No. 24-762-

IN THE

Supreme Court of the United States

GARY PISNER,

Petitioner,

v

ROBERT MCCARTHY, ET AL

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

Rules

PETITION FOR REHEARING

Pursuant to Rule 44, Petitioner Gary Pisner requests rehearing and reconsideration of the Court's March 24, 2025, order denying the Petition for a Writ of Certiorari, on the grounds of substantial intervening circumstances and substantial grounds and new facts that were unknown until the Summer of 2024, and legal arguments not previously presented.[1]

I. BACKGROUND

Petitioner Gary Pisner (hereinafter "Pisner") was a beneficiary of a trust. Shortly after the assets were transferred to a court-appointed trustee, nearly one million dollars of the remaining trust and estate assets disappeared.

The Court-appointed Trustee (hereinafter "McCarthy"), his accountant Dana Evans (hereinafter "Accountant"), and his assistant are the three Respondents who were the parties that collectively embezzled the assets of the trust and covered it up by fabricating documents for the court, and engaging in perjured testimony: Much of this, was done without the

[1] .A notice of deficiencies was received by Email on July 25, 2025, with 15 days to correct.

knowledge of Petitioner Pisner who was the beneficiary of the trust. One should note that one count in the original complaint was abuse of process, so given the standard of review for a Motion to Dismiss, it was a fact that documents were fabricated, false statements were made to gain the assets and to coverup the embezzlement.

At times, these activities by the respondents were done in courts that lacked subject matter jurisdiction, but in courts that the respondent was a court appointee.

In those courts (the circuit courts) McCarthy was deemed to be an expert on trust and estate law because he was an appointee, and he had held himself out as an expert for over a decade.

McCarthy's and the Maryland Circuit Court's relationship over the years had grown into something that was abnormal in that the rules and practices that one would normally expect to exist in a trustee/beneficiary relationship were absent.

For example, McCarthy refused to communicate with Pisner, the beneficiary; he refused to allow access to the trust files, so beneficiary Pisner was left in the dark; McCarthy had meetings with judges, without Pisner's knowledge; he ignored the trust documents, when it was advantageous for him.

This, although inconsistent with Maryland Trust and Estate statutes and with Trust caselaw, McCarthy had convinced the judges where he was an appointee that this was appropriate.

Because of his relationship with the courts as an appointee, his motion responses were never attested to and almost always contained false statements.

Finally, as an appointee, the court barred McCarthy from being required to testify upon Pisner's request.

As for McCarthy's accountant, she fabricated documentation and committed perjury to cover up the embezzlement of trust and estate funds. Later in another proceeding in 2024, McCarthy claimed he did not know where the Accountant's fabricated documentation figures had come from, and the accountant testified that the documentation that she prepared was the product of McCarthy's directions and that she could not recollect specifics.[2]

As for the attachments to the Respondents' Motions to Dismiss, we know that there was documentation submitted that was the product of perjured testimony, non-jurisdictional ex parte court hearings, and cherry-picking: Documents were submitted that paired unrelated Motions from the state circuit court along with an opinion from the appellate court, both of which

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[2] Request for documents or access to the trustee's files (remember the trustee had a fiduciary duty to Pisner–but he concealed his actions by refusing to permit review of the trust files and refusing to talk to Pisner).

predated the actions that were the subject of the complaint. Even the Motions to Dismiss were so ambiguous that Pisner moved for a More Definite Statement; the court did not address this until after the case had been dismissed, where the court said that the lack of notice in the Motion to Dismiss was moot.

II. REASONS FOR GRANTING REHEARING

A. Basis for this Rule 44 Petition

Since the Petitioner's Petition for a Writ of Certiorari was filed, considering the Federal Circuits alone, there were over two hundred cases where judicial notice was a key factor in the outcome.

These cases are instructive in the evaluation of a fact for its classification of a fact as judicially noticeable, but procedural failures in implementing Fed. R. Evid. 201 seem to be common.

B. The evidentiary nightmare created by the ambiguous wording of Fed. R. Evid. 201.

Taking judicial notice under Fed. R. Evid. 201 should have proceeded like this:

Once Defendants/Respondents identified the alleged documents and their purpose, they would have to move for the Court to take judicial notice of Federal Rules of Evidence Rule 201, which is:

> That ... the movant must supply the court "the necessary information ... and that the non-moving party must be given the "Opportunity to be heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed under Fed. R. Evid. 201(e)

What was unique, in this case, was that the Court-Appointed Trustee McCarthy was embezzling the assets of the trust and, as the Trustee of Pisner, who was the beneficiary of that trust as the trustee McCarthy admitted, under oath, in the Summer of 2024, that Pisner was being barred from access to the trust and its trust files.

Therefore, as stated above, McCarthy could fabricate any document, any data, to cover for the embezzlement. With this ability, with this relationship with the Maryland circuit courts (working for the Circuit Court) the Respondents had a collection of false documents to submit to the Maryland courts, at times, without the knowledge of Pisner, so the Maryland Court record is peppered with factually impossible statements and inconsistent legal arguments, where contradictory orders were generated, occasionally based on perjured testimony.

One can see that this would create a record in the Maryland courts that would need careful analysis to be useful in any other legal proceeding.

What happened here, which was also unique, was the comprehensive nature of the non-compliance with Rule 201. Given the problems identified above, Rule 201 had to be meticulously adhered to in order to work constitutionally, but one gets the impression that the Courts have found a workaround and that is Fed R. Evid. 201 (c)(1),which states the "The court... may take judicial notice on its own." So, if a party dumps documents in the file of a case and the judge reads those documents, at an early stage in the proceedings, the fact-finder, the court, has already considered those documents so, apparently, by the court's logic, Rule 201 (e) hearings are simply an unnecessary burden.

It is not quite clear how this behavior of a court squares with the rather sparse view that Rule 201 has a procedural due process origin.

Here, Rule 201 was evoked, but the court overlooked Pisner's Rule 201(e) motion and dismissed the case based on Respondents' document dump that included fraudulent documents and documents that that relate to circumstances that occurred before the grounds for Pisner's complaint came into existence.

Obviously, because the court failed to comply with Rule 201(e), Pisner could never provide the evidence that the Judicial Notice of the Court was inadmissible, he was never provided with any basis for any judicial notice, nor with any specifics of what would be taken judicial notice of and its purpose: Without this information, Pisner did not know what facts would

be relied on by the Court in its analysis of the Motion to Dismiss to work, any judicial notice issue has to be resolved prior to briefing of a Motion to Dismiss, because to respond to a motion to dismiss, you need to know what facts are before the court, otherwise briefing for a motion to dismiss is impossible, as is amply demonstrated in the case.

C. This case is a nightmare for the legal system because, using McCarthy's approach, lawyers can make themselves exempt from any kind of malpractice, ethical violations, and crimes perpetrated against their clients.

Consider this scenario: A lawyer commits malpractice, or a lawyer embezzles his client's funds. Using McCarthy's approach, as in this case after embezzlement or after malpractice, the lawyer can simply go to court with a motion that results in an order that indemnifies that lawyer against any action that his client, a victim, may take.

The court in this case accepted such an order without question.

If this is acceptable, how could a lawyer ever get sued by a client? Apparently, one of the few protections from this kind of behavior is Rule 201(e).

Pisner asserts that disregarding Rule 201(e) is a reckless policy by the courts if the actions alleged in the complaint were those of one's lawyer and fiduciary.

D. The 4th Circuit Court did not adequately respond to its appeal.

The 4th Circuit Court of Appeal's opinion apparently is the product of the evidentiary deficiencies of the district court, rather than addressing those errors, the 4th Circuit Court embraced the fruits of the district court's errors and by that, perhaps because of workload, the 4th Circuit Court transformed itself from a court where there is an appeal by right to a permissive appeals court.

One can see that the district court case was appealed, and a terse, uninformative opinion was issued by the 4th Circuit with no explanation.

As stated in the Petitioner's Petition for Certiorari, the opinion by the Fourth Circuit had no basis in the record of any case.

Clearly, this case had serious due process problems; it had corrupted facts, and we might have equal protection issues because of the Petitioner being pro se. Even the motions to dismiss failed to meet notice requirements.

As William Richmond & William I Reynolds, *Elitism, Expediency, and the New Certiorari: Requiem for the Learned Hand Tradition*, 81 Cornell L. Rev. 273, 282-283 (1996) notes:

> When a judge makes no attempt to provide a satisfactory explanation of the result, neither of the actual litigants, nor the subsequent readers of an opinion can know whether the judge paid careful attention to the case and decided the

> appeal according to the law or whether the judge relied on impermissible factors...

Certainly, given the facts and law issues, the facts used are clearly erroneous given their origins, and without uncorrupted facts, a court has no way to determine if there is error and there is or is not precedential value.

III. CONCLUSION

Obviously, the lower court requires guidance on the judicial notice issue-specifically its procedures.

As pointed out, since the Petition was filed, hundreds of federal cases have been decided where judicial notice was a factor.

Is the removal of the ambiguity on Rule 201 and of judicial notice, in general, overdue? This is the vehicle for doing that. This Court should grant the petition for a writ of certiorari because this case addresses a serious hole in state and federal due process.

Next, it is not rational to ignore the judicial notice procedure when the Petitioner's own attorney was an accessory: Documents can be fabricated, actions can be taken by one's attorney, or trustee, as in this case, that are self-serving and detrimental, under a false representation that the lawyer

or fiduciary is acting in the victim's interest. In this instance, failure to comply with Fed. R. Evid. 201 will be a due process disaster.

Add to all that, given an abuse of process count had allegations that asserted that documents and procedures were corrupted and for a motion to dismiss the facts in the complaint must be true; therefore, disregarding Fed. R. Evid. 201, by the court, was inexplicable.

Finally, the 4th Circuit Court of Appeal's opinion does not meet any minimal requirement for review.

Pisner understands that the lack of an opinion and responsive briefs by the Respondents makes effective review more challenging, but there is an aspect of this case that is unusual, in that with a court-appointed trustee, who has extensive control over the record of the trust and that means that Judicial Notice must be handled carefully, cautiously and, if not, the trustee can abuse his fiduciary duties and abuse his beneficiaries and get away with it. This may be a unique vehicle for this Court to correct this problem.

Finally, false facts and unintelligible pleadings can make an informative opinion less likely: this can lead to useless, uninformative opinions, as in this instance. All the more reason to get judicial notice under control, because it can throw a monkey wrench into the appellate process.

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Respectfully submitted,

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August 11, 2025

CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, Petitioner Gary Pisner, a member of this Court's Bar, certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Counsel certifies that this Petition is presented in good faith and not for delay.

Gary Pisner, Esq. Pro Se

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CERTIFICATES

I CERTIFIY that 3 copies of this Petition for Rehearing have been mailed to the Attorney of Record on August 11, 2025

All parties required to be served have been served.

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Pursuant to Rule 33.1(h) of the Rules of this, Court, I certify that the Petition for a Writ of Certiorari was prepared using 12-point Century Schoolbook type and contains 2086 words.

I Gary Pisner, Esq., under the penalty of perjury that the foregoing is true and correct.