NO: 23-7090

IN THE

SUPREME COURT OF THE UNITED STATES

AMBROSE C. MENDES, JR.,

Petitioner,

vs.

KIRSHENBAUM & KIRSHENBAUM ATTORNEYS AT LAW, INC.,

Respondents.

Lower Courts: On appeal from Rhode Island Superior Court, No: PP-2000-1820denied jury trial and forced settlement, and on Writ of Certiorari to the Rhode Island Supreme Court, No: SU-2023-0089-A whom denied the certiorari after an oral argument.

PETITION FOR WRIT OF CERTIORARI

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Brief prepared by Gustav Skurdal, Friend

QUESTIONS PRESENTED

a. **Whether the Trial court held a duty to obey the State supreme court holdings that it follows a prior judge ruling unless consent of parties agree otherwise or the trial court makes a clear record why he is not following it—neither was offered, just that the trial judge was not affording trial by jury over an accounting claim.**

b. **Does a Probate Trial Judge have a duty, when mandating settlement of parties, to insure Pro se parties have a voluntary, knowing, and intelligent ability to understand all duties regarding a settlement?**

c. **Do Rhode Island Judges hold a ethical duty to hear all matters and adjudicate the facts, even if those facts could destroy a law firm's business?**

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the courts whose judgment is the subject of thi petition is as follows:

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Defendant.

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Defendant.

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The Superior court trial judge decided contrary to no appeal. Because of this and never hearing Petitioner's claims the court strived to compel Petitioner and his siblings into a settlement by Hobson's choice or proceed to trial by judge that always favored the Defendant attorneys. At settlement, one sibling signed, the other two refused. The court, before any signed agreement dismissed the case in favor of Defendants and although the accountings were error, dismissed them all and that opinion is attached as **Appendix C** to this petition and is believed unpublished.

The Petitioner appealed to the state Supreme court, and the superior court trial judge dismissed the appeal for failure to follow Rule 10 and preserved attorney fees for failing to settle and that opinion is attached as **Appendix D** to this Petition and is believed unpublished.

The state trial judge awarded attorneys $3,470 for fees and costs because Petition refused to settle, and that opinion is attached as **Appendix E** to this opinion and is believed unpublished.

This Petition followed.

JURISDICTION

The date on which the highest state court decided my case was December 19, 2023, and a copy of that decision appears at **Appendix A**.

Petitioner filed no petition for rehearing.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner sets forth providently the following:

Congress shall make no law *** abridging the freedom of speech, *** and to petition the Government for a redress of grievances.

U.S. Const., Amend. I.

*No person shall be *** deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend. V (Emph. Added).

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Const., Amend. IX.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor *shall any State deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., Amend. XIV (Emph. Added).

The right of trial by jury *shall remain inviolate.* In civil cases the general assembly may fix the size of the petit jury at less than twelve but not less than six.

Rhode Island Const., Art. I, Section 5. Entitlement to remedies for injuries and wrongs — Right to justice.

The enumeration of the foregoing rights shall not be construed to impair or deny others retained by the people. The rights guaranteed by this Constitution are not dependent on those guaranteed by the Constitution of the United States.

Rhode Island Const., Art I, Section 15. Trial by jury (Emph. Added).

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

Rhode Island Const., Art., Section 24. Rights not enumerated — State rights not dependent on federal rights.

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

(1) The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or

(2) The court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes of this state.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

R.I. Super. Ct. R. Civ. P., Rule 39.

Canon 1. A judge shall uphold the integrity and independence of the judiciary. - A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. This Code, designed to further that purpose, is intended to apply to every aspect of judicial behavior except purely legal decisions. Legal decisions made in the course of judicial duty are subject solely to judicial review. The provisions of this Code are to be construed and applied to further that objective.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. - A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness in a judicial proceeding. A judge may, however participate in a confirmation hearing by appearing at the request of a candidate, making a statement as to the candidate's qualifications and responding to questions asked by the panel members or by writing a letter to the appointing or confirmation authority containing the information that would have been given in a personal appearance at the proceeding.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, disability or national origin.

Canon 3. A judge shall perform the duties of judicial duties of judicial office impartially and diligently. - A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

(f) A judge should not permit private interviews, arguments or communications designed to influence his or her judicial action, and ordinarily all communications of counsel to the judge should be made known to opposing counsel.

(g) A judge should discourage ex parte applications for injunctions and receiverships where the order may work detriment to absent parties. A judge should act upon ex parte applications only where the necessity for quick action is clearly shown. A judge should scrupulously cross examine and investigate the facts and the principles of law upon which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. A judge should remember that an injunction is a limitation upon freedom of action of defendants and should not be granted lightly or inadvisedly.

9. A judge shall dispose of all judicial matters promptly, efficiently and fairly.

10. A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

11. A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

12. A judge may discuss a case that has exhausted its appellate remedies provided, however, that a judge shall never disclose or use non-public information* acquired in a judicial capacity for any purpose unrelated to judicial duties.

13. A judge shall cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice.

C. Administrative Responsibilities.

1. A judge shall diligently discharge the judge's administrative responsibilities without bias

or
prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

2. A judge shall require* staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

3. A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

4. A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary Responsibilities.

1. (a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.

(b) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.*

2. (a) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.

(b) A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority,* the office of Disciplinary Counsel.

3. Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. Disqualification.

1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person;

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

2. A judge shall keep informed about the judge's personal and fiduciary* economic interests, and make a reasonable effort to keep informed about the personal economic interests* of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers,

without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

ARTICLE VI. JUDICIAL CONDUCT, Canons 1-3 (Code of Judicial Conduct, 2021).

§ 33-23-9. Assignment day.

The probate appeal may be assigned to the formal and special cause calendar, the continuous non-jury trial calendar, or t*he continuous jury trial calendar*, as the case may be, which occurs not less than seventy-five (75) days from the date that the probate order or decree appealed was executed by the probate judge. (Emph. Added).

Title 33, **Probate Practice and Procedure**, Chapter 23, Section 9, § 33-23-9.

STATEMENT OF THE CASE

A. Pre-Suit Matters:

The underlying facts and history of this case are set forth in detail in *Mendes v. Factor*, 41 A.3d 994 (R.I. 2012). (Mendes 1).[1] Firms like Kirshenbaum and Kershenbaum, (K & K), who claim they will honor the trust but in turn sells all, lets it fall apart, steals corporations when the siblings hold valid authority to claim a sale is necessary, fails to file documents in order to take control of assets-waste the trust of their clients under the pretense they will help when in truth they steal the family inheritance away via deception and the courts help.

[1] Alfred Factor was originally a co-defendant in the litigation as a shareholder of K&K. He passed away during the litigation leaving K&K as the sole defendant at the time of trial. Also, the notary of documents as well as Petitioner's brother Victor Mendes has passed. Petitioner's sister has medical problems remembering matters, because of the years this has drug on.

The facts set forth in K & K's memorandum, Case Number: SU-2023-0120-MP Filed in the State Supreme Court, Submitted: 7/10/2023 12:01 PM, Envelope: 4184442, Reviewer: Zoila Corporan, are correct as far as they are stated but leaves out facts.

The Petitioner has tried to inform the courts the accounting was wrong from the start but has repeatedly been denied having anything proven. K & K keeps claiming its correct even though the court acknowledged it was incomplete. A forensic review claimed it lacked hundreds of thousands not shown and K & K has refused to try to correct anything. The simple fact is this was to have been finalized in 1981 by the Estate's Will. The court told them to correct the accounting and 20 years later they still have failed to obey the court's order, but no court has sanctioned them for not obeying any order. Petitioner showed K & K took papers from his safe via Factor by a false raid; he showed the siblings held position as president, vice president and secretary of the businesses by a document Factor created but never filed with the Secretary of State, notarized; that K & K allowed these businesses to intentional fail after removing the siblings, who were operating them and making a profit[2], in order to sell them for nothing after all equipment and

[2] The house rentals were all making a profit, but the Firm and trustees sold them all to a college; the businesses were being operated by the siblings making a profit, the firm kicked them and then shut them down. After all equipment, chemicals and interiors became obsolete and no longer usable, they sold the two businesses for a loss to the siblings and estate's harm. No one will help afford justice but helps the thieves.

items became obsolete; that K & K failed to file taxes yearly under trust, allowing penalties to rise than after years claiming the taxes consumed all assets from their own failures and the list goes on. The cousins never received their shares either, which was to be the first priority of the trustee under the estate Will. The Firm discarded all duties the Will mandated for their own benefits[3].

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[3] Kirshanbaum & Kirshenbaum (K & K) was hired to handle the Mendes estate. Robert Factor, vice President of the firm, was appointed trustee, as well as a gentleman name Rufus. Rufus had worked for the Settlor over 20 years and held much knowledge of his dealings. Rufus worked as head Chef for the Industrial National Bank also, cooking for higher up banking staff. Two days before the Settlor died, who had appointed Factor as primary executive of the estate and Rufus as secondary if something happened to factor, Rufus made deposits for our Father, the Settlor. Our dad instructed his siblings, all three, to go to the bank and withdraw from the safety deposit box the $360,000 cash and divide it between us, however, Rufus went down first, and stated he was the executor (our dad was still alive) and withdraw the funds himself. These funds had been collected since 1961, and there were only two entries on the registry, one from out dad in 1961 and Rufus when he withdrew the funds. When Victor Mendes, the youngest son went to the bank, he was informed the account was closed and showed the registry. He went back to the Settlor and informed him, on his death bed, and the anger caused him to rip out the cords and tubes requesting his sons to "get my cloths from the closest" to go get the funds back. The nurses stopped him, so we contacted Factor, who called Rufus and was informed there was 'nothing in the account. Factor claimed he could not prove anything and nothing else was done.

They also used the Will to con the police to do a raid on Ambrose's home and business by telling the police his brother and Ambrose were making a 'disgrace of their dad's business, doing drugs, and inviting prostitutes, etc." The police raided, took us into custody, and the house and business were rand sacked. The safe had been opened and no one their to protect anything. The safe contained about $60-70,000 in saving bonds dating back to 1961 and some from 1940, as well as the original corporate documents Factor created, but never filed with the Secretary of State, showing the siblings owned the businesses, a funeral parlor and a realty business. When the siblings arrived at the police station, Factor was already there, even though no one called him. Why? When we were released, without charges, and went home, the door was wide open, house and business ransacked, and a man was standing at the desk. When asked what he was doing, he introduced himself as Hennery Willson and stated: "Al Factor sent me to see if any bills needed paid because he did not know when you might be released." All documents of ownership, cash, our dad's probate inventory and the agreement with K & K were all missing from the safe. Shortly after this raid and everything coming up missing, the probate court amended the estate inventory list to include the Mendes Funeral Home and Interstate Realty businesses.

In court, several documents attaching the condemning evidence, was never listed as the caption read. K & K attorneys requested and the court clerks worked with them to change the

A simple fact is, had all been turned over as the Will mandated in 1981, the Plaintiffs could have paid the taxes, and handled any matter themselves and they would still be operating the corporation's making money. But the court have refused to hear any of these matters, always walking around them in favor of the law firm and its lawyers.

B. Lower Superior Court Proceedings:

The lower courts refuse to hear these facts or acknowledge the documents as evidence to show the accounting is far from correct. The jury instructions held matters toward an attorney's duty as trustee; a trustee's duty, which a non-jury trial denies being heard. Petitioner's father's will, as set by the Will, has been degraded and made a mockery through K & K's acts and deeds and the allowance of this going on for years! It was to have been settled in 1980 when the youngest Mendes turned 30. It was not.

As K & K themselves admit, court matters overwhelm pro se parties. Petitioner and his siblings believed they were having a trial by a jury they could show the

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caption to something not relating to the motions and the evidence has never been heard. We've requested the court why but have never received any form of answer. It is always sidestepped to some different issue. Joseph F. Penza, Jr, attorney for K & K and their attorneys always informs the court no attorneys are willing to take our case, but that is untrue. The last two attorneys refused to challenge the above issues and the corporate papers, so we discharged them. Now, we lack the funds to hire an attorney and is why we do not have one. Penza's statements to the court are false.

facts K & K did wrong, only to be informed not to address the issues because the jury trial was denied for a judge trial after an interlocutory order held otherwise.

On January 6, 2021, the court awarded a trial by a jury of our peers. At that hearing Petitioner stated "Although you say it would be expeditious to the Court, it would not be in our benefit. It would be totally against our benefit to have a jury by trial (sic) because Mr. Penza and Kirshenbaum & Kirshenbaum are all members of the Court, and they have influence on the Court. All of their—all of their happenings are undercover, behind doors and not—behind closed doors and not any open, so it would not be to our advantage to be able to have a trial by the bench because of their influences, and they are members of the Court. ..." January 6, 2021, transcript, pages 32-33. See attached **EXHIBIT F** hereto. The Petitioner was trying to claim a non-jury judge trial would be unfair because as officers of the court the court would favor them over Petitioner[4].

In Respondent's memorandum, they wrote:

> "This case was finally reached for trial on January 17, 2023, before Judge Lamphear. Prior to the commencement of the trial, Judge Lamphear, sua sponte, ruled that the plaintiff was not

[4] Petitioner and his siblings have tried to get the courts to acknowledge for years fraud involved; that Respondents failed to do their job as the Will mandated, and because of Respondents acts and deeds is why the entire estate was loss, not because of taxes. The courts have refused to hear the matters, and even though during the January 17, 2023, trial when Petitioner asked the court to allow the corporate document showing himself and his siblings were rightful controllers of the corporation, it is the first time in years such has been acknowledged in any manner by any Judge. Judges usually seem to favor Respondents and reject anything Petitioner claimed that showed there were much missing from the accounting. But Petitioner and his siblings have been taught not to trust State court judges who favor lawyers.

> entitled to a jury trial with respect to the issue before the Court—i.e. the accuracy of the Second and Third Accountings regarding the Estate of Ambrose Mendes, Sr. After that ruling, Mendes noted his objection to being denied a trial by jury. The case then proceeded to trial."

Respondent's Memorandum @ pg 6, ¶ 3. At the January 6, 2021, hearing, (**Exhibit F hereto**) the Judge makes two points patently plain: 1) recognizing Respondents objections, of the "side of caution and afford the right to a jury trial, and we'll go from there." and 2) "when you talked about an appeal, I appreciate this would be *an interlocutory one,* but ... the Supreme Court might look at it.") (Emph Added). This decision came about because the Petitioner filed a motion under Rule 5 and 38 of Super. Ct. Rules of Civil Pro. See **EXHIBIT G** hereto.

Because the trial judge discarded the prior court rulings holding right to a jury trial by peers, when the trial judge claimed he would not allow a trial by jury, the hearts of the Petitioner and his siblings fell feeling the entire system was against them. Because of this they felt they could never win in any honest courtroom and although not wanting to give in, submitted to a settlement conference to try to come to a settlement. Petitioner contends no one made any specific agreement, knowingly, voluntarily, and intelligently or accepted specific terms, only they were compelled into a Hobson's Choice Agreement, because the trial court refused to honor the prior court ruling. The trial court never requested any party to consent,

explain why he was rejecting the prior holding, or anything. It just ordered no jury trial would be allowed and only a judge bench trial would be allowed.

It is true Respondents read what the contract terms stated and that each party acknowledged the terms were correct. The record states this plainly, but it does not state anywhere in the record nor did the court ask, if the Petitioner and his siblings agreed to those terms in plain language as Respondents strive to have this Honorable Court state occurred. If that had happened, a contract would have been formed on the record—IT WAS NOT. On January 18, 2023, Penza states:

> "MR PENZA: Yes. He has to sign. The release will include that fact that the agreement by the plaintiffs and plaintiff—the interveners will—is voluntarily made, and finally a non-disclosure confidentiality clause that will be in the release.
> So I would ask the court, if you could ask the parties involved if they *understand that that's essentally what the release is going to include* before I go to the next phase.
> THE COURT: Is all that okay with you, Mr. Mendes?
> MR. AMBROSE MENDES: Yes.
> ***"
> (Tr. 8-9; **K&K App 11**) (Emph Added).

The only sibling that signed the terms was Madonna Mendes—Mendes Jr's conscious would not allow him to sell out his Father's will for pennies so he rejected it and filed this Petition to have this Honorable Court clarify two matters: 1) does the record specifically clarify all parties agreed to the terms and not just understanding the terms, and two, whether the prior interlocutory order must stand and Petitioner and his siblings be entitled a trial by jury.

C. State Supreme Court proceedings:

The Petitioner filed a Writ for certiorari to the State Supreme Court. Contrary to normal processes, where only lawyers argue oral hearings, the State court instructed Petitioner he would have oral arguments on December 6, 2023, at 10:10 A.M. Petitioner appeared pro se and strived to address the matters to his best ability. Afterwards, the Petitioner sought to order the hearing transcript and was informed none was made; that Petitioner had to make arrangements in advance to obtain such documents to have them recorded. The attached Notice, **EXHIBIT H** hereto, explains the date of oral hearings but does not offer any notice for Petitioner to contact the Clerk's Office if he wanted hearing transcripts recorded. He makes this appeal to this Honorable Supreme Court to hear his complaints for justice.

Petitioner prays this Honorable Court will clarify and grant the writ in our Creator, Jehovih the I AM's, name to help protect Petitioner's estate property and the Will.

REASONS FOR GRANTING THE WRIT

The State of Rhode Island law, set by the State supreme court, holds if a prior judge makes a ruling, the trial judge should not disturb that ruling and should follow it unless he gets consent of parties or explains thoroughly on the record why he is rejecting it. The Superior trial judge did neither. Just stated he was not

allowing a trial by jury over an accounting claim, even though the prior judge making the prior ruling knew the case was on an accounting and still held the right to trial by jury.

Petitioner contends the State supreme court should have enforced its own rulings rather than enforce the settlement agreement. It did not! It had Petition, unlearned at law, to try and debate the matter to his favor. He did the best he could and explained he was under a Hobson's Choice, but the State supreme court still held the Petition must accept a settlement that is lass than 1/3 of the estate and even less than that because a firm that was to be a trustee sold it all, delayed in finalizing it and never paid taxes to claim taxes consumed it. Over $500,000 plus in estate assets and funds for a meager $67,000 settlement. The Firm has done NOTHING the Will mandated; they did their own conduct knowing the courts would help protect them. The Petitioner believes and the prior court agreed the accounting should be adjudged by a jury trial. The trial court deemed it di not have to follow State supreme court rulings and forced Petitioner and his siblings into a Hobson's Choice, to proceed to a judge trial favoring the Respondents or settle for nothing to disgrace their father's memory and his intent as set by the Will. **EXHIBIT I** hereto.

Secondary, does the record of the superior court trial judge explain the settlement to a level that makes it knowingly, voluntarily, and intelligently made.

Did it explain that Petitioner and his siblings would be bound by the settlement and had to agree to what the terms made were? Petitioner contends the trial court failed in this and the settlement agreement was never explained it was mandatory upon the Petitioner and his siblings. The trial court never explained the settlement would be binding, whether Petitioner and his siblings accepted it and would abide by it, nor did the court make clear the matters so the pro se parties could understand all the terms and its force upon them. The State supreme court never addressed this nor the prior ruling, it just denied certiorari based on oral arguments. The State supreme court did not recognize any need for the trial court to obey the prior ruling of a prior judge even though the State supreme court made that holding. Petitioner asks this Honorable Court to clarify the matters, whether the ruling mandates first, or the settlement and if the settlement, whether it was knowing, voluntary and intelligently entered into.

Lastly, should the State supreme court have appointed an attorney to address the court's issues. Is this a standard for the Rhode Island supreme court, to allow pro se parties to debate before it, or was this an acceptance for the purpose of helping the law firm and rejecting the Petitioner's certiorari. Petitioner has never heard of any supreme court allowing pro se's to argue before them, yet Rhode Island has. Does this Honorable Court allow such? Petitioner does not believe so! Is this proper when one is unlearned at law or lacking knowledge of a

hearing process. The Petitioner was ready to read to the court his contention. Instead, he was cast into debates. And if so, should it have been recorded or Notice given Petitioner so he could request it be recorded? Petitioner asks this Court to clarify the process before a supreme court.

Based on *Marshall v. Marshall*, 547 U.S. 293 (2006), Petitioner prays this Honorable Court limited the cases categorically barred from federal courts under this exception to those that *interfered* with a state court's possession of probate property. Petitioner prays this Court will grant the writ and determine if the State courts allow the firm to discard all estate property of over $500,000 plus for a meager settlement of $67,000 by not following ANYTHING the settlor had mandated on the trustees in the Will. If it does not, all States will be able to help law firms in the position of a trustee to steal away estate property and give the beneficiaries nothing or very little of what the estate actually mandates.

ARGUMENTS

a. Whether the Trial court held a duty to obey the State supreme court holdings that it follows a prior judge ruling unless consent of parties agree otherwise or the trial court makes a clear record why he is not following it—neither was offered, just that the trial judge was not affording trial by jury over an accounting claim.

Respondents and the trial Judge contend the accounting did not require a trial by jury. Petitioner disagrees. First, the Petitioner tried to explain the loss of property and issues of funds loss by Respondents' acts, words, and deeds from the

start of the case only to be repeatedly ignored by the courts. No Judge would address these matters because they claim the issues have NOTING to do with the accounting. Petitioner attempted to explain because of Respondent's own faults is why any taxes would have consumed anything from penalties because of not filing for years on any gains; that Respondents cast the siblings out of businesses they were running and making a profit at, claiming it was part of the estate, only to shut them down, allow all property, furniture and chemicals to become outdated and worthless to cause a loss to sell for pennies businesses that were making a profit. These type matters the courts contend have NOTHING to do with the accounting. Why would any logical Judge make such claims is beyond Petitioner's imagination?

In a more current case, *State v. Graham*, 941 A.2d 848, 856-857 (2008) from an appeal to the State supreme court from the superior court it stated:

> "Under the law-of-the-case doctrine, after a "judge has decided an interlocutory matter in a pending suit, a second judge on that same court, when confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling." *Richardson v. Smith,* 691 A.2d 543, 546 (R.I. 1997) (citing *Salvadore v. Major Electric Supply, Inc.*, 469 A.2d 353, 355-56 (R.I. 1983)) (emphasis added). This doctrine ensures the stability of decisions and avoids contests between judges that could cause a loss of public confidence in the judiciary. *Payne v. Superior Court for Providence County,* 78 R.I. 177, 184-85, 80 A.2d 159, 163 (1951). We have declined to apply the doctrine where the "issue did not present itself to the second judge in the same manner in which

> the first judge examined the issue." *Buonanno v. Colmar Belting Co.*, 736 A.2d 86, 87 (R.I. 1999) (mem.).
> "We hold that the law-of-the-case doctrine is wholly inapplicable to the present situation; thus, the trial justice did not err when he provided jury instructions that differed from those used in defendant's prior mistrials. We do not believe this doctrine is remotely applicable here because decisions by the trial justice on how to charge the jury are not interlocutory rulings."
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> *Id.* at 856-857 (Emph. Added). See also *Balletta et al. v. McHale*, 823 A.2d 292 (R.I. 2003) (Same).

Unlike the above two cases, in the instant case this was an interlocutory order as Judge Maureen Keogh made plain on January 6,2021, making two points patently plain: 1) recognizing Respondents objections, of the "side of caution and afford the right to a jury trial, and we'll go from there." and 2) "when you talked about an appeal, **I appreciate this would be an interlocutory one**, but ... the Supreme Court might look at it." (Emph. Added). See **Exhibit B** hereto.

This hearing arose from Petitioner filing for his right to a jury trial under R. I. Super. Ct. Rules of Civ. Pro, Rule 38 claiming his rights pursuant to R.I. Const., Art. I, sec. 5, 15, 24 and the U.S. Const., Amend. 1, 5, 9, and 14.

Notably, these rights are unalienable, inviolate, and cannot be forfeited by an attorney at an attorney's will nor a court's, --why-because the rights come from God, not men or courts. See, e.g. *Dallas v. Mitchell*, 245 S.W. 944,946 (Tex. App,

1922)[5]. It is enshrined in the Texas Constitution, Tex. Const. Article I, Section 15; Rhode Island Constitution, Art. I, Sec. 15, as well as under the due process clauses of the Federal Constitution. U.S. Const., Amend. 5, 9, and 14th Amendments.

Petitioner contends when 1981 came and the Will mandated all assets be turned over to the heirs, the heirs obtained property rights over the assets at that time which is a protected right also. E.g. Rhode Island Const., Art. I, sections 1, 5, 15 and 24 and Preamble rights, explicitly, apply to a contract, because a contract with the attorney or courts constitutes a "property right." See, e.g. *Butchers' Union Slaughter-House & Live-Stock Landing Co. v. Crescenl City Live-Stock Landing & Slaughter-House Co.*, 111 U.5.746,757 (1884) ("The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable;'); *Slaughter-House Cases*, 83 U.S.36, 111, ftn. 39 (1872) (Same); *Adsir v. United States*, 208 U.S. 161, 172 (1908) (Fifth Amendment rights ensures liberty to contract, to labor, etc, which rights are inhered in personal liberty as well as a property right), *Coppage v. Kansas*, 236 U.

[5] Petitioner has no access to a law library nor LexisNexis or West Law. But this Court held the same in a Lawyer's First Edition in the past. Book and citation are unknown without being able to have access to these type law books to review each one till located. In the referenced case, this Court stated: 'The [U.S.] constitution is a contract between the People, the states, and the United States.' This court should be able to locate its own case easily, but governments do not afford citizens and the People any means to learn or study law. They deny court law libraries, they shut down state operated law libraries, they offer nothing in schools to teach citizens and the People how to use law. So, Petitioner asks this Court to search their cases and locate the case referenced. The Constitution is a contract!

S. l, 17- 18 (1915) ("the Fourteenth Amendment, in declaring that a State shall not "deprive any person of life, liberty or property without due process of law," gives to each of these an equal sanction; it recognizes "liberty" and "property" as coexistent human rights and debars the States from any unwarranted interference with either."); Black's Law Dictionary, 6th Ed., "Property," @ 1216 (1990)[6]. Notably, the Stale constitution is also a contract and thus a property right which ensures Petitioner the right to seek redress of grievances to a higher court. E.g. *R.R. Co. v. McClure*, 77 U.S. 511, 515 (1870) ("Constitution of a State is a contract."). Depriving the right to trial by jury to force a trial by judge violates these protected and unalienable rights and is a breach of the contract! See R.I. Const., Art. I, sec. 5, 15, and 24.

Petitioner has time and time again complained he believed the courts were favoring the Respondents. In Petitioner's initial Memorandum, states why Petitioner sought a jury trial—to have them adjudge matters relating to whether issues deprived Petitioner of monies in the estate that were to be in the accounting. The matters the Petitioner claims exist are matters of fact, not law, and a jury trial would be proper. This is all in the record of the State supreme court.

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[6] Even though the Will was prepared by Petitioner's Father, the Settlor, before he died, that Will benefits the beneficiaries who hold contractual rights under the Will and the Trustees are to oversee the rights of the Beneficiaries are not denied by their acts, deeds, words and conduct.

At early common law, will contests involving realty were tried by jury but those involving personality were not, history provided no clear guide as to what modem probate systems, which try both types of cases, should do. E.g. Josef Athanas, Comment, The Pros and Cons of Jury Trials in Will Contests, 1990 U. Chi. Legal F. 529, 532 (1990). Furthermore, state constitutions in general provided no such right to a jury. [7] A study of which states permit jury trials in will contests was under-taken by a student commentator, Josef Athanas, in 1990, which indicates a conflict between States contrary to Article IV, Section 2 of the Constitution.

According to Athanas, seven states specifically deny jury trials in will contests![8] Massachusetts must be added to this list. [9] The majority of states have

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[7] Will contests are tried in state courts, and the Seventh Amendment to the United States Constitution, which guaranteed the right to a jury trial in certain civil cases, has not been extended to the states by the Fourteenth Amendment's due process clause, allegedly. See *id.* Why, probably because Fourteenth Amendment citizens of the United States are creatures of Congress, and a dead entity, see as set by the U.S. Printing Office, Congressional Record, 90s Cong., Ist. Sess., Vol. 113, Part12, pp. 15641-15646: The l4th Amendment-Equal Protection Law or Tool of Usurpation, Proceedings and Debates (June 13, 1967) ('A "citizen of the United States" is a civilly dead entity operating as a co-trustee and co-beneficiary of the PC! the Private Constructive, cestui que Trust of US Inc. under the 14th Amendment, which upholds the debt of the USA and US Inc. in Section 4.") and *Wheeling Steel Corp. v. Fox, Tax Comm's, et al.*, 298 U.S. 193 (I 936) ("Therefore, the United States citizen residing in one of the states of the union are classified as property and franchises of the federal government as an 'individual entity.'). See also *United States v. Anthony*, 24 Fed. 829 (1873) ("The term resident and citizen of the United States is distinguished from a Citizen of one of the several states in that the foregoing is a special class of citizen created by Congress") (Emp. Added), and not entitled to rights of state Citizens under the Constitution, Article IV, section 2. This Court has never explained why? But see *Texas v. White*, 74 U.S. 700, 729 (1869) (Legislature can vote the freed races on equal status under Article IV of the Constitution as a state Citizen).

[8] Athanas, *Id.* at 540. According to Athanas, the following states do not permit trial by jury in will contests: Arkansas; California; Louisiana; Oregon; South Dakota; Maine; and Kansas.

[9][9] Massachusetts Practice: Probate Law and Practice, With Forms § 23.7 (1997) (parties no longer have the right to request a trial by jury in the courts of Massachusetts).

statutes controlling whether there is a right to a jury trial in will contests. *Id.* These statutes range from provisions granting a waivable right to jury trials to those denying jury trials altogether. [10] Although most states have decided that there is no constitutional right to a jury trial in will contests, two states-Indiana and North Carolina--have found such a right at common law.' [11] Nine other states take the opposite approach, finding that common law does not dictate a right to a jury trial in will contest proceedings. [12] However, in three of these states--Delaware, Ohio, and Wisconsin-it is within the discretion of the judge hearing the will contest to

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[10] Athanas, *Id.* at 538. Fifteen states have statutes under which the right to a jury trial must be asserted in the first pleading; otherwise the right is waived. See id. (Alabama, Georgia, Illinois, Iowa, Michigan, Mississippi, Maryland, Missouri, Nebraska, Tennessee, Texas, Virginia, West Virginia, Wyoming, and North Dakota). Two states, Montana and Nevada, have statutes granting a jury trial in a will contest when one of the parties requests it. In these states, however, the jury is required to return a special verdict. See *id.* In Alaska, Arizona, Kentucky, Minnesota, Oklahoma, and Pennsylvania, the permissibility of a jury trial in a will contest is within the judge's discretion. See *id.* In these states, a court may use its discretion to convene an advisory jury for the determination of any issue of fact in cases where there is no constitutional right to a jury trial. See *id.* In Kentucky, the court, on its own initiative, may try an issue with an advisory jury. See *id.* Judges, in Oklahoma and Pennsylvania, may impanel an advisory jury. *Id.* Colorado, Hawaii, New Mexico, New York, South Carolina, and Utah enacted statutes which grant the right to a trial by jury in a will contest if the parties demand such a trial. Notwithstanding the parties' waiver of the right to jury trial, the courts in these states are still permitted to empanel an advisory jury. See *id.*

[11] See Athanas, *id* at 536. On June 18, 1952, the Indiana Supreme Court created a common law right to a jury trial in will contests although a statutory right to a jury trial for will contests no longer existed in that state. North Carolina common law makes a jury trial mandatory for will contests. Jury trials may not be waived because the state considers all will contests in rem proceedings, holding that since the contestant and the devisee are not actually parties to the proceeding, they cannot by consent relieve the judge of his duty to submit the issue to a jury. See *id.*

[12] See Athanas, *id.* at 537. These states are Connecticut, Delaware, Florida, Idaho, Ohio, New Jersey, Rhode Island, Vermont, and Wisconsin. See id.

convene a jury. Therefore, despite their common law traditions of denying an absolute right to a trial by jury, it is evident that these three states are reluctant to abandon completely the use of juries in will contests. [13]

However, Rhode Island affords a party to request a trial by jury by filing a motion specially requesting such. Petitioner here did such and the prior Judge held the right, on accounting issues, viable and granted it to Petitioner. The variation between States violates Article IV section 2 of the Constitution, as well as comity standards. See also § 33-23-9, Probate Rules and Statutes.

It should be noted Petitioner requested various documents, much of which still has not been transcribed or part of the record of the State supreme court. The Petitioner filled out the form and attached the docket at that date, which has two sections, one for hearings and the rest documents filed. The Petitioner highlighted between arrows what he wished transcribed into the record and the hearings he wished transcripts made of. This included trial dates, which have not been transcribed to date. Petitioner also attach exhibits to his response to Respondent's objections on his demand for trial by jury filed December 15, 2021, according to

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[13] See Athanas, *id* at 541. According to Athanas, 13 states do not use juries at all when deciding will contests. Thirty-seven states occasionally use some form of jury trials when deciding will contests. There are four basic approaches to the use of jury trials in will contests: "(1) not using juries at all; (2) using advisory juries; (3) using juries that may render only special verdicts; and (4) granting a right to jury trials." *Id.* (With the addition of Massachusetts to the list of states that do not use juries, the numbers of states cited by Athanas should be revised to 14 and 36, respectively). Rhode Island does afford a party to request trial by jury via a motion under Rule 38. See **EXHIBIT G** hereto.

the docket. This shows clearly the issues related to the accounting and Judge Keogh understood this and made an order granting trial by a jury on January 6, 2021. On January 17, 2023, Judge Lamphear, however, over Petitioner's objection, as Respondents would make plain in their Response, and Petitioner argued the "same issue" regarding jury trial, the Judge rejected the prior Order and commanded Petitioner have only a trial by judge. The Petitioner was out of mind believing the entire system was against him and his family to allow the trustees to do wrong and lose an entire estate and have no means to fix it because the trustees were officers of the court and the Judge's friends[14]. Because a prior interlocutory order existed granting right to jury trial, Judge Lamphear erred by denying Petitioner his right previously granted. The settlement matter only came about because of the Hobson's choice Judge Lamphear[15] forced upon Petitioner and his

[14] Petitioner placed issues like negligence, contract, etc in his jury instructions. The Court holds res judicata prevents some of these issues. Petitioner would not deny such, however, a court holds authority to set jury instructions in a manner that limits a jury when the issue cannot be judged. Petitioner believes such issues are necessary to show why the accounting is lacking and does not have all funds, and the jury could be instructed that the instruction is for a limited purpose, but the jury could not judge on that issue, like negligence, but could use it to understand the Respondents failed in their duty of care as Trustee to the Plaintiffs in the case. If this Honorable Court reviews State supreme court Exhibit 18-1, Petitioner marked sections he was transcribed or made record in both the docket and hearings and has gotten merely a small portion of what was requested by the Superior Court, so the record is not complete what Petitioner had asked for.

[15] See Article VI, Judicial Conduct, Canons 1-3 (Code of Judicial Conduct, 2021). The Judges continue to discard issues of theft, improper trustee powers, of the Businesses being the Siblings and not the estate and was stolen by the firm, loss of estate, etc, as if favoring the firm and attorneys to protect them. No one hears Petitioner's claims, and no attorney hired would address them.

siblings, which should never have occurred in the first place had the prior order been followed. Since no contract for settlement exists, and the fact the court never made record—other than it was an accounting issue—why a trial by jury should not afforded but just denied it outright, Petitioner is not in error seeking this Honorable Court to hear and adjudicate the controversy of the case which conflicts with case rulings of this Supreme Court. See e.g. *Marshall v. Marshall*, 547 U.S. 293 (2006), supra; *Scott v. McNeal*, 154 U.S. 34 (1894) (Probate ruling the law presumed Scott to be dead, its proceedings were not absolutely void, and therefore admitted the evidence objected to and directed a verdict for the defendants, which was returned by the jury); *Dohany v. Rogers*, 281 U.S. 362, 369 (1930) ([Due process] requirements are satisfied if [the party] has reasonable notice and reasonable opportunity to be heard and *to present his claim or defense*; due regard being had to the nature of the proceeding and the character of the rights which may be affected by it.") (Emph. Added)); *Case of Broderick's Will*, 88 U.S. 503 (1874) (A court of equity has no jurisdiction to avoid a will or to set aside the probate thereof on the ground of fraud, mistake, or forgery, this being within the exclusive jurisdiction of the courts of probate). See Rhode Island Constitution, Art. I, Sec. 5, 15, and 24 as well as under the due process clauses of the Federal Constitution. U.S. Const., Amend. 5, 9, and 14th Amendments.

In short, the State supreme court held the settlement was valid, ignored its ruling the prior judge order of interlocutory order be upheld by second judge on same matter, and ignored the Hobson's choice matter, paying no mind to Petitioner or his siblings feelings of despair watching Judges ignore evidence in favor of the trustees and law firm who sold away the entire estate for their benefit and complete lose to the beneficiaries. They never followed anything in the Will. Petitioner prays this Court will grant the writ of certiorari.

b. Does a Probate Trial Judge have a duty, when mandating settlement of parties, to insure Pro se parties have a voluntary, knowing, and intelligent ability to understand all duties regarding a settlement?

This Honorable Court has held repeatedly, when a contract comes into play, law merchants like Trustees, Lawyers, Judges, Brokers, etc., must ensure a non-law merchant, pro se party has a clear understanding of what he or she faces. Mere conjecture does not explain duties of the contract to insure the parties assent knowingly, voluntarily, and intelligently. E.g. *Santobello v. New York*, 404 U.S. 257, 261 (1971) (the Court has imposed procedural requirements designed to ensure that plea or settlement negotiations are a fair process in which the party voluntarily chooses to waive his or her rights); *Brady v. United States*, 397 U.S. 742 (1970) (Waivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences and cannot result from mental coercion);

Edwards v. Arizona, 451 U.S. 477 (1981) (Whether a plea or settlement agreement or waiver of the right to counsel, once invoked, not only must be voluntary, but also must constitute a knowing and intelligent decision).

The five elements of an enforceable contract are: Offer, Acceptance, Awareness, Consideration, Capacity. The offer must be clear and definite, and it must be communicated to the other party for a clear understanding. The offeree must then accept the contract terms of the offer, which can be done explicitly or implicitly. But, mental coercion affects the offer status regarding capacity. Here, Petitioner and his siblings showed evidence the businesses were rightfully theirs, not the estates, but State courts ignored the issues; they raised the Trustees kicked the siblings out of the businesses which were making a profit, to allow them to fall into array to be sold for a loss; that the Trustees failed to honor the terms of the Will, turn the estate over to the beneficiaries when the youngest reached the age of 30 as the Settlor mandated, ceased paying taxes for years to cause loss to the estate, but nothing the Petitioner raised was ever addressed, being told by State judges these matters "HAD NOTHING TO DO WITH" the accounting of the estate. Then, to add injury to chaos, refused to honor the prior judge's ruling on right to jury trial on the accounting matters forcing a judge trial instead. The toll caused all siblings hearts to fail and mental state to feel 'all is loss, the courts favor the defendants! Wow to us!

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242-243 (1980). This applies even in a probate case. Depriving Petitioner to have his raised issues heard and adjudicated does deprive due process. See Rhode Island Constitution, Art. I, Sec. 5,15, and 24 as well as under the due process clauses of the Federal Constitution. U.S. Const., Amend. 5, 9, and 14th Amendments.

QUESTION: Does loss of businesses, rent, profits, estate assets, etc, and the court never hearing the matter, constitute a deprivation of due process? Do these matters apply to an accounting on loses? Petitioner claims it does!

When brought to the State supreme court, instead of holding the prior ruling had priority and the State judge erred by not granting right to trial by jury as ruled by the prior ruling, it instead held a hearing, and because Petitioner held no knowledge how to argue before a court, ruled the settlement controlled and denied certiorari. Especially where Rhode Island statutes affords the matter to be placed on a jury trial status as set by § 33-23-9. It did not bother to address if the settlement was knowing, voluntary and intentionally understood by Petitioner or his siblings. Just denied outright to compel the settlement mandated. It never addressed if a Hobson's choice was involved, even though argued.[16] What is due

[16] Again, the State supreme court never informed to have the hearing recorded Petitioner had to request it in advance, so no recording, as claimed by the court, exists of the hearing and as to what was argued.

process for and what does it protect if a State court is unwilling to address matters? Petitioner contends the settlement agreement violates due process and Rhode Island Constitution, Art. I, Sec. 5, 15, and 24 as well as under the due process clauses of the Federal Constitution. U.S. Const., Amend. 5, 9, and 14th Amendments.

Petitioner prays this Court will address the settlement contract versus the prior court ruling as the State supreme court holds controls and grant the Writ of certiorari in the matter because it seems to conflict with rulings of the Court, like in *Marshal v. Marshal*, supra.

c. Do Rhode Island Judges hold a ethical duty to hear al matters and adjudicate the facts, even if those facts could destroy a law firm's business?

> "Rule 11 of the Superior Court Rules of Civil Procedure provides that the signature of an attorney or a party on a pleading, motion, or other paper constitutes a certificate by the signer that he or she has read it and "that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry [it] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that [it] is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Super. R. Civ. P. 11. Rule 11 goes on to authorize "any appropriate sanction, which may include an order to pay to the other party ... the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." *Id.*"

Thornton v. State, 948 A.2d 312, 316 (R.I. 2008). The problem with the Rule is it does not require a judge to actually adjudicate an issue to resolve it.

When a State supreme court or other courts reviews a hearing justice's determination with respect to an application for relief, like trial by jury, it will not disturb the findings of the hearing justice "absent clear error or a showing that the [hearing] justice overlooked or misconceived material evidence." *State v. Thomas*, 794 A.2d 990, 993 (R.I. 2002); see also *Gander v. State,* 935 A.2d 82, 85 (R.I. 2007). However, as shown above, if a prior judge has ruled on a matter in a interlocutory issue, the next judge should hold to that ruling on the similar issue! Here, however, that did not occur. The trial judge never stated on the record why it was not holding to the prior ruling; it only claimed Petitioner was not entitled to a trial by jury on an accounting issue. The prior Judge, however, when he entered the ruling in an interlocutory matter knew the matter related to an accounting of the probate and still granted right to trial by jury. State case law holds the second judge must comply with the prior ruling unless it makes a clear record why it is being denied or if all parties consent.

> "Under the law-of-the-case doctrine, after a "judge has decided an interlocutory matter in a pending suit, a second judge on that same court, when confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling." *Richardson v. Smith,* 691 A.2d 543, 546 (R.I. 1997) (citing *Salvadore v. Major Electric Supply, Inc.*, 469 A.2d 353, 355-56 (R.I. 1983)) (emphasis added). This doctrine ensures the

> stability of decisions and avoids contests between judges that could cause a loss of public confidence in the judiciary. *Payne v. Superior Court for Providence County,* 78 R.I. 177, 184-85, 80 A.2d 159, 163 (1951). We have declined to apply the doctrine where the "issue did not present itself to the second judge in the same manner in which the first judge examined the issue." *Buonanno v. Colmar Belting Co.*, 736 A.2d 86, 87 (R.I. 1999) (mem.).
> "We hold that the law-of-the-case doctrine is wholly inapplicable to the present situation; thus, the trial justice did not err when he provided jury instructions that differed from those used in defendant's prior mistrials. We do not believe this doctrine is remotely applicable here because decisions by the trial justice on how to charge the jury are not interlocutory rulings."

State v. Graham, 941 A.2d 848, 856-857 (2008). See also *Balletta et al. v. McHale*, 823 A.2d 292 (R.I. 2003) (Same).

Rhode Island supreme court holds that in reviewing a trial justice's decision on a motion, the court will not disturb the result unless the justice overlooked or misconceived relevant and material evidence or was otherwise clearly wrong. *State v. Brezinski*, 731 A.2d 711, [731 A.2d 710] 716 (R.I. 1999) (per curiam). Here, a review of the record reveals that the trial justice disregarded the prior judge's ruling for right to trial by jury and did not adequately articulate his reasons for denying that right. He merely claimed he was not allowing a jury trial which violate Petitioner' protected, God given rights. See Rhode Island Constitution, Art. I, Sec. 5, 15, and 24 as well as under the due process clauses of the Federal Constitution. U.S. Const., Amend. 5, 9, and 14th Amendments.

Moreover, from the first, Petitioner has raised and sought the judges to adjudicate the matters, of his position the trustees and law firm stole the estate, operated improperly as a trustee breaching their duty to the beneficiaries, etc, as toward the accounting and not one judge has addressed the matters in any form. They discard the issues and side step them to something else as if protecting the law firm and attorneys. Maybe because they were friends. Canons holds such conduct as improper for any judge. See Article VI. Judicial Conduct, Canons 1-3 (Code of Judicial Conduct, 2021).

A Will is an instrument set by a Settlor that requires a trustee to perform according to the Settlor's wishes. A Trustee is not, per se, allowed to do whatsoever they wish but must do for the beneficiaries as set by the Settor's intent in a Will. Rhode Island has basically held this standard in its own rulings.

Courts of Rhode Island have held that an executor owes a fiduciary duty to the beneficiaries under a Will, like the duty owed by a trustee to a cestui que trust. *Estate of Wickes v. Stein*, 266 A.2d 911, 914 (R.I. 1970). This fiduciary duty requires that the executor act at all times in the best interests of the beneficiaries as a whole, and more specifically encompasses duties to act in utmost good faith, *Hendrick v. Hendrick*, 755 A.2d 784, 789 (R.I. 2000), to act with undivided loyalty to the beneficiaries, *Sinclair v. Ind. Nat'l Bank of Providence*, 153 A.2d 547, 551-52 (R.I. 1959), and to avoid self-dealing and conflicts of interest, *id.* at 552. See

generally: George Gleason Bogert et al., The Law of Trusts and Trustees §§ 541-544 (2d ed. revised 1993) (enumerating and elaborating the duties of trustees).

Further, an executor is duty-bound to discharge the affairs of a beneficiary as a prudent person would discharge his own affairs. *Donato v. BankBoston, N.A.*, 110 F. Supp. 2d 42, 48 (D.R.I. 2000) ("Trustees must be prudent and vigilant and exercise a sound judgment. They are to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as probable safety of the capital to be invested.") (citations and quotations omitted); see also R.I. Gen. Laws §§ 18-15-1 to 18-15-13 (codifying the common law prudent investor rule for trustees). rule for trustees). Embedded in the duty to act prudently and reasonably is the duty to wind up the estate promptly and efficiently, and the Rhode Island Supreme Court has recognized the desirability of this. See *Ranalli v. Edwards*, 202 A.2d 516, 519 (R.I. 1964) ("It is in the public interest that the estates of decedents be promptly settled and that the property rights of heirs-at-law be fixed."). A failure to exercise such reasonable care and due diligence as would be expected of a prudent person gives rise to a breach of fiduciary duty, even if no bad faith is involved. *Oscar A. Samos, M.D., Inc. v. Dean Witter Reynolds, Inc.*, 772 F. Supp. 715, 719 (D.R.I. 1991) ("Trust law

does not require bad faith; rather, a trustee commits a breach of trust when he 'intentionally or negligently do[es] what he ought not to do or fail[s] to do what he ought to do.'") (quoting Restatement (Second) of Trusts § 201 cmt. A (1959)).

Petitioner has argued these matters repeatedly. Even though the State supreme court in a prior ruling held issues were waived by statute of limitations, except for the accounting, even though the estate has never been closed and the trustees to this date has not filed an accurate accounting or affidavits to close the estate or settle the Will, Petitioner has argued these matters affect the accounting itself. If the trustees failed in their duties to the harm of the beneficiaries, these matters must still be adjudicated as far as they relate to the accounting. The Rhode Island courts claim they do not or has refused to address the matter whether they do or not. Such supplantation of rights violate due process and is a breach of the Contract under Rhode Island Constitution, Art. I, Sec. 5, 15, and 24 as well as under the due process clauses of the Federal Constitution. U.S. Const., Amend. 5, 9, and 14th Amendments.

Most states, as well as the federal courts acknowledge the right to self-representation at the trial level. This was adjudicated in *Farette v. California*, 422 U.S. 806 (1975). But, this Court has also held that right was without limitations.

In *McKaskle v. Wiggins*, 465 U.S. 168 (1984) the Court ruled that judges may appoint standby counsel over a pro se defendant's objection. In 2000, the

Court unanimously ruled in *Martinez v. Court of Appeals of California*, 528 U.S. 152, 161 (2000) (citing Decker JF: The Sixth Amendment right to shoot oneself in the foot: an assessment of the guarantee of self-representation twenty years after Faretta. Seton Hall Const Law J 6:483–598, 199, p 598) that there was no constitutional right to self-representation during appeal of a criminal conviction. In this opinion, the Court also questioned whether the historical precedents of self-representation underlying the *Faretta* decision were as pertinent in the modern era when attorneys are more available and are standard participants in legal proceedings. Appellate decisions have further denied or limited defendants' requests to proceed pro se when defendants have disrupted proceedings, have appeared to move for self-representation as a delay tactic, have made a pro se request in an untimely manner, or have insisted on hybrid representation (defendant and attorney alternate in conducting different parts of the defense). Decker, supra; see also Mossman D, Noffsinger SG, Ash P, et al: Practice guideline: forensic psychiatric evaluation of competence to stand trial. J Am Acad Psychiatry Law 35(Suppl 4):S1–S72, (2007).

In *Martinez v. Court of Appeals of California*, Fourth Appellate District, the U.S. Supreme Court ruled that a criminal defendant does not have a constitutional right to represent himself when appealing a conviction. Although these all applied to a criminal actions, as stated above, this Court has held due process, or fairness,

applies the same to a civil action. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242-243 (1980). Petitioner contends, even though right to represent one-self is extremely important, at the supreme court level, those personal rights must be adjudicated by the court to determine whether the pro se party can effectively argue the merits where the supreme court is his court of last resort. The Petitioner holds that the Supreme Court should have questioned if Petitioner held knowledge enough to address the merits of his brief in oral arguments, especially where the brief was drafted by a third-party having law knowledge, not the Petitioner. The record shows the Petitioner struggled to address his claims properly; lacks knowledge of courtroom procedures and fails to address the merits of his briefs when questioned by the court. Petitioner states what he believes applies and gets by at the lower level, per se, but at the supreme court level, Petitioner believes the court should have appointed counsel for oral arguments. The briefs and petitioners were drafted by a college person, who also had twenty years arguing before various courts across the country. The court could have requested this person to argue the merits—it did not!

In closing, Petitioner believes the State supreme court did an injustice by making Petitioner attempt to argue his merits. If a record had been recorded it would show the Petitioner lacked understanding in addressing matters but that he tried his best. Like Hobson's choice, the mental state of the parties when the court

judge held, they were not entitled a right to jury trial, even though a prior judge held they did, when Petitioner feared judges because they always seemed to help the Defendants. Or never having been before a supreme court before or understanding how oral arguments worked. The petitioner had a letter drafted to read; he was not ready for debates before the judges.

Petitioner prays this Court grant certiorari to answer these matters.

CONCLUSION

Petitioner prays that this Honorable Court would grant the writ of certiorari and adjudicate the merits of the issues raised.

Respectfully submitted,
Without recourse

/s/ Ambrose Mendes Jr.

AMBROSE MENDES JR.
Petitioner-Plaintiff, Pro se.