



**ORIGINAL**

No. 23-1304

In The  
**Supreme Court of the United States**

**LINDA SMITH and KIRK SIDDELL,**  
*Petitioners,*

v.

**DAVID R. HEILMAN, TRUSTEE OF  
THE RALPH A. SIDDELL LIVING  
TRUST AND THE WILLIAM H.  
JOHNSON JR. LIVING TRUST,**

*Respondent.*

**On Petition for Writ of Certiorari  
to the Michigan Court of Appeals**

**PETITION FOR WRIT OF CERTIORARI**

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*Petitioner Pro Se*

*Petitioner Pro Se*

## QUESTIONS PRESENTED

The Allegan County Probate Court derives its limited jurisdiction and power from statutory authority under the Estates and Protected Individuals Code ("EPIC") concerning, among other issues, the construction, administration and validity of estates of decedents and trusts.

Section 700.7604(1) provides:

"(1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

- (a) Two years after the settlor's death.
- (b) Six months after the trustee sent the person a notice informing the person of *all of the following*:
  - (i) The trust's existence.
  - (ii) The date of the trust instrument.
  - (iii) The date of any amendments known to the trustee.
  - (iv) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.
  - (v) The settlor's name.
  - (vi) The trustee's name and address.
  - (vii) The time allowed for commencing a proceeding." (Emphasis added.) Words or phrases bolded and underlined are defined by statute.

By law,<sup>1</sup> §700.7604(1)(b) requires the application of the following relevant statutory definitions:

- a. §700.1104(m) – “Governing instrument”
- b. §700.1106(u) – “Proceeding”
- c. §700.1107(k) – “Terms of the trust”
- d. §700.1107(n) – “Trust”
- e. §700.7103(n) – “Trust instrument”

After application of the definitions, the statute is to be liberally construed.<sup>2</sup>

The questions before this Court are:

1. Whether the Michigan Courts committed plain legal error construing and applying §700.7604(1)(b) by declining to apply the relevant statutory definitions of §700.7103(n), §700.1104(m), §700.1106(u), §700.1107(k), §700.1107(n), and narrowly construing the statute, to claim a trustee owes no duty to include with the notice under §7604(1)(b), all amendments to a trust that describe or affect a beneficiary’s interest in the trust, in order to trigger the six-months limitation period to bar a beneficiary’s claims to contest the validity of the trust.
2. Whether the Michigan Courts’ failure to enforce a trustee’s affirmative duty to disclose all material facts for the beneficiaries to protect their interests under §700.7814(1) and §700.7814(2)(a) to (c) violates a beneficiary’s rights to equal protection of laws and due

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<sup>1</sup> §700.1102

<sup>2</sup> §700.1201

process under the Fourteenth Amendment, §1 of the U.S. Constitution.

3. Whether the Michigan Courts committed plain legal error by failing to enforce §700.1205(3) that provides two year statutory tolling after a party discovers fraud was perpetrated in connection with a proceeding or in a statement filed under EPIC, and to avoid or circumvent the provisions or purposes of EPIC, providing a person injured by the fraud relief against the perpetrator of the fraud or restitution from a person that benefited from the fraud, whether innocent or not.
4. Whether §700.7802(2) provides a qualified trust beneficiary standing to contest the validity of a trust, or redress a trustee's fraud and circumvention of duty, perjury in court proceedings, and embezzlement, notwithstanding the type or amount of the beneficiary's interest under the trust.

## **PARTIES TO THE PROCEEDINGS**

Petitioner, Linda Smith, is the sister of William H. Johnson Jr., Plaintiff in the Allegan County Probate Court, Appellant in the Michigan Court of Appeals, and Michigan Supreme Court. Petitioner Kirk Siddell is the son of Ralph Siddell, Plaintiff in the Allegan County Probate Court, Appellant in the Michigan Court of Appeals, and the Michigan Supreme Court. Respondent, David R. Heilman, Trustee of the William H. Johnson Jr. Living Trust and Trustee of the Ralph A. Siddell Living Trust, is

Defendant in the Allegan County Probate Court, and Appellee in the Michigan Court of Appeals and Michigan Supreme Court. Wounded Warrior Project, is a charitable beneficiary, appearing in the Probate Court, and Appellee in the Michigan Court of Appeals and Michigan Supreme Court. All Saint's Episcopal Church and Christian Neighbors are charitable beneficiaries appearing in the Allegan County Probate Court only.

A corporate disclosure statement is not required because neither Petitioner is a corporation. See. U.S. Supreme Court Rule, 29.6.

#### **STATEMENT OF RELATED CASES**

The following proceedings are directly related to this Petition, within the meaning of U.S. Supreme Court Rule 14.1(b)(iii):

A. Allegan County Probate Court Case No.  
2020-62158-CZ

*Linda Smith vs. David Heilman, Trustee of the William H. Johnson Jr. Living Trust and the Ralph A. Siddell Living Trust.*

1. Order disposing personal property entered: 4/1/2022
2. Linda Smith's Motion for Reconsideration to retain 50% of the personal property as opposed to 50% of the proceeds from the sale of the property was made: 4/22/2022
3. Amended Order entered: 6/7/2022.
4. Linda Smith's motion for reconsideration to receive the property denied: 7/21/2022.

B. Allegan County Probate Court Case No. 21-62806-TV

*In re Ralph A. Siddell Living Trust Kirk Siddell vs David Heilman, Trustee of the Ralph A. Siddell Living Trust; Petition to determine validity of the Ralph A. Siddell Living trust.*

1. Amended Opinion entered: 11/1/2021
2. Reconsideration Sought: 11/19/2021
3. Reconsideration denied: 12/28/2021

C. Allegan County Probate Court Case No. 21-62791-TV

*In re Ralph A. Siddell Living Trust David R. Heilman's Petition to Determine Validity of the Ralph A. Siddell Living Trust.*

1. Amended Opinion entered: 11/1/2021

D. Allegan County Probate Court Case No. 21-62888-TV

*In Re Ralph A. Siddell Living Trust – Petition by Linda Smith Petition to Determine Validity of Ralph A. Siddell Living Trust.*

1. Amended Opinion entered: 11/1/2021
2. Reconsideration sought: 11/22/2021
3. Reconsideration denied: 12/28/2021

E. Michigan Court of Appeals Consolidated Docket Numbers: 359979; 359991; 361535

*In re Ralph A. Siddell Living Trust Linda Smith Appellant Kirk Siddell Appellant David Heilman Appellee*

1. 5/11/2023 the Michigan Court of Appeals affirmed the Probate Court's Amended Opinion of 11/1/2021.
- F. Michigan Supreme Court Docket No. 165816  
*In re Ralph A. Siddell*  
*Kirk Siddell, Appellant, vs. David Heilman, Appellee*
  1. Review Denied March 1, 2024
- G. Michigan Supreme Court Docket No. 165817, COA: 359991  
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## **PETITION FOR WRIT OF CERTIORARI**

Pro Se Petitioners, Linda Smith (age 78), living in Kentucky, and Kirk Siddell (age 67), a Texas resident, jointly bring this Petition for Writ of Certiorari under U.S. Supreme Court Rule 12, ¶4. The Michigan Courts consolidated Petitioners' cases, and jointly address their issues. (App.A2; App.A29) The questions are identical. Linda spent over \$198,000.00 in legal fees, and she must now represent herself.

### **OPINIONS BELOW**

On 5/11/2023, the Michigan Court of Appeals affirmed the Allegan County Probate Court's Amended Opinion of 11/1/2021. The Probate Court denied reconsideration on 12/28/2021. The unpublished opinions are reproduced verbatim in Petitioners' Appendix at A1 thru A26, A27 thru A37 and A38 thru A41. The Michigan Supreme Court denied review 3/1/2024. (App.A42 thru A45)

### **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. §1257(a). The Michigan Appeals Court decision became final 5/11/2023. The Michigan Supreme Court denied review 3/1/2024. This Court has jurisdiction over trusts, and the contours of probate matters. *Markham v. Allen*, 326 U.S. 490, 494 (1946)

## **RELEVANT U.S. CONSTITUTIONAL AND U.S. AND MICHIGAN STATUTORY PROVISIONS**

Relevant constitutional and statutory provisions are reproduced verbatim in Petitioners' Appendix pages B1 through B33.

### **STATEMENT OF THE CASE**

The petition before this Court concerns an urgent and compelling issue of national significance due to the rising crime of Elderly Financial Exploitation by dishonest financial service providers with at least one retail office in nearly every city.

On 12/16/2016, William Johnson, Jr., ("Bill") the husband of Ralph Siddell ("Ralph"), who was also Ralph's fiduciary, oversaw his finances and healthcare, died unexpectedly. (App.E15-¶18 thru ¶20)

Eighty-two days later, on 03/08/2017, George Stoutin, the Edward Jones financial advisor and stockbroker that managed their accounts, and Stoutin's husband, Respondent, David Heilman (also an Edward Jones employee), 30 years Ralph's junior, financially exploited Ralph, when they created the Second Restatement of the Ralph A. Siddell Living Trust (the "2017 Amendment"), and then used non-disclosure and deception to unduly influence Ralph to sign the amendment to benefit themselves, with the intent to embezzle trust assets from Petitioners, and charities, after Ralph's death.

When Ralph signed the 2017 Amendment, he was an incapacitated individual,<sup>3</sup> receiving daily personal care,<sup>4</sup> including cognitive supervision. Ralph was a vulnerable adult, whether or not the court determined he was an incapacitated individual.<sup>5</sup> By law, Respondent and Stoutin were prohibited from self-dealing,<sup>6</sup> and their conduct violated criminal laws that prevent a person from indirectly or directly obtaining an interest in a vulnerable adult's money or property.<sup>7</sup>

***Ralph died 8/30/2019.*** Respondent, as trustee of Ralph's Trust, owed duties to Petitioners, as beneficiaries of Ralph's Trust, an affirmative duty to disclose all material facts for Petitioners to protect their interests.<sup>8</sup> Instead, Respondent, and his lawyers, deliberately concealed material facts, made misstatements, committed perjury in court proceedings, and deliberately misrepresented the law to the Michigan Courts, to prevent detection of Respondent's 2017 self-dealing to defraud Petitioners.

After Petitioners discovered Respondent's fraud to circumvent his duty of full disclosure, and his undue influence upon Ralph, they brought claims to contest the 2017 Amendment within two years of Ralph's death, and within two-years from

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<sup>3</sup> §700.1105(a)

<sup>4</sup> §750.145m(m)

<sup>5</sup> §400.11(f); §750.145m(u)(i) and (iii); §750.174a(15)(c)

<sup>6</sup> §700.1214

<sup>7</sup> §750.174a(1)

<sup>8</sup> §700.7814(1) and §700.7814(2)(a) to (c)

discovering Respondent's fraud.<sup>9</sup> However, the Michigan Courts determined the notices Respondent mailed to Petitioners under §700.7604(1)(b) provided sufficient information to advise Petitioners they should have known they had claims in jeopardy to trigger the six-months limitations period to contest the 2017 Amendment, and their claims were untimely. They determined Kirk's distribution under the 2017 Amendment was larger than his distribution under the 2012 Amendment, he suffered no injury, and lacked standing to contest the 2017 Amendment to reinstate the 2012 Amendment.

## DISCUSSION

"According to the U.S. Department of Justice, elder abuse,...affects at least 10 percent of older adults each year in the United States, with millions of older adults losing more than \$3 billion to financial fraud annually as of 2019. (Footnote excluded.)<sup>10</sup> "Trusted persons who commit elder theft ... include familiar associates and acquaintances such as neighbors, friends, financial services providers, other business associates, or those in routine close proximity to the victims." (Emphasis added.) "Criminals frequently exploit victims' reliance on support and services and will take advantage of any cognitive and physical

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<sup>9</sup> §700.1205(3)

<sup>10</sup> See, *Elderly Financial Exploitation Advisory* (Fincen.gov), June 15, 2022), U.S. Treasury, Financial Crimes Enforcement Network

disabilities, or environmental factors such as social isolation, to establish control over the victims' accounts, assets, or identity.”<sup>11</sup> Often, due to age, cognitive impairment, isolation, fear of physical harm, lack of social support or financial resources, victims fail to report the financial exploitation.

The United States currently has the largest class of Americans that established, or will establish, estate/trust plans, with the expectation their plans, and the laws that govern them, are sufficient to carry out their wishes. This Petition demonstrates why our citizenry must carefully create their estate plans, since corrupt financial service providers, fiduciaries, dishonest lawyers, and *a state court’s failure to enforce its laws*, will eviscerate a settlor’s plans, irreparably damaging beneficiaries, that also leaves a stain on the reputation of honest financial service providers, fiduciaries, lawyers and this nation’s courts.

“The greatest threat to national security is the corruption of justice.”<sup>12</sup> See generally, Nicholas, Fighting the Probate Mafia: A Dissection of the Probate Exception to Federal Court Jurisdiction, 74 Cal. L. Rev. 1479, p. 1501 (2001), where Professor Nichols claims “probate courts have a reputation for bias and corruption.”

In this dispute, Respondent’s counsel misrepresented the law to the Michigan Courts, who then failed to scrutinize Respondent’s self-dealing,

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<sup>11</sup> *Id.*, p.4

<sup>12</sup> See, “The Probate Mafia.” [probatemafia.com](http://probatemafia.com).

deception, fraud and perjury, deliberately omitted statutory definitions from §700.7604(1)(b) before construing the statute, failed to enforce Petitioners' rights to two-year tolling after discovering Respondent's fraud, to then dismiss Petitioners' claims to contest the 2017 Amendment as untimely, leaving Petitioners with the belief they encountered Michigan's Probate Mafia.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On 4/19/2021, Respondent sought, and obtained, suspension of discovery (App.C7 thru C8), and refuses to respond to requests for information. Thus, the factual background is based on Petitioners' personal knowledge, documents produced in Case No. 2020-62158-CZ, filed against Respondent, as trustee of the William H. Johnson Jr. Trust ("Bill's Trust") and the Ralph A. Siddell Living Trust ("Ralph's Trust), affidavits, and deposition or trial testimony.

After Kirk's parents divorced, in 1963 Bill and Ralph began a romantic relationship.

In 1998, they created separate, identical, reciprocal, joint/mutual trusts, that they amended in 2004, 2006, and on 8/29/2012 (the "2012 Amendments" or "Ralph's 2012 Amendment").

The affidavit of Attorney Danielle Streed, scrivener of their original trusts, and the three amendments, claims the trusts were made pursuant to an agreement intended to be binding at their

death. (App.E52-¶3.4) By law,<sup>13</sup> since the trusts were funded by more than one settlor with community property with general assignments, they could only be amended by both of them. George Stoutin was liaison between Danielle Streed and Bill and Ralph to create the amendments. (App.E11-¶5; App.E51-¶3.1)

Respondent claims he replaced Linda as successor trustee since Bill and Ralph didn't trust her, which is absurd, since Linda remained a successor fiduciary/trustee under their 2012 estate plans, had unencumbered access to their home, was an owner on their safety deposit box, and spent nearly every birthday and holiday with them. (App.E10-¶4)

Their 2012 Amendments did not expressly provide terms to maintain the survivor's standard of living, but expressly agreed to limit the trustee's discretion to distribute assets to the survivor only if the survivor's income or property was insufficient for his maintenance. (App.E12-¶9)

"Section 2.1(c) [of the 2012 Amendments] provided: 'a person is considered to be disabled (and disability is similarly removed) when a non-biased beneficiary or Trustee receives proof that: (i) A court of competent jurisdiction has determined that the individual is (or is no longer) legally incapacitated to handle financial transactions; (ii) Two physicians licensed by the State in which the person is domiciled have certified in writing that he or she is

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<sup>13</sup> §700.7602(2)(a)

incapable (or is again capable) of exercising judgement about or attending to financial or property transactions." (Brackets/Emphasis added.) (App.A34)

Bill and Ralph, both 85, legally married 8/16/2015, and didn't amend their estate plans.

In January of 2016, Ralph couldn't live independently, and began receiving *daily personal care*<sup>14</sup> *including cognitive supervision from licensed nurses* for acute conditions<sup>15</sup> due to chronic illness,<sup>16</sup> including permanent cognitive impairment,<sup>17</sup> that included assistance with bathing, grooming, diapering, transporting, ambulating, obtaining food and maintaining a medication schedule. (App.E13-¶13) Bill's Trust paid the premiums for Ralph's long-term insurance, activated by Genworth Financial, based upon written certifications from Ralph's physicians under perjury, he was chronically ill, had a permanent form of cognitive disease, and the benefits were medically necessary. Genworth's medical staff performed their own evaluations, and created Ralph's plan of care.

The written certifications, provided to Bill Johnson, were sufficient to comply with the terms of Ralph's 2012 Amendment, ¶2.1(c)(ii) to determine

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<sup>14</sup> §400.11(f); §750.145m(m); §750.145m(u)(i) and (iii)

<sup>15</sup> §500.3901(a)

<sup>16</sup> §500.603(b)

<sup>17</sup> Genworth confirmed Ralph received benefits after 11/3/2016, but his benefits began January 2016.

Ralph was “disabled” under ¶2.1(b), and his trust irrevocable. (App.E13-¶13).

When Ralph began receiving the personal care, as a matter of law, he was a *vulnerable adult*,<sup>18</sup> *whether or not a court determined him incapacitated*.<sup>19</sup> Bill was Ralph’s fiduciary, managed Ralph’s finances, and oversaw his care. (App.E9-§C-¶1)

On 11/24/2016, Bill fell, was hospitalized, and became fatally septic. (App.E13-¶14)

On 12/14/2016, Attorney Jeffrey Helder sent an email to Respondent and Stoutin attaching a trust amendment for Bill, though Helder claims he never did estate planning for Bill, or spoke to Bill. (App.E14-¶15 thru ¶16; App.E60-¶4.9)

***Bill died 12/16/2016.*** Next business morning, Respondent drove Ralph to the bank to empty the safety deposit box he had not opened in 13 years. (App.E15-¶20) Also, Respondent sent an email to Helder’s office, upset that Bill hadn’t signed the trust amendment before he died.

After Bill’s death, Respondent took control of Ralph and “[c]oordinated with his nurses, made sure nursing staff was there, doing the right things, making sure he was getting his meals made, making sure he was being taken care of.” (SA1620/DHDepo, p. 60, lns.9–p.61, ln.6).” (App.E83) Respondent knew Ralph “SUFFERED FROM A NUMBER OF ISSUES WHICH MADE IT APPEAR HE WOULD NOT

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<sup>18</sup> §750.145m(u)(i) and (iii)

<sup>19</sup> §750.174a(15)(c)

LONG SURVIVE BILL AND THAT HE WOULD NOT BE IN A POSITION TO MANAGE HIS PERSONAL FINANCES NOR THAT OF BILL'S TRUST." Ralph was an incapacitated individual, crying daily, wanting to die to be with Bill. (App.E15-¶18 thru ¶19) Respondent didn't believe he would live long. (App.E54-¶3.8)

Under the terms of Bill's Trust, or by law,<sup>20</sup> Ralph did not have an immediate right to Bill's Trust assets, because Ralph had sufficient income and property for his maintenance. His income was approximately \$4,000 per month, he had \$33,452.58 at Macatawa Bank, received a \$98,620.69 IRA at Bill's death, his Edward Jones accounts had a balance of \$327,063.16, his home and car were unencumbered, and his monthly expenses low. (App.E82) However, since Respondent believed Ralph would soon die, Bill's Trust assets were exhausted first, without giving notice to the other beneficiaries, as required by law,<sup>21</sup> for them to protect their interests under Bill's Trust.

On 1/10/2017, Stoutin and Attorney Helder began creating an amendment for Ralph to benefit Respondent and Stoutin. Helder never obtained waivers for the dual representation, nor a retainer agreement from Ralph. (App.E55-¶3.10)

Respondent testified he never spoke to Ralph about changing his trust until after he saw the draft. (App.E60-¶4.1) But emails prove, before Ralph saw

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<sup>20</sup> §700.7815(1)

<sup>21</sup> §700.7820a(7)

the draft, the changes were between Respondent and Helder only. (App.E16-¶23)

On 2/10/2017, Respondent sought appointment as cotrustee of Bill's Trust, claiming Ralph only needed a little help, concealing Ralph's true health status from the court. The court questioned Attorney Helder whether guardianship was necessary. *Helder responded "it is an issue" and he would seek that order.* Instead, without Ralph's consent, Helder sought Respondent's appointment as trustee of Bill's Trust, that the court granted 2/22/2017. (App.E80 thru E81) "If Ralph was competent there was no need for the court's orders." (App.E81) Respondent claims he immediately relinquished trusteeship back to Ralph since "Ralph got better," but never gave notice to the beneficiaries, as required by law.<sup>22</sup>

On 2/24/2017, Attorney Helder emailed a proposed draft of the 2017 Amendment to Ralph: "Ralph: I'm attaching a revised trust, which makes the changes requested by David in his last email to me, earlier this week." (App.E18-¶27)

Ralph no longer read well, and relied on Respondent to explain the "redlined" draft to him on the evening of 2/27/2017. The draft was deceptive, and notably "redlined" distributions similar to those Respondent and Stoutin would receive under the 2012 Amendments, but failed to "redline" or disclose that after Ralph's death, they would receive all property, and Linda would only receive 10 items, if

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<sup>22</sup> §700.7705(1)

anything was left over. Ralph had no independent legal advice before signing the 2017 Amendment. (App.C2-§G-C3; App.E18-¶28 thru E19-¶30)

On 03/08/2017, Respondent drove Ralph to Helder's office. Helder testified he gave the documents to Respondent and Ralph to review and sign. Respondent and Stoutin, self-dealt, and indirectly or directly obtained an interest in Ralph's money and property in violation of civil and criminal laws.<sup>23</sup> Since Respondent was Linda's fiduciary under Bill's Trust, and trustee of Ralph's Trust, whether or not confirmed or appointed by the court,<sup>24</sup> his self-dealing constituted embezzlement by an agent<sup>25</sup> from Linda who was 72.<sup>26</sup>

Ralph wasn't given a copy of the documents at signing, but on 05/03/2017, Denise Teunis, a nurse hired by Respondent, signed a receipt for the documents. "On July 20, 2017, Helder emailed Ralph's estate plans to Barbara McNally at Edward Jones. Ralph was not included on this email." (App.E59-¶(4);

*Ralph died 8/30/2019.* That day, Respondent changed the locks on the house, preventing Linda from accessing the estate planning binders Bill and Ralph maintained. (App.E19-¶32)

By law, Kirk, was the only person authorized to make decisions about Ralph's body, or plan his

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<sup>23</sup> §700.1214; §750.174a(1)

<sup>24</sup> §700.1107(o)

<sup>25</sup> §750.174(1)

<sup>26</sup> §750.174(12)(b)

funeral.<sup>27</sup> But to conceal Ralph's death from Kirk, Respondent fraudulently signed documents to dispose of Ralph's body, and planned his 9/22/2019 memorial, that was also concealed from Kirk.

Attorney Helder waited until 9/24/2019, to mail notice to Kirk under §700.7604(1)(b), enclosing a copy of his distribution under the 2017 Amendment only. (App.E21-¶36)

After Kirk received notice, Kirk and Respondent communicated. Respondent promised to send Kirk wedding photos from his parent's wedding. Kirk never suspected Respondent was concealing information, or in the midst of embezzling Ralph's vehicle through a fraudulent affidavit he submitted to the Michigan Secretary of State. (App.E20-¶33 thru E21-¶34)

Linda was sent notice under §700.7604(1)(b), on 10/24/2019, enclosing a copy of her interests under the 2017 Amendment only. (App.E21-¶36) Linda discovered she had essentially been disinherited, differing from what Bill told her would happen after they both died.

On 10/29/2019, Linda sent a letter to Attorney Helder seeking Ralph's complete trust. Helder knew Linda possessed interests under Ralph's 2012 Amendment, but on 11/15/2019, he replied by email to Linda's newly-retained lawyer: ***"Mrs. Smith has repeatedly asked for a complete copy of Ralph's Trust, which we have told she was not entitled to. However, my client has authorized me to***

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<sup>27</sup> §700.3206(2)

*nonetheless supply you with a copy of “Ralph’s trust.”* (App.E46-¶2.8)

#### **A. ALLEGAN PROBATE COURT PROCEEDINGS.**

In March of 2020, Linda filed a civil action in Allegan County Probate Court against David Heilman as Trustee of both trusts. Linda served interrogatories upon Respondent. On 7/20/2020, Respondent served verified responses claiming at Ralph’s death he had no living relatives. (App.E47-¶2.10) Respondent never disclosed to Kirk Linda Smith’s lawsuit that affected Ralph’s Trust.

On 12/17/2020, months after the expiration of the six-months limitation period under §700.7604(1)(b), Attorney Brower, of Miller Johnson sent an email to Linda’s lawyer disclosing Linda Smith’s interests under Ralph’s 2012 Amendment. (App.E47-¶2.12)

On 12/18/2020, at deposition, Respondent claimed **“Ralph doesn’t have a son.”** Appellant was adopted, and Ralph relinquished his parental rights.” (App.E22-¶39)

Linda became suspicious, and in January of 2021, she located Kirk, and explained to him Respondent’s claims. (App.E22-¶38) That was the first time Kirk knew something was wrong.

On 1/21/2021, Jeffrey Helder produced documents demonstrating Respondent used fraud, non-disclosure, a deceptive redline, and undue influence to induce Ralph to sign the 2017 Amendment. (App.E57-¶4.4 thru ¶4.5)

On 1/25/2021, Respondent notified Kirk of Linda's lawsuit affecting Ralph's Trust.

After Respondent and Helder's disclosures, Petitioners discovered Helder's 11/15/2019 email was an affirmative misrepresentation intended to induce Linda's reliance that she possessed no other interests under Ralph's Trust, and to conceal Respondent's 2017 self-dealing.

On 03/12/2021, Kirk filed a petition to remove Respondent as trustee, and to invalidate the 2017 Amendment for undue influence.

On 4/19/2021, the Probate Register conducted a status conference. The Probate Register told Kirk: "... we don't need exhibits at this point. Nobody is going to be reading your exhibits. The court is not designed to read exhibits like that...." "We just can't process this kind of paperwork...." "Undue influences are like putting a gun to somebody's head or waterboarding them to sign something." "Somebody visiting an attorney's office five six times to draft a trust is not something that reeks of undue influence to me." (App.E23-¶3) Helder testified in total he met Ralph one time after the documents were finalized. The probate register suspended discovery, and the court entered the order on 4/27/2021, violating §600.838(2) since the judge was not present at the hearing. (App.C7 thru App.C8)

On 4/23/2021, the trustee sought summary disposition under MCR 2.116(C)(7) (expiration of limitations period) claiming Kirk was sent written notice complying with §700.7604(1)(b) to impose a strict six month limitations period to contest the

validity of Ralph's trust, and he was required to commence a proceeding by 3/24/2020. (App.E25-¶5)

Linda sought leave of court to amend her complaint to add a claim to invalidate the 2017 Amendment, but the court denied her request holding form over substance. "Petitioner's request for leave to amend in Case No. 2020-62158-CZ to add a claim to invalidate the 2017 Siddell Trust was proper and should not have been denied on the basis that it was a civil action, not a proceeding." (App.C10, fn. 1). "Ms. Smith then filed a petition in action 21-62888-TV on or about August 20, 2021, seeking to invalidate the 2017 Trust for the same allegation made by Kirk." (App.A29) Linda actually filed the petition on 8/30/2019, within two years of Ralph's death.<sup>28</sup>

"Kirk Siddell has also filed a Motion for Summary Disposition, declaring the 2017 Trust invalid." (App.A28; App.E28-¶13-(1) thru (13))

On 9/14/2021, Judge Buck took the bench for the first time, requesting supplemental briefing on sufficiency of the notice under §700.7604(1)(b). (App.E29-¶14)

Kirk's briefing argued that Ralph's trust was irrevocable before his death since he was disabled, and irrevocable at Bill's death due to Ralph's agreement with Bill that the trusts, funded with community property, were to be binding at their death, based on Danielle Streed's affidavit and her file materials demonstrating their negotiations.

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<sup>28</sup> §700.7604(1)(a)

(App.E11-¶5; App.E52-¶3.4) Kirk claimed the notice under §700.7604(1)(b) was inapplicable, unconstitutional<sup>29</sup> and insufficient to trigger the six-months limitations period, that Petitioners were entitled to two-year tolling after discovering Respondent's fraud after he disclosed Ralph's 2012 Amendment on 12/17/2020, and a published opinion was necessary to protect the public. (App.E42-¶1.3)

Petitioners cited "*Dice v Zimmerman*, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No. 342608), 2019 WL 3432599, at \*2 ("Notably, enclosed with the letter were copies of Esther's will and the Irrevocable Trust established in 2012, but not a copy of the original trust or any of its amendments.")," where the Appeals Court reversed, finding the notice insufficient, and the limitations period tolled. (App.C13-§1; App.E38-¶1.5).

Respondent's motion, and supplemental briefing, claimed Ralph's 2012 Amendment was non-operative and irrelevant, and Respondent owed no duty to provide that document to Petitioners, and that Kirk's claim that Ralph's Trust was irrevocable before his death, or at Bill's death, were meritless. (App.E40-¶1.8) Respondent claimed the notice under §700.7604(1)(b)(iv) complied with the requirements of the statute, and also complied with Respondent's duty to disclose under §700.7814(1). Respondent claimed no evidence was provided that Ralph's physicians provided certifications that Ralph was

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<sup>29</sup> (App.E36-§IV-¶A; E42-¶1.13; App.E63)

unable to attend to his finances. (App.E32-¶(6)) Without discovery, that could not occur.

On 11/1/2021, in these consolidated cases, the Probate Court held:

“A beneficiary's due process rights are not violated by application of limitations / repose period contained in Michigan Trust Code [§700.7604] for challenging the validity of a trust when beneficiary received the full statutory period to bring his claim after receiving requisite notice *In re Gerald L. Pollack Trust*, 309 Mich App 125 (2015).” (Brackets/Emphasis added.) (App.A32)

The opinion stated:

“While Kirk makes numerous arguments that there is circumstantial evidence that Mr. Siddell was ‘disabled’ before he passed, the gating events in 2.1(c) never occurred, therefore by the terms of the Trust, Mr. Siddell was not disabled.” (Emphasis added.) (App.A35)

The record lacks evidence to support the Probate Court's conclusion that Ralph was not “disabled” under the 2012 Amendment, ¶2.1(b), or the gating events under ¶2.1(c)(ii) never occurred, because the court suspended discovery. The court ignored documents proving, between January 2017 and May 2017, Ralph received “personal care” and “**cognitive supervision**” and lacked the mental capacity to create the 2017 Amendment. If Ralph wasn't “cognitively impaired,” Genworth wouldn't have

covered “cognitive supervision.” The court ignored Respondent’s self-dealing, fraud and perjury, and that a presumption of undue influence was met. (App.E56-§D-¶4.1 thru ¶4.16)

Petitioners sought reconsideration due to the Probate Court’s palpable errors by failing to enforce Respondent’s duty to disclose, its failure to apply the definition of §700.7103(n) to §700.7604(1)(b) before construing the statute,<sup>30</sup> and that Linda made repeated requests for Ralph’s complete trust,<sup>31</sup> but Respondent concealed Ralph’s 2012 Amendment until 12/17/2020. On 12/28/2021, reconsideration was denied. (App.A38)

#### **B. MICHIGAN APPEALS COURT PROCEEDINGS.**

Petitioners appealed to the Michigan Appeals Court, seeking interpretation of §700.7604(1)(b), due to the lower court’s error by failing to apply the statutory definitions before applying the statute, and that the notices were insufficient to trigger the six-months limitations period. (App.E36-§IV) “Without the context of the Ralph’s previous amended and restated trust from 2012, Petitioner was not on notice about the “relevant portions of the terms of the trust that … affect[ed] [Petitioner’s] interest in the trust …” under MCL 700.7604(1)(b).” Petitioners claimed they were entitled to two-year tolling for Respondent’s fraud and

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<sup>30</sup> (C30§3; App.E64-¶23)

<sup>31</sup> (App.E46-¶2.8)

circumvention of duties. Kirk argued he was “affected” by Respondent’s self-dealing and conflicts, and entitled to \$30,000 vehicle embezzled and costs he had not been awarded. (App.E65-¶10)

Shortly before oral argument on 05/03/2023, Kirk learned if the 2017 Amendment is invalidated, he has a claim to Ralph’s real property. He explained the increase under the 2017 Amendment was a tactic to claim he suffered no harm, and that the notice he received was incomplete since it did not include Paragraphs A, B, or C, that affected his interests.

On 5/11/2023, the Appeals Court held: “Kirk has not identified any ‘concrete or particularized injury’ ... nor has he shown how he would benefit if this Court reversed the Probate Court’s decision.” (App.A9 thru A11) The opinion held that Linda argued the notice lacked information material to her ability to protect her interest under the 2012 Siddell Trust, and it did not fulfill MCL 700.7604(1)(b)(iv) to trigger the six-month limitations period.” (App.A11 thru A15) At App.A14, footnote 2, the opinion stated:

“MCL 700.7604(1)(b)(iv) requires the trustee to send only the ‘relevant portions’ of the terms of a trust that describe or affect the beneficiary’s interest in the trust.” “Including irrelevant terms from superseded documents in the notice required by § 7604 arguably would muddy the law governing trusts and unsettle settlors with the possibility that a beneficiary unhappy with the settlor’s instructions would commence trust-depleting litigation to obtain the

distribution reflected in a superseded document." (Emphasis added.)

The Michigan Courts were advised they were obligated to apply the statutory definitions. However, they declined to do so, and gave no weight to Respondent's affirmative duty to disclose, his fraud and perjury to circumvent his duties, or that until Respondent's disclosure on 12/17/2020, and Attorney Helder's disclosure on 1/21/2021, Petitioners didn't have sufficient information to know they had claims in jeopardy to contest the 2017 Amendment for fiduciary self-dealing or undue influence.<sup>32</sup>

Petitioners timely sought leave to appeal to the Michigan Supreme Court who denied review on 3/1/2024, holding: "...we are not persuaded that the questions presented should be reviewed by this Court." (App.A42 thru A45)

## LEGAL ARGUMENT

In this dispute, Respondent's lawyers misrepresented the law to the Michigan Courts, and the courts failed to enforce relevant laws, as written, that violated Petitioners' rights to due process under the Fourteenth Amendment, §1 of the U.S. Constitution.

Under §700.1045(9),<sup>33</sup> if a court fails to enforce a law in construing, administering or determining the validity of a trust, the trustee shall immediately

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<sup>32</sup> §700.7406

<sup>33</sup> (App.B6)

cease to be trustee, without further action of the court. This statute is the Michigan Legislature's answer to thwart a "Probate Mafia."

This Court holds:

"[A]s a representative for the beneficiaries of the trust which he is administering, the trustee is not the real client in the sense that he is personally being served' (quoting *United States v. Evans*, 796 F. 2d 264, 266 (CA9 1986) (per curiam)); *Riggs*, 355 A. 2d, at 713 (same).... Instead, the linchpin of the 'real client' inquiry is the identity of the ultimate beneficiary of the legal advice. See *Wachtel*, 482 F. 3d, at 232."<sup>34</sup>

Respondent showed no impartiality or loyalty to Petitioners – the real clients. The Michigan Courts showed no fairness or due process as explained below.

**A. The Michigan Courts failed to remove Respondent as trustee of both trusts due to his conflicts of interest as a beneficiary under the 2017 Amendment.**

"To simplify the timeline, the Trust [Ralph's Trust] left Mr. Heilman and his husband Mr. Stoutin some items of personal property, but a reinstatement of the Siddell Trust made by Ralph, after Bill's death, gave nearly all the personal

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<sup>34</sup> *U.S. v. Jicarilla, supra*, p. 172, 178-179, 191

property to the Defendant and his husband.” [Brackets added.] (App.D4)

EPIC mandates if there is no conflict, Respondent can represent the beneficiaries,<sup>35</sup> and unless there is no conflict, Petitioners are bound by probate court orders.<sup>36</sup>

In 2017, Respondent “...was a fiduciary who actively placed himself in conflict with Appellant sufficiently strong that he should have resigned as trustee. Had he resigned, Appellant would have discovered her interests in Ralph’s 2012 Trust, how they differed or affected her interests, and timely filed her claims.” (App.E75) “Speaking of the traditional trustee, Professor Scott’s treatise admonishes that the trustee ‘is not permitted to place himself in a position where it would be for his own benefit to violate his duty to the beneficiaries.’ 2A, Scott § 170, at 311.” *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). “To deter the trustee from all temptation and prevent any possible injury to the beneficiary, the rule against a trustee dividing his loyalties must be enforced with ‘uncompromising rigidity.’” *NLRB v. Amax Coal Co*, 453 U.S. 322 (1981)

Petitioners original filings sought Respondent’s removal as trustee,<sup>37</sup> but: “...getting removed from their trustee account – or trustee position is not something that should even be in my court, to be

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<sup>35</sup> §700.7303(d)

<sup>36</sup> §700.1403(b)(ii)(D)

<sup>37</sup> (App.E23-§D-¶1)

honest with you.”” (App.E24-¶4) Subsequent attempts to remove Respondent as trustee were made, but denied.<sup>38</sup>

The Michigan Courts found no issue with Respondent’s conflicts or misconduct that essentially eviscerated both trusts.

**B. The Michigan Courts failed to enforce laws mandating Respondent’s affirmative duty to disclose all material facts for Petitioners to protect their interests.**

“A violation by a trustee of a duty the trustee owes to a trust beneficiary is a breach of trust. MCL 700.7901.” (Emphasis added.) (App.D6-Relevant Law) “An agent who acquires information relevant to matters within his province and of which he should know the principal would want to know, has a duty to reveal it, ... Seavy, Agency (1964), Duties of Care and Obedience, Sec. 143, p. 238.” (App.E.38-¶1.3)

Respondent was duty-bound to disclose all material facts within his knowledge for Petitioners to protect their interests under the respective trusts, including unsolicited information. *In re Childress Trust*, 194 Mich. App. 319, 327; 486 NW2d 11 (1992) (App.E74) But due to Respondent’s conflict, he breached every duty owed to Linda under Bill’s Trust, and to Petitioners under Ralph’s Trust. (App.E44-¶2.4 thru ¶2.5)

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<sup>38</sup> (App.D57-§II; App.D62 thru D65)

“[R]ooted in the trustee’s fiduciary duty to disclose all information … designed ‘to enable the beneficiary to prevent or redress a breach of trust, and otherwise to enforce his or her rights under the trust.’ Third restatement §82, comment a(2), at 184.” (Emphasis added.) *U.S. v. Jicarilla Apache Nation*, 564 U.S. 162, 292 (2011) “[A] fiduciary has an obligation to accurately convey material information to beneficiaries, including material information that the beneficiary did not specifically request,...”(Emphasis added.) *Bendaoud v. Hodgson*, 578 F. Supp.2d 257, 278 (2008)

“On December 17, 2020, Mr. Brower finally disclosed [to Linda] Ralph’s 2012 Amendment.” (App.E47-¶2.12) In January of 2021, “Appellant’s son “tracked down Kirk,” further confirms Appellee’s breach of duty, and motive to conceal and commit perjury – to keep Appellant from contacting Kirk, who was also entitled information under MCL 700.7814....” [Brackets added.] (App.E83)

“[T]he suppression of a material fact, which a party in good faith is duty-bound to disclose, is equivalent to a false representation and will support an action in fraud.’ Williams at 19.’ In other words, Michigan courts have recognized that silence cannot constitute actionable fraud unless it occurred under circumstances where there was a legal duty of disclosure. *M & D, Inc v. WB McConkey*, 231 Mich. App. 22, 25-36; 585 NW2d 33 (1998).”

(App.E45, Fn. 6)

The Michigan Courts failed to enforce its laws mandating Respondent's legal duty to disclose, including unsolicited information, for Petitioners to protect their respective interests under the trusts, and ignored Respondent's fraudulent concealment and perjury in court proceedings.

### i. Ralph's Trust

In determining the validity of the 2017 Amendment to Ralph's Trust, the Michigan Courts failed to enforce a number of statutes<sup>39</sup> it was obligated to enforce. Specifically, Respondent breached his duty to disclose *facts that Petitioners needed to know to protect their interests under Ralph's Trust*,<sup>40</sup> regardless of whether Respondent felt Ralph's 2012 Amendment was "non-operative" or "irrelevant."<sup>41</sup>

On 03/08/2017, Respondent was Ralph's fiduciary, and Linda's fiduciary under Bill's Trust and Ralph's Trust, "...whether or not appointed or confirmed by the court."<sup>42</sup> Respondent was represented by counsel, who both knew Ralph was

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<sup>39</sup> §700.1102 (application of definitions); §700.1107(k) ("Terms of the trust"), §700.1107(n) ("Trust"), §700.1214 (self-dealing prohibited), §700.7103(n), §700.7814(1) and (2) (duty to disclose), §700.7303(d) (representative conflicts), §700.7802(2) (transactions involving conflicts) and §700.1205(3) (remedies for fraud; tolling and damages)

<sup>40</sup> §700.7814(1) and §700.7814(2)(a) to (c)

<sup>41</sup> (App.E42-¶1.12)

<sup>42</sup> §700.1107(o)

an incapacitated vulnerable adult, and that the 2017 Amendment violated Ralph's 2012 Amendment, ¶2.1(b) since Ralph was disabled, and violated ¶4.7(b) preventing self-dealing unless the transaction was arm's length and benefitted the trust, not the trustee. (App.E54-¶3.9) They knew Respondent's conduct violated civil<sup>43</sup> and criminal laws,<sup>44</sup> to embezzle assets from Linda who was 72 in 2017, and from charitable beneficiaries, and Kirk. After Ralph's death, Respondent had over \$500,000 to satisfy distributions to the four charities receiving \$2,000 under the 2017 Amendment, but they remain unsatisfied since he had no intention of satisfying any distribution.

After Linda received the notice under §700.7604(1)(b), she made repeated requests for Ralph's complete trust,<sup>45</sup> but her requests were met with affirmative misrepresentations, fraudulent concealment, perjury in court proceedings,<sup>46</sup> and false deposition testimony,<sup>47</sup> that violated civil and criminal perjury laws.<sup>48</sup>

On 01/21/2021, Attorney Helder disclosed documents demonstrating that Respondent, who "[c]oordinated" Ralph's nursing care,<sup>49</sup> used undue

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<sup>43</sup> §700.1214

<sup>44</sup> §750.147(1), §750.174(7); §750.174(12)(a) thru (c), §750.174a(1); §750.174a(7)(a), §750.174a(15)(c).

<sup>45</sup> §700.7814(2)(a)

<sup>46</sup> (App.E46-¶2.8 thru E47-¶2.10)

<sup>47</sup> (App.E55-¶3.11)

<sup>48</sup> §700.1205(3); §750.422; §750.423; §750.424; §750.425

<sup>49</sup> (App.E83)

influence, non-disclosure, deception and fraud to obtain the 2017 Amendment. (App.E22-¶38) Until both of those disclosures, Petitioners didn't know they had claims in jeopardy. "Regardless, evidence of Appellee's fraudulent concealment exists, and the exception under MCL 700.1205(3) and MCL 600.5855 applies to extend the statute 2-years until December 17, 2022." (App.E77)

"The beneficiaries were entitled to all amendments affecting their rights and the trustee wrongfully withheld them to conceal his conflicts and self-dealing." (App.C33) Petitioners are not guilty of laches, they were deceived by the fraudulent concealment of Respondent, and his lawyers.

**a) The Michigan Courts committed plain legal error by declining to apply statutory definitions to §700.7604(1)(b).**

On 2/21/2024, the Michigan Legislature revised §700.7604, to ensure a trustee's compliance with duties to disclose under §700.7814(2)(a) to (c), but this dispute demonstrates why the Legislature didn't go far enough.

EPIC mandates the application of relevant definitions<sup>50</sup> to §700.7604(1)(b),<sup>51</sup> and it is to be liberally construed, but the Michigan Courts ignored their statutory obligations. Without the context of Ralph's 2012 Amendment, Linda had no ability to

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<sup>50</sup> §700.1107(k) ; §700.1107(n); §700.7103(n)

<sup>51</sup> (App.E36-§IV-A-¶1.1 thru ¶1.13)

know she had claims in jeopardy. (App.C51) And Kirk had no reason to suspect Respondent's fraud until January of 2021.

The Probate Court held: "This Court is persuaded by the memoranda and briefs filed by Attorney Browers and hereby incorporates that legal reasoning by reference in this opinion." (App.A36) Kirk's motion for reconsideration claimed:

"The court errored by relying on *In re Genevieve Garcia Revocable Living Trust*, 2014 WL 61243 (Mich. Ct. 2014) in support of its decision. This is also inapplicable because the petitioner in that case was involved in the trust administration at the start and receiving distributions. Those facts are not applicable here. From the outset the Trustee intentionally concealed his actions from the beneficiaries in first procuring the 2017 Amendment. Heilman continued his concealment by failing to provide the requisite notice under MCL 700.7604 and MCL 700.7814 for obvious reasons, and thus the action is not barred by the two year statute of limitations."

(App.C24)

"MCL 700.7604(1)(iv) requires the trustee to provide "A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any," which includes all amendments pursuant to MCL 700.7103(n) affecting the beneficiaries' rights." (App.C30-¶3 thru

C33; App.E36-§A) But the court denied reconsideration. (App.A38-A41)

“Rule 3.3 of the ABA Model Rules of Professional Conduct (1984) provides in part: “a lawyer, shall not knowingly: ‘(1) make a false statement of material fact or law to a tribunal; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to the directly adverse to the position of the client and not disclosed by opposition counsel; (4) offer evidence that the lawyer knows to be false.”

*McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 441 (1988). When there is a duty to disclose, failure to disclose is fraud. “*M & D, Inc v. WB McConkey*, 231 Mich. App. 22, 25-36; 585 NW2d 33 (1998).” (App.E45, Fn. 6) “Similarly, in cases where the plaintiff has refrained from commencing suit during the period of limitation because of inducement by the defendant, *Glus v. Brooklyn Eastern Terminal*, 359 U.S. 231, or because of fraudulent concealment, *Holmberg v. Armbrecht*, 327 U.S. 392, this Court has not hesitated to find the statutory period tolled or suspended by the conduct of the defendant.”

*American Pipe Construction Co. v. Utah*, 414 U.S. 538, 559 (1974)

Respondent's lawyers, Robert Brower,<sup>52</sup> and Angela Caulley of Miller Johnson, experienced estate/trust attorneys, owed duties to all beneficiaries of Ralph's Trust to disclose. Importantly, they were obligated to be truthful, and not misrepresent facts and laws to the courts. However, to protect Respondent's interests under the 2017 Amendment, they misrepresented facts and laws, essentially aiding Respondent's criminal racketeering enterprise to embezzle<sup>53</sup> assets from charities, and from Petitioners, who were over 60 at Ralph's death, claiming:

"Kirk's argument that the Trustee was required to state in the notice that Kirk was 'entitled to request a copy of the trust affecting [his] interest, which would have included the 2012 Amendment in order to comply with MCL 700.7604 is meritless. Similarly, Kirk's additional argument that the Trustee was required to provide the beneficiaries with the non-operative 2012 Trust in order to comply with MCL 700.7604 is also meritless. These are simply not requirements of MCL 700.7604. The Court must impose additional obligations

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<sup>52</sup> Practicing only estate/trust law since 1972.

<sup>53</sup> §750.174(1); §750.174(7); §750.174(12)(a) and (b)

on Trustee that are not clearly delineated in MCL 700.7604. (Emphasis added.)”

(App.E40-¶1.8)

Clearly, §700.7814(1) mandates Respondent’s duty to disclose, §700.7814(2)(c) mandates the duty to notify the beneficiaries of their right to request a copy of the terms of the trust that describe or affect their interests in the trust, including additions to the trust, wherever and however created,<sup>54</sup> and §700.1102 requires the application of relevant definitions to §700.7604.

“Appellee’s Brief which is replete with inaccuracies [is] and intended to mislead this court. For example, Jeffrey Helder, an accomplice to Appellee’s scheme, was never sworn as an ‘expert.’... Appellee (and Helder) have ample motive to fabricate facts, submit fraudulent documents, commit perjury under oath, and Appellant asks this court to consider these facts as a legitimate bearing on their credibility.” [Brackets added.] (App.E74) But the reasoning fell on deaf ears.

Petitioners sought leave to appeal to the Michigan Supreme Court, seeking review, due to the lower courts’ failure to apply the statutory definitions to §700.7604(1), and that the opinions conflict with Michigan’s laws, and the Appeals Court’s holding in *Karam v. Kliber*: “The estate plan consisted of a last will and testament and a revocable

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<sup>54</sup> §700.1107(n)

trust (including amendments) with the decedent as settlor and trustee.”<sup>55</sup>

The Michigan Supreme Court was advised the opinions conflicted with published law from other states construing statutes similar to §700.7604(1)(b). The Nevada Supreme Court held:

“NRS 164.021(2)(c) requires a trustee’s notice to beneficiaries to include ‘[a]ny provision of the trust instrument which pertains to the beneficiary.’ After employing tools of statutory construction, we conclude that the term “any” in this context means ‘all.’ Because only complete disclosure of all pertinent trust provisions will promote the statutes goals and adequately inform beneficiaries, we also hold that NRS 164.021(2)(c) is subject to strict compliance. Patricia failed to include the purported fourth amendment to the Trust in her initial disclosure to beneficiaries and therefore did not strictly comply with NRS 164.021(2)(c). Accordingly, this initial disclosure did not trigger the 120-day deadline for challenging the validity of the trust.”

(Emphasis added)<sup>56</sup>

Nevada determined a trustee had no discretion to withhold an amendment, and found the notice insufficient to trigger the six-month limitations

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<sup>55</sup> *Karam v. Kliber*, 253 Mich. App. 410, 411 (2002)

<sup>56</sup> *Holiday v. Horst*, 478 P.3d 861 (2020); 136 Nev. Adv. Opn. 90

period. And in California, the Supreme Court found notice insufficient for failing to apply 10-point bold typeface formatting.<sup>57</sup> But for unknown reasons, the Michigan Supreme Court was not persuaded the questions required review.

EPIC is to be applied uniformly “[t]o make the law uniform among the various jurisdictions, both within and outside of this state,”<sup>58</sup> and affects settlors and beneficiaries across this nation. To this day, Attorney Helder claims Respondent and Stoutin are his clients, leaving Petitioners with the belief they are involved in a racketeering enterprise to financially exploit elderly and vulnerable customers, that will likely affect other U.S. citizens.

Thus, this dispute presents a number of issues of federal significance, including diversity, placing this Court squarely in a position to protect settlors and beneficiaries from similar misconduct by dishonest financial service providers with access to sensitive personal information, dishonest lawyers, and a state court’s failure to enforce its laws, that has irreparably damaged Linda, and damaged Kirk, as explained below.

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<sup>57</sup> *Harustak v. Wilkins*, 84 Cal.App.4th 208, 216, 219 (2000).

<sup>58</sup> §700.1201(d)

- b) The Michigan Courts failed to enforce §700.1205(3) providing two-year tolling, and damages, for Respondent's fraud to circumvent duties.**

**“Mr. Brower did not disclose Ralph’s 2012 Amendment until December 17, 2020.”** (App.E9) That disclosure, long after the expiration of the six-months limitations period under §700.7604(1)(b), constitutes fraudulent concealment.

The Michigan Courts claimed Petitioners “should have known” they had claims in jeopardy. First, the “should have known” doctrine does not apply when an affirmative duty to disclose exists, second, the “should have known” doctrine was omitted from §700.1205(3), and third, Respondent committed fraudulent concealment.

Again, Petitioners are not guilty of laches, they were deceived by fraudulent concealment and fraudulent misrepresentations by their fiduciaries, *whether innocent or not*,<sup>59</sup> and the Michigan Courts’ failure to enforce §700.1205(3), as written.

- c) The Michigan Courts committed plain legal error claiming Kirk suffered no harm or concrete or particularized injury and lacks standing to contest the 2017 Amendment.**

Due to Respondent’s fraudulent concealment, and his request to suspend discovery, granted by the

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<sup>59</sup> §700.1205(3)

Probate Court,<sup>60</sup> Petitioners will never discover all injuries or damages until Respondent is removed as trustee of both trusts.

"To demonstrate their personal stake, plaintiffs must be able to sufficiently answer the question: " 'What's it to you?'" Scalia, The Doctrine of Standing as an Essential Element of the Separation of Powers, 17 Suffolk U. L. Rev. 881, 882 (1983).

To answer that question in a way sufficient to establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)."

*TransUnion v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)

Justice Sotomayor, in a dissenting opinion in *Thole v. U.S. Bank*, joined by Justices Ginsburg, Bryer, and Kagan held:

"... a beneficiary's equitable interest allows her to 'maintain suit' to 'compel the trustee to perform his duties,' to 'enjoin the trustee from committing a breach of

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<sup>60</sup> (App.C7 thru C8)

trust,' and to 'remove the trustee.' Restatement (Second) of Trusts §199; see also *id.*, §205 (beneficiary may require a trustee to restore 'any loss or depreciation in value of the trust estate' and 'any profit made by [the trustee] through the breach of trust').<sup>3</sup>

<sup>3</sup>Even contingent and discretionary beneficiaries (those who might not ever receive any assets from the trust) *can sue to protect the trust absent a personal financial loss (or an imminent risk of loss).*" (Emphasis added.) *Thole v. U.S. Bank N.A.*, 590 U.S. \_\_\_, (2020) - (Slip Op. p.2)

*Thole, Id.*

**What's it to Kirk?**<sup>61</sup> Kirk demonstrated that he is entitled to protect the beneficiaries of Ralph's Trust, *not represented by counsel*,<sup>62</sup> and entitled to double damages due to the fraud and circumvention of duty<sup>63</sup> by Respondent and his lawyers, and entitled to costs. (App.C33-¶4; App.E63-¶1 thru ¶11)

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<sup>61</sup> "See *Uzuegbunam*, 592 U. S., at \_\_\_\_-\_\_\_\_, 141 S.Ct. at 798-99 (collecting cases); ... '[T]he actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing" (citing cases; brackets and internal quotation marks omitted))." *TransUnion LLC v. Ramirez, supra*, p. 2218

<sup>62</sup> (App.C33¶4)

<sup>63</sup> §700.1205(4)

Also, the Michigan Courts erred construing §700.7802(2). Kirk was, and will be, “affected” by the 2017 Amendment, entitling him to void the transaction.

Kirk is entitled to property “not effectively transferred to his [Ralph’s] trust by his will.” [Bracket added.] (App.E83) If the 2017 Amendment fails, Ralph’s real property reverts to Ralph’s Estate, and Kirk has a concrete claim to quiet title to the property,<sup>64</sup> that accrued at Ralph’s death.<sup>65</sup> Kirk is entitled to a 15-year<sup>66</sup> limitations period to bring a claim to invalidate the deed that Ralph signed on 04/19/2017,<sup>67</sup> when Ralph was a cognitively impaired vulnerable adult. If the 2017 Deed is invalidated,

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<sup>64</sup> §600.2932

<sup>65</sup> “No rights having accrued to these claimants in any court until the death of their ancestor..., they are not chargeable with laches by reason of their non-assertion of such rights at an earlier date, nor had the statute of limitations barred their claim.” United States v. Dunnington, 146 U.S. 338, 341 (1892)

<sup>66</sup> §600.5801(4); “Plaintiff argues that the trial court erred in granting defendants’ motion under MCR 2.116(C)(7). She asserts that the true gravamen of her complaint was to quiet title under MCL 600.2932, and the court should have therefore applied the 15-year limitation period of MCL 600.5801(4). In response, defendants assert that plaintiff’s claim sounded in fraud or undue influence. ... We agree with plaintiff that the gravamen of her claim was to quiet title under MCL 600.2932 and conclude that the claim was governed by the 15-year limitation period of MCL 600.5801(4). Adams v. Adams, 276 Mich. App. 704, 710 (2007)

<sup>67</sup> Recorded 4/24/2019.

the real property reverts to Ralph's Estate, and Kirk has a claim as Ralph's sole heir-at-law,<sup>68</sup> based on the following facts and Michigan law (as explained to the Michigan Supreme Court) as follows:

When Bill and Ralph executed their 2012 Residuary Wills, their Residuary Wills were never intended to convey their interest in the real property to their respective trusts<sup>69</sup> since they didn't know who would die first. Their intention was to convey their property to the trust of the survivor, by warranty deed. (App.E13-¶12) The contingent deeds, contained gifts in default to the survivor,<sup>70</sup> and were not beyond recall since Ralph recalled the deeds on 03/08/2017. Therefore, delivery to Ms. Streed didn't constitute constructive delivery.

"The courts in general are adverse from construing legacies to be specific; and the intention of the testator, with reference to the thing bequeathed, must be clear."<sup>71</sup> Ralph's 2012 Residuary Will must be manifestly clear, there can be no doubt, that at the time it was executed it was intended to transfer his interest in the real property to his trust, but it is not manifestly clear since his intention was to convey the property to the trust of the survivor with one of the 1998 deeds, and by law,

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<sup>68</sup> §700.2101

<sup>69</sup> §556.112(g)

<sup>70</sup> §556.112(j)

<sup>71</sup> *Kenaday v. Sinnott*, 179 U.S. 606, 618 (1900)

Kirk has a claim to the property under intestate succession.<sup>72</sup>

If Ralph lacked mental capacity to execute the 4/19/2017 deed, applying logic, Ralph lacked capacity to sign the 2017 Amendment,<sup>73</sup> and it is invalid.

“Kirk’s constant, unwarranted threats, allegations, communications, and court filings *can be stopped if the \$50,000.00 specific distribution is made to Kirk.*” (App.E25-¶6.) By law,<sup>74</sup> if the 2017 Amendment is invalidated, Kirk would be required to return the \$50,000 distribution forced upon him, currently held by the Probate Court. Kirk wouldn’t likely have the ability to return the distribution, exposing him to a lawsuit, where he would be responsible for attorney fees, costs, double damages, and interest. Thus, it would seem reasonable to grant the petition, reverse the opinions, and resolve the question whether Ralph lacked the mental capacity to sign the 2017 Amendment or 2017 deed at this time.

*What’s it to Linda?* The Michigan Courts’ error by failing to enforce Respondent’s duty to disclose, and his fraud to circumvent that duty, their flawed application of §700.7604(1)(b)(iv), and failure to enforce §700.1205(3) entitling Linda to two-years tolling to bring her claims, profoundly damaged Linda, and deprived her of property *she was to*

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<sup>72</sup> §700.2101(1)

<sup>73</sup> §700.7402(1)

<sup>74</sup> §700.7604(4)

*receive.* Linda sought reconsideration to retain 50% of the property (App.D16 thru D26), not the proceeds from the sale of the property, but the Probate Court denied her request to retain 50% of the property. (App.D45 thru D47) All property, including family heirlooms, are gone, irreparably damaging Linda, and our family.

Respondent, and his lawyers, owed legal duties to all beneficiaries, but they knowingly participated in Respondent's circumvention of duty, fraud to conceal his criminal acts, and they are personally liable for damages.<sup>75</sup> In *Harris v. Salomon Smith Barney* this Court held that a beneficiary may "...bring a civil action for 'appropriate equitable relief [that] extends to a suit against a nonfiduciary 'party in interest' to a prohibited transaction barred by ... [statute].'" [Brackets added.]<sup>76</sup>

"No length of time can prevent the unkenneling of a fraud." *Stearns v. Page*, 48 U.S. 819, 821 (1849) "Each alleged breach plainly constitutes an 'injury in fact.'" *Bendaoud, supra.*, p. 272. Each day Respondent conceals material facts, including Ralph's medical records, is a breach of duty, and an "injury in fact," entitling Petitioners to statutory tolling for fraudulent concealment.<sup>77</sup>

In 2022, the Appeals Court reversed the Allegan County Probate Court for the same reasons here. (App.E77) Unfortunately, the Michigan Supreme

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<sup>75</sup> §700.1205(3)

<sup>76</sup> *Harris v. Salomon Smith Barney*, 530 U.S. 238, 245-253 (2012)

<sup>77</sup> §700.1205(3)

Court "...did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable." *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) The Michigan Court's failure to enforce its laws is too high to be constitutionally tolerable, and violated Petitioners' constitutional rights to equal protection of laws, and due process, under the Michigan Constitution, §2, and the Fourteenth Amendment, §1 of the U.S. Constitution. (App.E3-§2; App.E36-§IV; App.E42-¶1.3; App.E63)

## ii. Bill's Trust

On 02/22/2017, without hearing, the Probate Court appointed David Heilman, as Trustee of Bill's Trust. Respondent claims he resigned, but never gave notice to the beneficiaries as required by law.<sup>78</sup> Instead, Respondent, Stoutin and Helder crafted a plan to exhaust Bill's Trust assets first, that didn't expressly provide terms to maintain Ralph's "standard of living" or to provide for Ralph's happiness, *but expressly limited the trustee's discretion to distribute assets for Ralph's maintenance* if a determination was made that Ralph's income and property was insufficient for his maintenance, because they believed Ralph would soon die, and they were in the midst of creating the amendment, to benefit Respondent and Stoutin after Ralph's death. (App.E16-¶22 thru ¶24)

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<sup>78</sup> §700.7705(1)

At Bill's death, Ralph had ample income and property for his maintenance. "[I]t is believed to be closer to \$4,000, since he received an annuity, Bill's Social Security, and his own Chrysler pension. ... Ralph had \$33,452.58 at Macatawa Bank, received payment of \$98,620.69 for a ROTH IRA, and his Edward Jones accounts had a balance of \$327,063.16." (App.E82) Ralph had no mortgage or car payment, Medicare paid his healthcare, and Bill's Trust paid the premiums for his long-term care. Thus, under the terms of Bill's Trust, or by law,<sup>79</sup> Ralph didn't have an immediate right to trust assets. And Respondent is personally liable to return any transfer that failed to provide notice and comply with the law,<sup>80</sup> even absent a breach of trust.<sup>81</sup>

The Probate Court claimed after Ralph's death, Bill's Trust assets "poured over" to Ralph's Trust. (App.D31 thru D32) Assets belonging to a trust do not automatically "pour over" from one trust to another. Michigan's Powers of Appointment act must be followed to transfer assets.

"The trust agreement must be enforced as written."<sup>82</sup> But the Probate Court made no effort to comply with the terms of Bill's Trust, or law, and all property was sold before Linda was given the ability

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<sup>79</sup> §700.7815(1)

<sup>80</sup> §700.7902; §700.7903

<sup>81</sup> §700.7903(1)

<sup>82</sup> *Bill & Dena Brown Trust v. Garcia (In re Brown Estate)*, 312 Mich. App. 684 (2015)

to retain meaningful family heirlooms<sup>83</sup> as expressed in Bill's Trust.

After Linda discovered in January of 2023, that the Probate Court's Amended Opinion of 6/7/2022, didn't **bold and underline substantive changes**, as asserted,<sup>84</sup> she sought relief from the judgment due to mistake and fraud,<sup>85</sup> and provided a "comparison" of the orders, and sought Respondent's removal as trustee due to his conflicts<sup>86</sup> and failure to protect Bill's Trust at trial.<sup>87</sup>

"Defendant also breached his duty at trial when he remained silent and failed to seek a return of the following assets belonging to the Johnson Trust as follows:

\$78,244.88 Defendant admitted should have remained in Bill's Trust for the Genworth Reimbursements.

\$8,900.00 for the charitable contributions that were not for Ralph's maintenance."

(App.D55 thru D56)

Linda advised the Probate Court that Respondent was not complying with the order for selling the property, and that he was incurring unauthorized and excessive fees for selling property.

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<sup>83</sup> §700.1503(2)(h)

<sup>84</sup> (App.D29)

<sup>85</sup> (App.D56-§B)

<sup>86</sup> §700.7303(d)

<sup>87</sup> (App.D50 thru D59)

(App.D58-¶d) But on 2/22/2023, the Probate Court denied her request. (App.D62 thru D65)

Respondent recently petitioned the court to approve the final accounting of Bill's Trust. Linda filed an objection asking the court to suspend the hearing until after this Court determined whether it would review this matter. The request was denied.

At the hearing on 5/15/2024, she explained property is missing, Respondent incurred excessive fees that were not approved in advance violating Michigan's Prudent Investor rule. Linda again raised Respondent's conflicts, but the judge shut her down mid-sentence, approved the accounting, released Respondent of liability, and criticized Linda for incurring more attorney fees for seeking a petition from this Court.

## **CONCLUSION**

The Michigan Courts' plain legal errors by failing to enforce their laws, as written, deprived Petitioners of due process, and violated Petitioners' rights under the Fourteenth Amendment, §1 of the U.S. Constitution.

For the above-stated reasons, the Petition for Writ of Certiorari should be granted.

## **REASONS FOR GRANTING THE PETITION**

- A. The Michigan Courts failed to follow the law, and decided an important question involving issues of federal significance, including

diversity, within or outside of Michigan,<sup>88</sup> that has not been, but should be settled by this Court, concerning what information a trustee must provide to trust beneficiaries before expiration of a limitations period under statutes similar to §700.7604(1)(b).

- B. This Court's intervention is the only realistic judicial avenue left for resolving these conflicts to protect these elderly beneficiaries and guaranty their rights under the Fourteenth Amendment, §1, of the U.S. Constitution are not violated.
- C. To protect other inexperienced, elderly and vulnerable citizens across this nation from predatory financial exploitation, fiduciary self-dealing, and a state court's failure to enforce its laws as written.

Dated May 24, 2024

Respectfully submitted,

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<sup>88</sup> §700.1201(d)