IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No.: DA-25-0756

IN THE MATTER OF THE GUARDIANSHIP AND CONSERVATORSHIP OF:

J.F.R.
A Protected Person.

Appeal from the Third Judicial District Court, Granite County, Montana
Hon. Judge Meehan, Presiding
Cause No. DG-20-2023-0002

APPELLANT'S OPPOSITION TO MOTION TO DISMISS APPEAL and ALTERNATIVE MOTION TO TREAT APPEAL AS PETITION FOR WRIT OF REVIEW OR WRIT OF SUPERVISORY CONTROL

I. INTRODUCTION

Appellant, the attorney found in contempt by order dated October 20, 2025, respectfully submits this Opposition to Jana Cooke's Motion to Dismiss Appeal. Counsel for Jana Cooke asserts that the contempt order is not appealable except under the family law provisions of § 3-1-523(2), MCA. That contention, if applicable, demonstrates that the Appellant's request to

convert this appeal to a Writ of Review or Writ of Supervisory Control is the proper result.

The underlying proceeding arose under Title 72, Chapter 5, MCA, a temporary conservatorship, and not a Trust matter under Title 72, Chapter 38. [Doc. 1 – Petition at ¶ 24]. Nevertheless, the District Court has ventured outside of the Probate Code where the temporary conservatorship resides and gone into the unpled Trust Code to enter an order against J.F.R.'s daughter and J.F.R.'s counsel for using the Trust to protect the Trust Beneficiary's assets and pay her bills as permitted under the Trusts.

If direct appeal is unavailable for this order, this Court should treat this matter as a Petition for Writ of Review under M.R.App.P. 14(2) or Writ of Supervisory Control under M.R.App.P. 14(3) because the District Court is proceeding under several mistakes of law and is causing a gross injustice.

II. BACKGROUND

The underlying proceeding involved a contested temporary conservatorship and temporary guardianship for J.F.R., who is also a trustee of private trusts ("Trusts"). The Trusts themselves were never brought before the District Court under the Uniform Trust Code ("UTC"), and therefore, the District Court never had jurisdiction over the Trusts.

Nevertheless, the District Court found Appellant in contempt because the law firm for which he was working at the time submitted a legal invoice(s) to the Trustee, which is an act that did not violate any clear or specific court order, and imposed an attorney-fee sanction on October 20, 2025 [Doc. 357], resulting in a gross injustice. The situation was that the temporary conservator, Western Montana Chapter ("WMC") had disavowed any responsibility for the Trusts and their assets, leaving J.F.R. in a jurisdictional and fiduciary vacuum. She was unable, for example, to get potable water to her home because the temporary conservator refused to use her personal funds for the preservation and maintenance of Trust property. [Doc. 138] The Trustee sought legal help; that help was provided by Vicevich Law. Trustee later properly directed the financial advisor for the Trusts to pay the Vicevich Law firm's bill.

From that Trust activity, this contempt issue was raised. However, that Motion did not have the required fact affidavit, and there was no order prohibiting the Trustee from making the payment from the Trusts. *Id.*

Cooke's Motion was one of 36 pending motions by June 2025. A hearing was started on June 10, 2025, for, as Judge Menehan stated: "***oral argument*** on virtually every motion that's been filed in this case, of which

there are a great many." [Doc. 335, *page 4, ln 25 – page 4, ln 14* emphasis added] The hearing notice did not say this would be an evidentiary hearing. *Id.* The notice, as the District Court stated was for "oral argument." *Id.* Despite the hearing being set only for "oral argument" the District Court permitted Cooke's counsel to convert the hearing into an evidentiary hearing. *Id.* Stephanie Ross' counsel objected to this, as well as the jurisdictional issue of the Trusts. *Id., page 5, ln 15 – 22; page 6. Ln 9 – 15; page 8, ln 10-14.* The District Court went ahead with the evidentiary hearing, stating improvidently: "But nonetheless, we're all here and I'd like to proceed. *Id., page 7.*

Cooke called Stephanie Ross as her first witness. *Id. page 8, line 21.* During Ms. Ross' cross-exam, the Court interrupted and noted it was nearing 5:00 o'clock. *Id., page 131, ln 22.*

The Court then momentarily addressed another of the 36 pending motions, that being the question of the Court's continuing jurisdiction and specifically jurisdiction over the Trusts. *Id. pages 131-33.* The Court then reset the matter for hearing on August 14, 2025, to "take the opportunity to argue some of those other motions, . . . ". *Id. page 138, ln 22 – page 139, ln 2.*

At the August 14, 2025, hearing no witnesses were called and the alleged contemnors were denied the ability to have a hearing required under M.C.A. § 3-1-518. No evidence was taken, and Ms. Sirrs specifically objected to the presentation of any witnesses stating: "Your Honor, at the end of the last hearing, it was made clear that this is only going to be oral argument. Yes." *Doc. 336, page 3, ln 17-19.*

Stephanie Ross' attorney, Don St. Peter, brought to the Court's attention, again, that the pending, unresolved issue of the District Court's jurisdiction over the Trusts remained. *Id. page 4, ln 18 – page 12, ln 19.* The District Court nevertheless just plowed ahead.

After that, and without the opportunity to call witnesses or present evidence, the District Court issued the appealed order. [Doc. 357].

III. ARGUMENT

This probate case has a long and sorted history. The existence of the temporary conservatorship and temporary guardianships at the relevant times in this matter is still an unresolved point of contention. [Doc. 205]. Were the Trusts even within the District Court's jurisdiction remains. [Doc. 158; Doc. 161; Doc. 169; Doc. 172; Doc. 336; Doc. 336]. Temporary Conservator denied the Trusts. [Doc. 138; Doc. 177]:

> First, this is one of the largest reasons why Western Montana Chapter asked the court for clarification regarding Judy's trusts because it is being requested to make decisions and expenditures related to Trust assets **that it also doesn't believe it has authority over**.

Doc. 177, page 2 (emphasis added)

With this unstable foundation, and without the requisite requirements of a Motion for Contempt, the District Court started an evidentiary hearing without proper notice, nor the due process provided to each alleged contemnor. This makes the contempt order appealable via M.R.App.P. 14. *See Fouts v. Montana Eighth Jud. Dist. Ct.*, 2022 MT 9, ¶ 11, 407 Mont. 166, 180, 502 P.3d 689, 698. This Court specifically stated in *Fouts*:

> [W]e have long recognized that the scope of certiorari review of lower court contempt adjudications and sanctions is not solely limited to whether the court acted within its subject matter and personal jurisdiction, but also more broadly to whether it acted within its authority under the governing procedural and substantive law based on the requisite facts as supported by substantial evidence.

Id.[1]

[1] *El Dorado Heights Homeowners' Ass'n v. Dewitt*, 2008 MT 199, ¶ 15, 344 Mont. 77, 186 P.3d 1249 (scope of review of a contempt sanction "is [whether it is] legally complicit with the statutes authorizing [it]"); *Morton v. Lanier*, 2002 MT 214, ¶ 27, 311 Mont. 301, 55 P.3d 380 (standard of review of contempt order "is whether substantial evidence supports the judgment of contempt"); *Milanovich v. Milanovich*, 201 Mont. 332, 333-34, 655 P.2d 963, 964 (1982) (holding that court lacked jurisdiction to hold husband in contempt due to factual insufficiency of wife's motion and supporting affidavit); *Rose v. Eighth Jud. Dist. Ct.*, 192 Mont. 341, 348-50, 628 P.2d 662, 666-67 (1981) (voiding and vacating contempt order on certiorari review based on non-compliance of predicate paternity blood test order with Uniform Parentage Act); *White v. Corbett*, 101 Mont. 1, 52 P.2d 156 (1935) (holding on certiorari review that justice court exceeded its jurisdiction in erroneously granting a statutory execution levy exemption without the requisite qualifying factual affidavit; *State ex rel. Burns v. Mont. Second Jud. Dist. Ct.*, 83 Mont. 200, 212,

Under whatever title the review request is made, the actions taken by Judge Menehan are reviewable by this Court under Rule 14. *Id.*

> Consequently, upon recognition that there would otherwise be no remedy for abuses of discretion committed in non appealable contempt proceedings, we have long recognized that assertions of error in contempt proceedings that are not subject to review within the limited scope of certiorari review are nonetheless subject to review on supervisory control for an abuse of discretion.

Id.; see also, Jones v. Mont. Nineteenth Jud. Dist. Ct., 2001 MT 276, ¶¶ 2 and 15, 307 Mont. 305, 37 P.3d 682 (non-appealable contempt orders are subject to review on certiorari per § 3-1-523, MCA, or on supervisory control to extent not reviewable on certiorari)

A. Section 3-1-523(2), MCA, Can Apply Because a Family Member was Included in the Order.

The statutory provision argued upon by Appellee, § 3-1-523(2), MCA, permits appeals of contempt orders in a family law proceeding where the order includes an ancillary ruling affecting substantial rights of a family member. This matter may be subject to § 3-1-523(2), MCA, because the order does affect Stephanie Ross, a party to the litigation.

B. Regardless, Review Is Proper by Writ of Certiorari Review or Supervisory Control.

271 P. 439, 443-44 (1928) (holding that court was "without jurisdiction to make the order of [contempt] commitment" absent "substantial evidence).

Contempt orders are reviewable through writ proceedings. M.C.A. § 3-1-523(1). The Supreme Court routinely exercises its original jurisdiction to review and vacate contempt findings. *See Fouts, supra*.

1. Writ of Supervisory Control Should Issue.

The Montana Supreme Court may exercise supervisory control "to control the course of litigation in the inferior courts, and to correct a mistake of law or fact when the District Court is proceeding under a mistake of law causing a gross injustice." M.R.App.P. 14(3). Supervisory control is appropriate when the District Court is proceeding based on a mistake of law, which if uncorrected, would cause significant injustice for which appeal is an inadequate remedy. *Stokes v. Montana Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 281, 259 P.3d 754, 756.

The District Court exercised contempt power over conduct involving the non-party trusts never brought into the Probate Code case under the UTC, and over repeated objection to its jurisdiction to do so. [Doc. 138; Doc. 158; Doc. 161; Doc. 169; Doc. 172; Doc. 177]. Even the Temporary Conservator did not think it had responsibility for or control of the Trusts. [Doc. 138; Doc. 177]. This is a mistake of law justifying supervisory correction. *Safeco Ins.*

Co. of Illinois v. Montana Eighth Jud. Dist. Ct., Cascade Cnty., 2000 MT 153, ¶ 15, 300 Mont. 123, 128, 2 P.3d 834, 837.

Furthermore, the alleged contemnors were not provided the required factual affidavit outlining the alleged contempt, nor were they allowed to complete cross-examination required by the District Court's improvident expediency justification "we're all here" rationale. [Doc. 336, *page 6, ln 16 – page 7, ln 3*]. They could not call witnesses, or present evidence before the Court issued its contempt order. A contempt order entered without these procedural safeguards is void, not merely erroneous, because this improper judicial conduct contravenes the mandatory protections in M.C.A. §§ 3-1-511 and 3-1-512; Mont. Const. art. II, § 17.

Without supervisory control, the District Court's void order and fee sanction would stand unreviewed, despite fundamental jurisdictional and due-process defects.

C. Conversion Serves Judicial Economy and Preserves Timeliness.

Montana law favors substance over form when jurisdiction is properly invoked. The Supreme Court has previously recognized that writs of review from contempt rulings follow appellate timelines and may be converted from appeals to avoid dismissal. In *In re Marriage of Weigand*, 2021 MT 128, ¶

18, the Court treated a premature notice of appeal as filed on the proper date rather than dismissing. M.R.App.P. 29 and the Court's Internal Operating Rules authorize the Court to suspend rule requirements for good cause and to proceed as it directs, including by accepting this Notice of Appeal as a petition for Writ of Review or Supervisory Control if a direct appeal is unavailable.

This Court holds routinely that "[w]e shall look to the substance of a motion, not just its title, to identity what motion has been presented. *Miller v. Herbert*, 272 Mont. 132, 136, 900 P.2d 273, 275 (1995). The Court likewise recasts mislabeled filings to fit the correct procedural vehicle, emphasizing substance over form. *See* § 1-3-219, MCA ("The law respects form less than substance.").

D. Writ Relief Is Warranted on the Merits.

Even under writ review or supervisory control, relief from this contempt order is warranted. The District Court exceeded its jurisdiction by enforcing an expired, statutorily inconsistent temporary conservator appointment order that even the Temporary Conservator did not consider covered the Trusts. [Doc. 138; Doc. 177].

Further, the question of an individual attorney's liability for a Trust beneficiary paying the law firm bill for which the attorney works is

insufficient for the imposition of sanctions and raises, in addition to jurisdiction and legality, additional questions of judicial bias.

Montana requires a specific, lawful court mandate and substantial evidence of disobedience before contempt will lie. *Animal Found. of Great Falls v. Mont. Eighth Jud. Dist. Ct*., 2011 MT 289, ¶¶ 16–19, 362 Mont. 485, 265 P.3d 659. Here, no clear directive prohibited counsel from submitting his time to his law firm, and the law firm submitting invoices to a non-party trustee. *See id*.; *see also, Malee v. Dist. Ct*., 275 Mont. 72, 75, 911 P.2d 831, 832 (1996). Furthermore, this conduct lacks and the record is devoid of any competent proof of willful disobedience necessary for contempt. *Id.*

The crux of the alleged actions supporting contempt were that J.F.R.'s counsel and J.F.R.'s daughter, Stephanie, conspired to circumvent WMC in getting a financial advisor for the Trust assets and having the financial advisor pay J.F.R.'s bills. [Doc. 357, *Order, page 8*]. It is invalid for, including but not limited to, the following:

1. <u>The Trusts were not within the District Court's jurisdiction; but even if later determined they were – at the time of the conduct, even the Temporary Conservator said they were not.</u>

The Trusts were never within the District Court's subject-matter jurisdiction. The underlying proceeding was limited to a temporary guardianship and temporary conservatorship under Title 72, Chapter 5, MCA,

concerning the personal care and, at most, the individual property of the purported protected person. The separate private trusts at issue were neither petitioned into court nor administered under the UTC. As a result, the District Court never acquired jurisdiction over the Trusts, their assets, or the Trustee's independent authority to retain counsel and pay trust expenses. *See Section II, supra.*

2. There was no order in place that removed J.F.R. as Trustee of her Trusts.

A trustee cannot be removed absent subject-matter jurisdiction over the trust and strict compliance with the UTC. The District Court's authority to supervise trust administration, including the removal or suspension of a trustee is triggered only when a trust matter is properly brought before the court by petition or other authorized proceeding under the UTC. Without jurisdiction over the Trusts, the District Court lacked any legal authority to alter trustee status, interfere with the Trustee's fiduciary duties, or effectively displace the Trustee through collateral rulings issued in a guardianship or conservatorship proceeding. [Doc. 138; Doc. 158; Doc. 161; Doc. 169; Doc. 172; Doc. 177].

Equally important, trustee removal is not an implied or ancillary power that may be exercised informally or by indirection by the District Court. The UTC, and these specific trust documents, establishes specific grounds, procedural safeguards, and evidentiary requirements for trustee removal, all of which presuppose a properly invoked trust proceeding and notice to interested persons. None of those statutory prerequisites were met here and any action purporting to remove or supplant a Trustee without Trust Code jurisdiction is therefore void and cannot serve as a lawful.

And the Temporary Conservator agreed. [Doc. 138; Doc. 177]

3. <u>There was no order in place that prohibited the Trust from paying the Beneficiary's legal fees.</u>

The temporary conservator refused to exercise control over, or responsibility for the Trust assets. *Id.* Thus, the Trustee should, and was required by law to, act in further preservation of the Trust assets.

There was no court order that prohibited the Trust from paying the Beneficiary's legal fees from Trust assets. The District Court never entered an order restraining the Trustee's authority, limiting the use of Trust assets, or requiring District Court approval before the Trust could satisfy ordinary and necessary expenses. [Doc. 137]

In the absence of a clear, specific, and operative court order, there was nothing for the Trustee or counsel to violate. Contempt cannot lie where the alleged contemnor's conduct contravenes no express judicial command, particularly when the conduct occurred entirely within the scope of independent trust administration.

WMC created the vacuum:

> It was Western Montana Chapter's understanding that they were appointed as conservator to manage Judy's **non-trust assets;**

Doc. 138, page 1. (emphasis added)

"Western Montana Chapter has not been appointed by this Court as trustee of any trusts for Judy's benefit." *Id., page 2.* The Temporary Conservator acknowledged "it has not been administering any of Judy's trusts nor have they been given inventories or accountings for the various trusts from the current trustee(s)." *Id.*

Keeping with its "hands off" approach, the Temporary Conservator even proposed that it be allowed to continue to abandon the Protected Person, in her status as beneficiary of the Trusts, in proposing "that it continues to only manage Judy's non-trust assets." *Id.*

The Trustee was not merely permitted but obligated to act to preserve the Trust and protect the Beneficiary's interests.

To punish the Trustee's counsel for fulfilling that statutory obligation, in the absence of jurisdiction or a prohibitory order, converts lawful fiduciary conduct into contempt by hindsight and underscores the fundamental injustice of the sanction imposed.

4. The temporary appointments expired by operation of law.

M.C.A. § 72-5-317 limits temporary appointments to **a maximum** of six-months. There is no statutory provision of extension, re-appointment without a hearing, or any judicial power granted nor inferred where a District Court can ignore the statutory deadline. *Id.*

The District Court appointed WMC as a temporary conservator on **October 18, 2023**. [Doc. 61]. The temporary appointments expired **April 18, 2024.**

On May 16, 2024, the parties agreed to leave WMC in place for only 90-days while the parties tried to mediate the matter. The agreed placement expired on **August 14, 2024.** At the time of that agreement, the temporary appointments had already been expired by statue for a month, and the Court had no authority to judicially extend the WMC appointment beyond the statutory limits, which had already expired.

The District Court re-set the August 14, 2024, hearing and without any judicial or statutory authority purported to extend the temporary appointments to "the next setting". [Doc. 195]. This was at least the second time the District Court ignored the statute and the legislative mandate of a maximum of six-months under which a person's personal liberties can be taken under § 72-5-317, MCA temporary authority.

On August 30, 2024, the District Court entered an order that once again violated § 72-5-317, MCA, and the six-month maximum time frame for temporary appointment by stating:

> In the meantime, IT IS HEREBY ORDERED that all orders regarding temporary appointments will remain in full force and effect.

[Doc. 221]

What temporary appointments "remained" was a nullity; all temporary orders had expired as a matter of law. J.F.R. in fact pointed that out to the District Court, which failed to address the motion. [Doc. 205]

5. <u>The fee sanction is not supportable.</u>

The fee sanction imposed without findings of willfulness or harm was punitive and procedurally defective. *Id.* Further, the lump sum award jointly and severally likewise is not supportable. *Id.* Equally problematic, the District

Court imposed a lump-sum, joint-and-several fee award, untethered to any evidence of fees reasonably incurred in prosecuting the contempt issue itself. *Animal Found.,* 2011 at ¶ 28, 362 Mont. at 494, 265 P.3d at 665. Fee sanctions must be narrowly limited to attorney time strictly related to the contempt proceedings and supported by evidence, not imposed wholesale as a blunt instrument. *Id.*

The fee sanction operates as a form of financial disgorgement imposed without evidence and against the wrong party. Appellant did not receive any Trust funds. Appellant was a salaried employee of a law firm; any payment made by the Trusts was made to the firm and not to Appellant personally; there was no evidence to the contrary. Yet the court imposed a monetary sanction as though Appellant had received and retained the funds personally, converting a routine employer-employee relationship into personal financial liability by judicial fiat.

Sanctions cannot rest on assumption, inference, or imputed receipt of funds. When a court orders a lawyer to "disgorge" money he never received, based on proceedings riddled with jurisdictional defects and procedural violations, the result is not merely error, but it is a manifest injustice requiring corrective relief.

E. The Contempt Order Is Void for Denial of Due Process.

Under §§ 3-1-512 and 3-1-518, MCA, an alleged contemnor in an indirect contempt proceeding must be (1) notified of the charge, (2) given a reasonable opportunity to answer, (3) permitted to cross-examine witnesses, and (4) allowed to present witnesses and evidence in defense. *Lilienthal v. Dist. Ct. of Sixteenth Jud. Dist., Rosebud Cnty.*, 200 Mont. 236, 242, 650 P.2d 779, 782 (1982). These statutory protections are mandatory and embody the due process guarantees of Article II, § 17 of the Montana Constitution.

A contempt finding rendered without such opportunity is void. *Lilienthal v. Dist. Ct. of Sixteenth Jud. Dist., Rosebud Cnty.*, 200 Mont. 236, 242, 650 P.2d 779, 782 (1982); *citing, In Re Green* (1962), 359 [369] U.S. 689, 691–92, 82 S.Ct. 1114, 1116, 8 L.Ed.2d 198, 200; *Re Oliver* (1948), 333 U.S. 257, 275, 68 S.Ct. 499, 508, 92 L.Ed. 682, 695. If denied those due process protections, any judgment of contempt must be set aside. *Id.*

The Montana Supreme Court has made clear that due process is the "indispensable prerequisite" to the exercise of contempt powers. *Kauffman v. Montana Twenty-First Jud. Dist. Ct.,* 1998 MT 239, ¶ 33, 291 Mont. 122, 132, 966 P.2d 715, 721. In cases in which it is not necessary for a court to take instant action an alleged contemnor is entitled to full due process. *Id.*

IV. CONCLUSION

The Motion to Dismiss should be denied. If the Court deems a direct appeal unavailable, Appellant respectfully requests that the Court treat the appeal as either a Rule 14(2) petition for writ of review or a Rule 14(3) writ for supervisory control and grant relief from the October 20, 2025, contempt order.

DATED this 18th day of December, 2025.

Respectfully submitted,

/s/ *Lawrence E. Henke*
Lawrence E. Henke
Appellant

CERTIFICATE OF TIMELINESS

Pursuant to M.R.App.P. 22(3) and 26(c), Appellant certifies that this Opposition to Motion to Dismiss Appeal and Alternative Motion to Treat Appeal as Petition for Writ of Review or Supervisory Control was filed within the time allowed by rule.

The Motion to Dismiss was served on Appellant on November 3, 2025, and this response is filed in accord with the Court's November 18, 2025, order granting an extension of time to respond up to and including December 18, 2025.

Word count for this Response is 3,612 words per the Microsoft word count function, excluding certificates and caption.

Accordingly, this filing is timely and properly before the Court.

DATED this 18th day of December, 2025.

Respectfully submitted,

/s/ *Lawrence E. Henke*
Lawrence E. Henke
Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this this 18th day of December, 2025, the foregoing APPELLANT'S OPPOSITION TO MOTION TO DISMISS APPEAL and ALTERNATIVE MOTION TO TREAT APPEAL AS PETITION FOR WRIT OF REVIEW OR WRIT OF SUPERVISORY CONTROL was e-served on all interested parties by the Montana Supreme Court's ePass MT to the following:

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I, Lawrence E. Henke, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 12-18-2025:

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