 8, 2021 (Last Updated: October 8, 2021) (Channel 7

Report):

<https://www.thedenverchannel.com/news/investigations/former-denver-court-clerk-blew-whistle-10-years-ago-about-conservatorship-system>

March 25, 2022 (Last Updated: March 25, 2022) (Channel 7

Report):

<https://www.thedenverchannel.com/news/investigations/colorado-bill-on-guardianship-protections-elicits-passionate-testimony>

Denver Post (2022-04-15):

<https://www.denverpost.com/2022/04/15/colorado-supreme-court-justices-testify-reform-bill-judicial-discipline/>

Reporter-Herald (2022-04-15):

<https://www.reporterherald.com/2022/04/15/colorado-supreme-court-justices-testify-reform-bill-judicial-discipline/>

IV.

Also “apprised,” the following link (as of December 14, 2022) – to the (official) audio recording of the (April 14, 2022) Colorado Senate Judiciary Committee’s hearing on “SB22-201: Commission On Judicial Discipline (Lee, Gardner, Weissman)” – which reveals that Colorado Supreme Court Chief Justice Brian Boatright (who testified at that hearing) acknowledged “inadequacies” in the Colorado’s system for disciplining judges:

SB22-201: Commission On Judicial Discipline (Lee, Gardner, Weissman):

<https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20220416/41/13330#agenda>

V.

As *NC DEPT. OF REV v. KIM RICE KAESTNER 1992 TRUST* is one of this Court's (precedential) cases, it should prevail over the (numerous) "reversible errors" made by the Colorado Court of Appeals in this case.

CONCLUSION

For all of the foregoing reasons forth herein and for “good cause” shown – and due to the fact that the State of Colorado has “eliminated” Petitioner’s “constitutional rights” to his own (“lawful” and “vested”) “testamentary inheritance” – Petitioner (respectfully) requests that this (Honorable) Court “GRANT” this PETITION FOR A WRIT OF CERTIORARI; if for no other reason(s) than to ensure that no other American, Coloradan, or veteran, is made to endure the same, or similar, “travesties of justice,” in contravention of both the U.S. and Colorado Constitutions, as have been “committed” in this case.

Respectfully submitted,


Mark W. Coll

Date: 2-22-2023