

No. \_\_\_\_ - \_\_\_\_\_

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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In re the matter of Derek Windell Cole Trust,

Derek W. Cole,

Applicant,

v.

Marcie R. McMinimee, in her capacity as Trustee of the Derek Windell Cole Trust,

Respondent.

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**APPLICATION FOR EXTENSION OF TIME TO  
FILE PETITION FOR WRIT OF CERTIORARI**

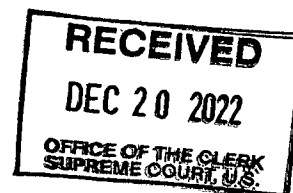
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**To the Honorable Neil M. Gorsuch  
Associate Justice of the United States Supreme Court  
and Circuit Justice for the Tenth Circuit**

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*Applicant (Pro Se):*

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**To the Honorable Neil M. Gorsuch, Associate Justice of the United States Supreme Court and Circuit Justice for the Tenth Circuit**

**I. CALCULATION(S) OF FILING DEADLINE(S)**

¶ 1 Pursuant to Supreme Court Rules 13.5 and 30.2 (2019), Derek W. Cole (“Applicant”) respectfully requests an extension of time to file a petition for a writ of certiorari. As calculated under Supreme Court Rule 13.1 (2019), the (earliest) deadline, for Applicant to file his petition, falls on Sunday, December 25, 2022; ninety (90) days from the Colorado Supreme Court’s (Denial) Order of “Monday, September 26, 2022.” (**Appendix (A)**) Conversely, and as calculated under Supreme Court Rule 30.1 (2019), the (latest) deadline falls on Tuesday, December 27, 2022.<sup>1</sup> As such, and for “good cause” set forth herein, Applicant respectfully requests that his deadline be extended by sixty (60) days so that the new deadline would be Friday, February 24, 2023.

**II. BASIS FOR JURISDICTION**

¶ 2 This Court has jurisdiction under **28 U.S.C. § 1257(a)**; which states (*verbatim*):

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the

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<sup>1</sup> Pursuant to Supreme Court Rule 30.1, two (2) days were added to the calculation to move the due date from Sunday, December 25, 2022, to the “next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed,” namely, Tuesday, December 27, 2022.

Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

### **III. JUDGMENT SOUGHT TO BE REVIEWED**

¶ 3 The Colorado Supreme Court's Order of "Monday, September 26, 2022."

(attached as **Appendix A**)

### **IV. REASONS EXTENSION IS JUSTIFIED**

¶ 4 Supreme Court Rule 13.5 provides that "An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified." Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified are set forth, below, in paragraphs ¶¶ 5 - 14.

¶ 5 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” – 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\\_probate\\_cases\\_perf\\_contr\\_sept\\_2006.pdf](https://leg.colorado.gov/sites/default/files/documents/audits/1774_probate_cases_perf_contr_sept_2006.pdf)**

**September 1, 2011 (Colorado State Audit):**

**[https://leg.colorado.gov/sites/default/files/documents/audits/2132\\_judbranchguardconservsept2011.pdf](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/1678publicadministrators0.pdf>**

¶ 6 In her (“official”) “quasi-government” capacity, Respondent, Marcie R. McMinimee, is the “Assistant County Administrator” for the City & County

of Denver, Colorado.

¶ 7 The following links (as of December 14, 2022) – to (Colorado) television news coverage and newspaper articles -- 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/>

¶ 8 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)” – 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>

¶ 9 In his PETITION FOR WRIT OF CERTIORARI, filed on June 23, 2022, Applicant “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 “**lack[ed] 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)

[...].

¶ 10 In his (PETITIONER’S) C.A.R. 53(d) REPLY BRIEF, filed on July 29, 2022, Applicant “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](https://www.courts.state.co.us/userfiles/file/Code%20of%20Judicial%20Conduct.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](https://www.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**" [...]

¶ 11 In addition to the foregoing "reasons extension is justified," Applicant asserts -- "on information and belief" -- 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"]; and
- c. 42 U.S.C. 1983 ["Civil action for deprivation of rights"]; and

¶ 12 Further, Applicant 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”], Colorado Revised Statutes (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.”

¶ 13 Finally, Applicant asserts that, effectively, the State of Colorado – when the Court of Appeals misapplied its own case law to Applicant’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” Applicant’s “constitutional rights” to his own (“lawful” and “vested”) “testamentary inheritance.”


#### IV. CONCLUSION

¶ 14 For all of the foregoing reasons, with “good cause” shown – and due to the

fact that the State of Colorado has “eliminated” Applicant’s “constitutional rights” to his own (“lawful” and “vested”) “testamentary inheritance” – Applicant respectfully requests that this Court grant this application for an extension of time to file a petition for writ of certiorari; if for no other reason(s), than (1) to allow Applicant to conduct further research into these (“case-of-first-impression”) “issues,” and (2) to allow Applicant sufficient time to draft and prepare a petition for writ of certiorari “worthy” of this (Honorable) Court’s consideration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-14, 20 22

  
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