IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 23-0031

IN THE MATTER OF THE ESTATE OF: IAN RAY ELLIOT, Deceased.

On Appeal From The Montana Thirteenth Judicial District Court,
Yellowstone County, Hon. Rod Souza
Case No. DP-22-0034

APPELLANTS' REPLY BRIEF

ORAL ARGUMENT REQUESTED

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PRELIMINARY STATEMENT

Appellee Joseph Womack's Answer Brief (AB) did not respond to multiple serious facts and evidences in our Opening Brief (OB). These facts and evidence were presented in our supplementary motion, the subsequent motions and objections (Dkt 68, 69, 70,72, 78,79, 81). Womack also evaded the undisputed fact that he charged $300 hourly rate substantially for non-legal work, and the evidence (Womack's accounting report) we obtained after September 2022, proving that Womack made false testimony claiming he conducted Ada estate's accounting.

Womack's evasions, if not an concession, at least indicate that he was unable to deny these facts and evidences.

Womack argued that Rule 60 Relief is a matter of court discretion, not the matter of law we brought up in our OB.

This is a misinterpretation. The standard review for Rule 60 Relief as abuse of discretion does not limit this Court's review of the law issues involved. See *State v. Price*, 2006 MT 79, ¶ 17, 331 Mont. 502, 134 P.3d 45.

ARGUMENT

A. The Pre-UPC Precedents We Cited Are Applicable

Womack contends that our argument of the proper jurisdiction were based on the pre-UPC precedents, and not applicable. This is false.

First, we also cited *Matter of Estate of Fender* (541 P. 2d 784 Mont. 1975)

(See OB, p12). *Fender* was after Montana adopted the UPC in 1974.

Second, the ruling in *In Re Hofmann's Estate*, 318 P.2d 230, at 239 (Mont. 1957) that "the petition shall be filed by the heirs or those entitled to distribution of an estate" is consistent with the "interested person" defined in the UPC, as "having a property right in or claim against a trust estate or the estate of a decedent", (MCA 72-1-103(25)).

Third, Womack petitioned for a formal probate to adjudicate the heirs, claiming Ian Elliot died intestacy. This is an action of Will contest, when Womack knowingly did not disclose to the Court the assertive notice from Ann Sargent and Jenny Jing, that they each possessed an Ian's original notarized Will.

The *Fender* Court cited multiple early precedents before the UPC (including our cited case, *State ex rel. Hill v. District Court* (242 P. 2d 850, Mont. 1952). *Fender* affirmatively ruled again, that only the person whose property right could be detrimented by the will could contest the will.

Neither Ada Elliot's estate nor Starfire LP would be detrimented by Ian's Will or no Will. Therefore,

> "a court that would otherwise have jurisdiction to hear and decide a matter will not have jurisdiction if a person without standing attempts to bring the action." *In re Parenting of DAH*, 109 P. 3d 247 (MT 2005), citing *Edwards v. Burke*, 102 P. 3d 1271 (MT 2004)

Fourth, Womack's petition claimed he was an interested person because he needed to administrate Ada's estate. However, the matter of Ada estate's

administration is the jurisdiction of Hon. Judge Mary Jane Kinsely's Court, while Ian's pending appeal of Judge Knisely's order was in the jurisdiction of This Court.

Womack's filing a document he prepared for Cindy Elliot claiming Ian's intestacy (Dkt 2), does not establish the District Court's jurisdiction either. Without filing attorney appearance to represent Cindy, Womack cannot prepare and file document for Cindy in the Court.

B. Womack And Cindy Cannot Participate In The Cause To Disqualify The PR Until They Prove They Have Property Right In Ian's Estate

Womack was correct that MCA 72-1-103(25) also defines "interested person" as:

> "The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding".

However, Womack misinterpreted the statute. The definition of "interested person" may change, but is still based on the core principle that the person has a "property right" for the "particular purpose of matter" at the time.

Cindy's or Womack's standing varies for the purpose from contesting Ian's will to contesting PR's appointment. This is because both of their claimed standings are *conditional*. See *In re Estate of Lawlor*, 343 P.3d 577 (MT 2015); *In re Estate of Glennie*, 265 P.3d 654 (MT 2011); *Estate of Miles v. Miles*, 994 P.2d 1139 (MT 2000).

Cindy is not in Ian's Will. She must first succeed in overturning Ian's will.

Womack argued that Ian thanked him for the Starfire "loan". Yet Womack never filed demand for notice as a creditor. Womack controlled the partial distribution of Ada's estate in the form of "Starfire loan" (See MCA 35-12-1001, partnership's interim distribution to partner (Ada's estate) allowed; 72-3-1006(2) estate's partial distribution to heir allowed). In Ada probate's proceedings in the jurisdiction of Judge Knisely's court, Womack has the authority and duty to directly adjust heirs' shares by subtracting the "Starfire loan" from the cash balance in his possession (the $1.8 million property sale proceeds). There is nothing to involve Ian probate court's jurisdiction about this "loan". Let's see some obvious examples:

(1) The IRS is presumably a creditor of all the tax payers. The IRS has the duty and authority to keep the tax owed from a tax payer's overpaid withholding.

(2) A person's checking account has overdraft protection and is linked to his $1 million deposit in his savings account. He over drafted $100,000 from his checking account. The bank has the authority and access to take the money from his savings account to pay back the overdraft from the bank's funds.

If the attorneys for the IRS or for the bank in the above situations bring litigation as this taxpayer's or this depositor's creditor, they could be sanctioned for bringing a frivolous case or for dishonesty.

Yet this is exactly what Womack did. Womack's claim as Ian estate's creditor

does not have even an arguable base on the face, both according to the law and the common sense.

Womack's and Cindy's *conditional* standing as "interest person" ended at the time when they failed to overturn Ian's Will, and failed to prove that Womack could not simply subtract Ian's "loan" from Ian's shares in Ada's estate. Without first establishing a property interest in Ian's estate, they do not have interest in Ian estate's management/administration to bring the cause to disqualify Ann and Jenny, as ruled in *Lawlor*, *Glennie*, and *Miles*.

C. The District Court Exceeded Its Jurisdiction In Determining The Facts Without a Jury

Womack contends that MCA 72-3-701(2) only requires a hearing for a special administrator's appointment. Womack misinterpreted the statute.

First, Womack's and Cindy's *conditional* standing did not satisfy them as "interested person" to Ian estate's administration.

Second, there's no finding of the necessity "to preserve the estate" since Ian estate's main assets are in Womack's possession.

Third, the finding of the "circumstances where a general personal representative cannot or should not act" is to disqualify the PR with legal cause.

Cindy claimed that Ian's Will was invalid, because of Jenny's undue influence, financial exploitation, conflict of interest and other felony activities such as providing "legal advice" to Ian without a law license (Dkt 9, 12). These

allegations involved civil and criminal law issues. Jenny as the defendant is entitled for a jury trial in these legal disqualification causes. (See *Safeco Ins. Co. v. Lovely Agency*, 652 P. 2d 1160 (MT 1982). Holding: "Safeco's action states a claim for negligence, misrepresentation and breach of duty. Such claims are legal rather than equitable. As such, factual determinations would have been properly before a jury.").

A court order is a public record, it affects people's life. Although the District Court order admitted Ian's will, it stated that Jenny did a false denial and intended to minimize a much lager amount of $21,000 to a smaller amount of either $2,000 or $8,900 that Jenny received. A false denial is the same as a perjury. The Court order publicly destroys Jenny's credibility and integrity.

Fourth, the Court's "finding, after notice and hearing" is conditioned "in a formal proceeding". UPC prescribes only two type of probate proceedings: informal probate and formal testacy proceedings.

A formal proceeding is defined in MCA 72-3-302:

> "**Formal testacy proceedings -- nature -- how and when commenced.**
> (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will."
> ...
> "(2)(b) to set aside an informal probate of a will or to prevent informal probate of a will that is the subject of a pending application;"

To circumvent the jury trial requested by Ann and Jenny, then in the middle of the litigation, Womack and Cindy claimed that they were not going to contest Ian's

Will but only object to an informal probate and the appointment of PR designated in Ian's Will.

Nevertheless, both contesting the Will, and preventing an informal probate to appoint Ian designated PR, are defined in MCA 72-3-302 as formal testacy proceedings.

MCA 72-1-208(1) explicitly states that,

> "If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury."

In *Banschbach Habeas Corpus*, (133 Mont. 312, 323 P.2d 1112), This Court noted numerous cases from other jurisdictions and hold that, where a party is entitled to a jury trial as a matter of right, and it is being withheld from him, extraordinary relief is justified:

> "the jury constitutes an essential part of the tribunal authorized to determine the facts, and that the court in attempting to determine the facts without a jury exceeds its jurisdiction."

Womack argues that we only brought up the jury trial issue first time in our appeal. Again, this is false. Ann and Jenny repeatedly requested for a jury trial and never waived or withdrew their demand (Dkt 7, 11, 13, 81).

D. The District Court Did Not Apply The Correct Legal Standard For Analyzing Rule 60(b)(1)

Womack contends that our correcting Jenny's negligence/mistake was attempting to 'guise of a "mistake" to resurrect an argument' that we forfeited by

failing to appeal. This attack is improper. It undermines Rule 60(b)(1).

Our motion for relief from the 5/23/2022 order was in compliance with the Rule 60. Our OB argued District Court's errors in the 12/9/2022 order.

Womack contends that we cited non-Montana case law to support Jenny's not having "conflict of interest". Womack used double standard.

The District Court also cited other jurisdictions' precedents such as *In the Estate of Gober*, 350 S.W.3d 597, 600 (Tex. Ct. App. 2011). Womack himself also cited non-Montana cases. *Zetor North America, Inc. v. Rozeboom*, (W.D. Ark. Aug. 23, 2018) is an Arkansas district court order, not even qualified as a case law. Womack also mischaracterized *Coleman v. Dunlap*, 303 S.C. 511 (1991) as having "significant doubt" of the relief (AB, p31, ¶1). Yet *Coleman* Court affirmed relief. One Justice, Cureton, J. concurred and dissented. Cureton's doubt emphasized on the finality and believed that Rule 60(b)(1) relief should be very difficult to obtain. Please note that Cureton's doubt was in 1991.

According to the 9th Circuit Court, after *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 US 380 (1993), the legal standard for analyzing under Rule 60(b)(1) requires conducting a four-factor test stated in *Pioneer*. The reason for this is:

> "To aid uniformity of law, it is important that the Supreme Court's interpretations of law are adopted and followed by lower courts." *Lemoge v. US*, 587 F. 3d 1188 (9th Cir. 2009), at 1193

The 9th Circuit explained that,

'Before *Pioneer*, we had held that "ignorance of court rules does not constitute excusable neglect" and had applied a per se rule against the granting of relief when a party failed to comply with a deadline. [citation omitted]. After *Pioneer*, however, we recognized that the term covers cases of negligence, carelessness and inadvertent mistake."
Bateman v. U.S. Postal Serv., 231 F.3d 1220, (9th Cir.2000), at 1224

In *Marriage of Remitz,* This Court noted that,

"M. R. Civ. P. 60 is modeled on F. R. Civ. P. 60, so we look to interpretation of the Federal Rules for guidance.", *Id.*, Note 2.

Under the new standard, not conducting the *Pioneer* analysis for Rule 60(b)(1) is an abuse of discretion for not applying the correct legal standard. (See *Lemoge,* omitting the *Pioneer's* equitable test altogether; *Laurino v. Syringa Gen. Hosp.*, 279 F.3d 750, 753-54 (9th Cir.2002), not analyzing the good-faith factor; *Briones v. Riviera Hotel & Casino*, 116 F.3d 379 (9th Cir.1997); *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir.1996), etc.)

The four *Pioneer* factors are: 1) the danger of prejudice to the opposing party; 2) the length of the delay and its potential impact on judicial proceedings; 3) the reason for the delay; 4) whether the movant acted in good faith.

We have argued that,

(1) Whether Womack and Cindy will be prejudiced is in the jurisdictions of the cases pending in other courts (OB p40).

(2) and (3): It was Womack's dishonest acts of self-seeking the appointment

as Starfire's liquidating partner, and Womack's manipulation of accounting delayed Ada estate's judicial proceedings (OB p35). Womack and Cindy also delayed Ian probate's judicial proceedings with this litigation.

4) Jenny's negligence/mistake was in good faith. (OB p10, 14-16, 19)

Whether it is purposeful or not, as a bankruptcy trustee with the experience of preparing numerous accounting reports, Womack confuses the $15,400 *total* debits with the $8,900 *net* debits. It is basic accounting that the net balance must negate the debits with credits, not just taking away the $6,500 credit and still keeping the $6,500 debit in the *total transactions* ($21,900).

Womack then continued to allege that Jenny still tried to minimize $15,400 to $8,900, and Jenny's receiving funds from Ian established potential claim against her, and the actual amount was irrelevant.

However, the fact of Jenny's promises to Ian's mortgage co-signer to pay out Ian's entire mortgage to ease his concern, also made their argument of a potential claim groundless.

Knowing his arguments are exactly opposite to the case law, Womack then argued that Jenny's integrity is irrelevant and our cited cases were from the jurisdictions of other states, implying that these precedents are not applicable in Montana. This is again, false.

In Re Wilcox's Estate, 290, 291-95 (Mont. 1949), *In re Estate of Jochems*,

252 Mont. 24, 826 P.2d 534 (Mont. 1992), *In re Estate of Graf*, 150 Mont. 577, 437 P.2d 371 (Mont. 1968), are all Montana precedents.

These precedents consistently ruled that, what is material and relevant is the decedent's free and competent intention, and the PR's integrity.

Therefore, our request for Rule 60(b)(1) relief is appropriate. The district Court's denying the relief is erroneous both in the law and facts. Also, without applying the correct legal standard to identify and conduct *Pioneer* factor analysis whether Jenny's negligence/mistake was excusable, is an abuse of discretion according to the federal appellate courts' guidance.

E. Womack's Conducts Squarely Fit In Fraud On The Court

Womack's denying fraud on the court centered on his arguments that we were trying to re-litigate the issues that had already decided in *In re Estate of Elliot*, 2022 MT 91N (*Elliot III*). Based on this argument, Womack went further to declare that our argument of his fraud on the court was "frivolous".

Once again, Womack's arguments are false and misleading. An action is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) The issues, facts and evidence will not disappear or become trivial by evading them.

In *Chewning v. Ford Motor Company*, 354 S.C. 72 (2003), the South Carolina Supreme Court explained why nation's higher courts treat an attorney's dishonest

act as fraud on the court:

> "where an attorney—an officer of the court—suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud." at 82-83

This is what happened in Ada and Ian probate court proceedings.

1. It's a First Impression Issue, Not A Re-litigation For Womack's Conducts In His "Enforcing The Agreement"

Elliot III affirmed Judge Knisely's orders for no abuse of discretion based on the information Judge Knisely had at the time. *Elliot III* did "not further assess the Liquidation Agreement" (*Id.*, ¶16), nor the legitimacy of Starfire's property title.

> "issue preclusion does not apply to issues an appellate court declines to consider on appeal, even when the appellate court affirms the overall judgment." *Pogue v. Principal Life Insurance Co.*, No. 20-5133 (6th Cir. 2020). Refer to and cited *Jennings v. Stephens*, 574 U.S. 271, 135 S.Ct. 793 (2015).

Womack's first motion to Ada's probate court was filed just 9 days after Womack first met Ian, when Ian disagreed to let Womack manage Starfire, for the reason that Womack's $300 hourly fee was too expensive for Stafire's extremely simple operation. Womack did not disclose to Judge Knisely the partnership law adverse to his position for his liquidating Starfire, the mandatory in-kind distribution preference law, and the fact that Ian already disagreed to let Womack manage Starfire.

In Womack's second and third motions and the subsequent Court hearing to

"enforcing the agreement" for his appointment to a lucrative position as Starfire's liquidating partner, Womack again did not disclose to Ian and Judge Knisely the above mentioned controlling laws. (Womack could have argued that the laws were not applicable, yet he chose not to disclose.)

Other jurisdictions have ruled that an attorney's similar kind of acts constituted fraud on the court, and justified to set aside the order. (OB, p27). It's a first impression issue in Montana.

Womack is a court appointed attorney trustee, he is required with the even higher duty of loyalty comparing to the attorneys representing their clients, especially the position Womack argued would financially benefit himself at the expense of the estate and the beneficiaries.

As the rule set in *Hazel-Atlas Glass Co. v. Hartford-Empite*, 322 US 238 (1944), to review the issue of fraud on the court, the matter is the attorneys' action/conduct itself, not the effectiveness or relevancy of the attorneys' action in obtaining the favorable judgement. Like the attorneys in *Hazel-Atlas,* Womack believed the "agreement" was relevant, because he knew the partnership law requires other partners' consent. Womack's actions in his planning with Cindy's counsels, in executing his plan, and "enforcing the agreement" are self-proving facts and evidence, therefore clear and convincing.

2. <u>The Additional Facts And Evidence Of Collusion/Conspiracy Were Unavailable At The Time Of Ian's Appeal</u>

The additional facts and evidence regarding Womack's collusion with Cindy were only available after Ian's death, were not reviewed in *Elliot III.*

Again, AB evaded Womack's receiving the stolen document from Cindy's trespass and theft, the subsequent planning and concerted actions they took in this litigation, and his minimizing Cindy's liability by excluding more than $1 million transactions in Ada's personal bank and credit card accounts in his "Starfire accounting" conducted by Wipfli. (OB p30; and Dkt 79)

In *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), the U.S. Supreme Court ruled that, claims in the second suit based on events that had not yet occurred at the time of the first suit were not barred even though "both suits involved essentially the same course of wrongful conduct". *Id.* at 327

Womack colluded Cindy in initiating this litigation, according to the definition of conspiracy. (See *Duffy v. Butte Teachers' Union* (332, 541 P. 2d 1199, at 1202, Mont. 1975). Womack and Cindy obtained Ian unsigned Will "by criminal or unlawful means", and used it to "accomplish a purpose" of preventing Ian designated PR from retaining legal representative to timely making appearance in Ian's surviving actions against them (including Ian estate's appeal in This Court). Womack's advise to the District Court (Trans. 4/1/22, p478, P479, ¶1-2), is a self-proving evidence of this purpose.

It is naked facts that Womack and Cindy have been taking the same positions

in every court, joining each other's actions which personally benefit Cindy or Womack, and detriment to Ian/Ian's estate.

Trustee must stay neutral, not taking the position of one beneficiary in a manner beneficial to one beneficiary and detrimental to the other. (See *Zahnleuter v. Mueller*, 88 Cal.App.5th 1294 (2023). Certified for publication in March. Holding: the trustee breached his duty of impartiality to contest a Will that would favor one beneficiary and himself.)

Again, Womack evaded the issue and fact that his siding with Cindy in this litigation, breached his fiduciary duty of impartiality. See MCA 72-38-803.

3. We Request An Investigation For Womack's Concealing Document

Womack contends that we did not provide sufficient evidence for his concealing an audio record because his assistant Lindsey Ross testified that she could "not recall". Womack's statement that Lindsey was an U.S. assistant attorney now, was to evade the fact that Lindsey was an attorney in Cindy counsel's law firm at the time of her testimony (Trans. 4/1/22, p60).

The District Court had ruled previously that Jenny should stop when Lindsey said she could not recall. When Jenny contested Adrian's testimony after Adrian answered he did not remember, the District Court also ruled: "No other questions after that". (Trans. 3/7/2022, p192, ¶2-23).

Jenny then did try to ask Womack himself to describe the incident. Womack evaded answer and the District Court sustained objections. (Trans. 11/29/2022, p106-110)

Womack never contested Mike's testimony that Womack instructed Lindsey to sit in, and Lindsey made an audio record. Womack also evaded that Lindsey testified that she "sat in on several meetings to take notes and keep a record of the meetings what was said". (Trans. P300, ¶16-25)

4. The District Court Accessed Witnesses' Credibility In An Arbitrary Way

Womack did not provide any fact or evidence to counter our evidence that he falsely testified that he conducted Ada estate's accounting. Instead, Womack argued in a circle, using his testimony in question of falsity, to prove no falsity. Womack did the same to assert Adrian was credible.

Womack is correct that the appellate courts generally do not question a trial court's discretion for a witness' credibility. This is because the trial court has the advantage of observing the witness' demeanor (*Miller v. Mercy Hosp., Inc.*, 720 F.2d 356, 365, 369 (4th Cir. 1983)). However, *Miller* Court looked first to the trial court's credibility assessments "because it is essentially on that stated basis that the court's ultimate finding is based." *Id.*, at 365.

In our instant case, the District Court's fact-findings are also essentially (if not all) citing Womack's and Adrian's testimonies. The review of the District Court's

assessment process is necessary because:

> "the appellate function is to insure that the [fact-finding] process shall have been principled". *Id.*, at 361. *(*Citing numerous cases from the U.S. Supreme Court to other circuit courts)

Here, we are not trying to argue the 5/23/2022 order but questioning the District Court's assessment process in the 12/9/2022 order.

> "[c]redibility involves more than demeanor and comprehends an overall evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." *Id.*, at 365. Citing 9 C. Wright A. Miller, *Federal Practice and Procedure: Civil* § 2586, pp. 736-37 (1971).

When the District Court discredited Jenny's making correction as Jenny's still trying to minimize the $21,900, it at least used the record Ex. V, (Order, p2) as its supporting evidence (although it arbitrarily picked up the miscalculated amount (OB, p14-16)).

Comparing to the assessments that Womack conducted Ada estate's accounting, or Adrian did not fabricate facts, were made by citing Womack's or Adrian's testimony, and disregarding other evidence.

Therefore, the District Court abused its discretion when it did not apply legal standards of rationality in drawing inferences "together with other evidence" and "internal consistency" (*Miller*, at 365), but in an arbitrary way.

F. Our Constitutional And Statutory Rights Need To Be Protected

As indicated in Womack's AB and the 12/9/2022 order, in addition to Jenny's

"conflict of interest", the rest of the District Court's findings were all based on Jenny's involvement in Ian's "litigation strategy" and "not work with Womack".

This presents another first impression and constitutional issue to This Court. That is, Jenny's involvement in her domestic partner Ian's litigation, her legal research to help Ian, her expressing opinions to Ian from her research, is her free speech right under the protection of the First Amendment, or is a crime, or wrongdoing as providing "legal advice" without law license.

The law preventing anyone from providing legal service without law licence is to ensure people to receive quality legal services. It is not for the purpose of keeping people ignorant to the law, or prevent them from expressing opinions through their self-educated or even self-perceived understanding of law. It will have a chilling effect to prevent people who do not have law license from expressing opinion about legal issues, either privately in their own home, or publicly. Especially in the age of Google, and when people like Ian were unable to afford an attorney most of the time (then his counsel was taken away by Womack). Or, in the circumstances that attorneys declined to be involved in the controversies regarding their peer attorney's conducts.

As pro se, Ian might have filed a few improper motions with mistakes. Ian believed that he was not treated equally comparing the way Womack was treated in the court, because his motions were never granted a hearing unless Womack

wanted a hearing, and his arguments were ignored while Womack's requests were always granted. Although This Court ruled that Ian's motion did not satisfy the legal standard for a judge's recusal, Womack's tainting Ian for making such a request is unjust. A party should have the confidence in our judicial system and not fear to be prejudiced after requesting a Judge's recusal.

To discrete Ian's actions against Womack, Womack states that Ian brought claims against everyone who disagreed with Ian, while evading what was "disagreed".

Womack evaded the fact that because Ian "disagreed", Hon. Judge Holly Brown did not approve Cindy and these attorneys proposal to sell out Ada's/Starfire's properties. Hon. Judge Ingrid Gustfason also disallowed the property sale without a court order. Without Ian "disagreed" with Cindy and the 3 former attorneys' withholding accounting and attempting to cash in Ada's/Starfire's properties for Cindy claimed "management fees" and these attorneys' created unnecessary services, nothing would have left for Ada's estate, let alone the property appreciation after Ada's death, and Ian's estate.

Womack suggested that Ann and Jenny somewhat disobeyed This Court's order in filing a pro se intervening motion without intention to retain an attorney.

However, it was Womack who advised the District Court that an attorney retained by Ann and Jenny would act "in a manner that - they want him to do"

(Trans., 3/7/2022, p86, ¶3-13).

Ann and Jenny did secure an attorney in Kalispell, after Ian and Jenny failed to do so in Billings, Bozeman, Helena, Greatfall, Missoula, even in Sheridan (WY), where Womack is well-connected. The attorney agreed to represent Ian's estate to file a reply brief after Ann and Jenny were appointed.

Without the appointment order, Ann and Jenny followed Appellate Procedure Rule 2(1)(f), filed intervention as pro se interested parties.

Womack violates appellate rules in requesting This Court to declare Jenny as "vexatious". Womack's new motion and our objection are not in the record for this appeal. This is unfair to us since we are unable to squeeze in arguments for this new issue within the word limit.

G. Justice Overweight Finality In Our Case

When Womack contends that Jenny attempted to argue the merits of Ian's claims in the hearings, he indirectly conceded/admitted that the hearings for the 5/23/2022 order did not examine Ian claims' merits.

In the 11/29/2022 hearing, Jenny contested zealously against the objections to her bringing up Ian claims' merits. This includes Womack's false financial report which buried the legitimacy issues of Ada's property transfer to Starfire, Womack's legitimizing Cindy's purported "contracts" with Ada, etc. (Trans. 11/29/22, p72-88)

Ada and Ian should not have lived a frugal life depending mainly on their

social securities, while their fiduciaries depleted more than $3 million Ada's assets, involving their compensation contract/agreement issues.

The District Court stated that it did not have jurisdiction to the "contract" issues. (Order, 12/9/2022, p10) Yet the denying relief from the 5/23/2022 order prevented the "contract" issues to be adjudicated in the Courts that have the jurisdictions. Our special administrator's dismissing Ian's claims with prejudice, was his following the 5/23/2022 order's direction to "curtail the ongoing litigation strategy that Ms. Jing was heavily involved in prior to Ian's death." (Dkt 65, p3).

In *Buck v. Davis*, 137 S. Ct. 759 (2017), the U.S. Supreme Court ruled that Rule 60 relief was appropriate when proceedings "patently unconstitutional for a state to argue that a defendant is liable to be a future danger because of his race", at 775; therefore "the State's interest in finality deserves little weight." At 779.

Ian's probate proceedings are also unconstitutional to condemn Ian and Jenny for pursuing the redress of Ian's grievance against Ian's fiduciaries as their "litigation strategy".

Moreover, both Ada and Ian estates' probate proceedings are still pending.

Therefore, the court's interests of finality for a special administrator's appointment are light, and the justice interests are strong.

In *Demjanjuk v. Petrovsky* (10 F. 3d 338 (6th Cir. 1993)), the 6th Circuit

vacated both of its own judgment and the trial court's judgement, based on its determination that government attorneys' non-disclosure information constituted fraud on the court, "to protect the integrity of the judicial process within this Circuit", at 356.

To prevent a miscarriage of justice, and to protect the integrity of the judicial process, we ask This Court to also reconsider *Elliot III* based on an review of our presented facts and evidence that Womack has committed fraud on the court.

CONCLUSION

For the above reasons, we pray This Court to

1) Reverse the District Court's 12/9/2022 and to set aside the 5/23/2022 order;
2) Order an investigation of Womack's concealing an audio record, false testimonies regarding Ada estate's accounting and the other matters presented in our appeal.

Respectfully submitted: 10/3/2023

Jenny Jing, Alice Carpenter, Mike Bolenbaugh

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CERTIFICATE OF COMPLIANCE

I certify that this brief satisfies Rule 11 of the Montana Rules of Appellate Procedure, with Times New Roman typeface of 14 points, and 4,998 word count calculated by WordPerfect, excluding cover page, table of contents, table of authorities, certificate of compliance, certificate of service, and signatures.

Jenny Jing, Alice Carpenter, Mike Bolenbaugh

CERTIFICATION OF SERVICE

I certify that on the 3rd day of October, 2023, I served a true copy of this brief to:

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