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STATE OF MONTANA
Case Number: DA 25-0593

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. 25-0593

ESTATE OF IAN ELLIOT, deceased,
and Derivatively on Behalf of Starfire L.P.,
Plaintiff and Appellee,
v.
Joseph Womack,
Defendant and Appellee
and
Jenny Jing, Alice Carpenter, Mike Bolenbaugh
Invervenors and Appellants,

On Appeal From The Montana Thirteenth Judicial District Court,
Yellowstone County, Hon. Ashley Harada, Presiding, Case # DV 21-811

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INTRODUCTION

Appellees ask this Court to view this case as a simple exercise of judicial discretion. The reality is a profound procedural breakdown that presents a particular difficulty and imperative: the alleged misconduct involves attorneys acting as fiduciaries and officers of the court. For over six years, beneficiaries alleging that a controlling fiduciary engaged in self-dealing and fraud have been led through a series of courtrooms, only to find each door closed by a ruling that deferred the examination of their fraud evidence.

The result was a closed loop: the Probate Court, confined to a narrow review, deferred examination of fraud to the District Court; the District Court, believing itself bound by the Probate Court, then dismissed the claims. The result is that there is no forum where the facts and evidence of the beneficiaries' specific claims could be presented, examined, and adjudicated. Appellants' legal claim has been extinguished without any tribunal ever conducting the evidentiary hearing necessary for a decision on its merits.

Such a process violates the Due Process Clauses of the Montana and United States Constitutions, which guarantee a "meaningful opportunity to be heard." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). The judicial system's integrity demands that allegations of this gravity be heard through proper procedure. Appellants' interest in redressing alleged misconduct by the fiduciary

who controls the assets of their estate is direct and substantial. They seek not a pre-determined outcome, but the meaningful hearing that has been systematically absent—a hearing foreclosed by this legal deadlock, creating an impasse that nullifies the constitutional right to petition for redress.

A reversal and remand would correct this impasse by providing the necessary forum, demonstrating that Montana's courts are equipped to fairly examine serious allegations, even when they involve the officers of the court. This path honors Montana's constitutional guarantee that "courts of justice shall be open to every person, and speedy remedy afforded for every injury." Mont. Const. art. II, § 16.

This reply addresses Appellees' assertions, demonstrating they rely on a selective view of a procedural record defined by deferral and preclusion. To remedy this constitutional defect, Appellants respectfully request reversal.

ARGUMENT

I. The Principal Fiduciary's Control of Intervenors' Assets Creates A Direct Duty, Giving Intervenors A Direct, Protectable Interest

Appellees wrongly dismiss Appellants' interest as "indirect" and derivative. This ignores the foundational relationship at issue. Joseph Womack was not a third party; he is the controlling fiduciary of the very assets that constitute Ian Elliot's estate—the assets from which Appellants are to inherit.

A. The Structure of Control

Womack served simultaneously as Special Administrator of Ada Elliot's estate

and liquidating partner of Starfire, L.P. The primary asset of Ian's estate was its 50% beneficial interest in those very entities. Thus, Womack exercised unilateral control over the valuation, management, partition and distribution of the assets that were the significant property of Ian's estate. Andrew Billstein, as Special Administrator of Ian's estate, held a subordinate, derivative position entirely dependent on Womack's decisions and disclosures.

This relationship gives rise to a direct duty, the breach of which beneficiaries must be able to challenge. Montana law expressly provides that a personal representative is liable to interested persons 'to the same extent as a trustee of an express trust.' MCA § 72-3-616(1). This principle—that the ultimate beneficiaries hold the enforceable right—is widely recognized. Our opening brief cited *Estate of Bowles*, 169 Cal. App. 4th at 694, and *In re Estate of Bleeker*, 168 P.3d at 777–78, which recognize that beneficiaries have a direct, non-derivative right to sue when a personal representative declines to act. Here, as in *Bleeker*, the personal representative declined to pursue claims, leaving Appellants no recourse but to sue personally. More importantly, because Womack controls the estate assets, the beneficiaries possess a direct, equitable right to seek redress for his alleged breaches—in their personal capacity and at their own expense.

B. The Equitable Imperative Against a Fiduciary Loophole

Montana law imposes the highest duties on fiduciaries. When a fiduciary in

Womack's position controls the assets of a beneficiary entity, his duties of loyalty and care must run to the ultimate beneficiaries whose economic interests he directly impacts. This Court should close such an unconscionable loophole where a fiduciary, by controlling the assets and information of a dependent estate, can place himself beyond the reach of the beneficiaries whose property he manages. Such a rule would nullify the fiduciary duties imposed by law.

C. This Presents a First Impression Central to the "Interest" Requirement

Appellees invoke *Aniballi v. Aniballi* to argue Appellants lack the required "direct, substantial, legally protectable interest in the proceedings." This case, however, presents a question of first impression that *Aniballi* does not govern.

Aniballi involved a dispute where intervenor-parents failed to document an alleged loan to marital property, lacking an enforceable instrument under legal grounds. Here, Appellants' interest is grounded in a properly executed and uncontested Will. Womack, as the controlling fiduciary of the Ada Estate and the Starfire Partnership, holds unilateral authority over the very assets that form the main asset of the Ian Estate from which Appellants inherit. By controlling the source of their inheritance, Womack owes them a direct duty. Womack's control is not through Billstein; on the contrary, what Billstein might administer flows directly from Womack's superior authority and prior decisions.

Thus, Appellants' interest in redressing the alleged misconduct of the fiduciary

who directly controls their property is quintessentially "direct, substantial, and legally protectable." Given that Montana families commonly hold generational properties through partnership structures, this interest is emblematic of a widespread need for clear fiduciary law. A ruling recognizing this direct interest would resolve the instant case and set a vital precedent to protect family assets from diminishment during a family's generational property transfers in the court administration proceedings.

II. By Confining Each Hearing's Scope, Appellees Engineered An Impasse That Barred Any Forum For The Fraud Claims

Appellees characterize prior hearings as providing an opportunity to litigate the fraud claims. In reality, Appellees, as attorneys well-versed in procedure, successfully argued at each stage to limit the scope of the hearing, preventing any examination of the facts and evidence necessary to establish the merits of the fraud claims. When viewed together, these rulings created an impasse: the Probate Court deferred to the claims pending court, which, in turn, felt constrained by the Probate Court's order.

Together, they have created a procedural loop that indefinitely defers the merits. This cycle raises a fundamental due process question under the Montana and United States Constitutions: whether a legal claim—a recognized property interest—can be effectively extinguished through a sequence of rulings that, while they may be procedurally sound in isolation, collectively deny any forum for a

hearing on its substance.

A. Proceedings Before Judge Knisely Were Narrow and Non-Dispositive

Appellees argued that Womack's accounting was fully litigated in Ada's probate court (Ans. p16)—an assertion that is factually false.

The 2021 Hearings This hearing concerned Womack's petition to sell property to fund the Wipfli accounting. Its scope was whether to continue Wipfli's accounting and pay the increased expenses of their significant time spent on sorting through the 34 boxes of disorganized documents they received. Also, when Ian tried to present the issue that Womack was not truthful under oath to deny knowledge of a $2.5 million valuation, and to present the evidence that Womack attempted to sell all remaining properties for $2.54 million just one month after Judge Knsley's order restricted sales to two building lots only in 2019, Judge Knisely halted cross-examination, stating there would be other time to hear the case. The Court made no finding on Womack's truthfulness; it ruled only that Womack performed his duty to engage an accounting, and Ian obstructed Womack's necessary sale to pay for the accounting. The court never examined whether Womack engaged in alleged discovery misconduct of a document dump to purposely inflate the accounting expenses.

The 2021 Dismissal of Ian's initial lawsuit was a procedural ruling for defective pleading under Rules 8 and 9(b) for "not short and clean", not an

adjudication on the merits. Ian corrected and refiled.

B. Proceedings Before Judge Souza Explicitly Deferred the Merits

Judge Souza's hearing reviewed only the reasonableness of Billstein's settlement decision. The Court did not allow our challenge to Womack's service charges go forward and ruled it was not in its jurisdiction. The Court's order is unequivocal: it declined to examine the underlying fraud allegations, expressly deferred further evidence to supplement Womack's accounting misrepresentations, concealing meeting record and expenses verification for the claims pending court. A hearing that, by judicial order, puts the central controversy off-limits cannot satisfy due process for that controversy.

C. Newly Uncovered Evidence Necessitates a Hearing on Accounting Irregularities

1. Womack and Billstein Knew Wipfli's Accounting Was Premised on a Flawed Methodology

Appellees also argue that Womack's accounting "has nothing to do with the inadequacy of Mr. Billstein's representation of beneficiaries in this matter." (Ans. p16) That is incorrect. The accounting's flawed method—which Womack and Billstein both knew was unreliable—directly demonstrates Billstein's failure to protect Appellants' interests.

Wipfli's final accounting report explains its methodology: due to "the lack of supporting documents" that Cindy and Womack produced, it allocated partnership

expenses based on the assumptions that 1) funds titled to each partner were allocated to that partner; 2) expenses without supporting documents were allocated as managing partner Cindy's expenses; and 3) deposits not identified as regular Starfire business income were credited as the managing partner's personal contribution.

This is a reasonable approach for a normal partnership. However, Starfire's case was not normal. Ada was an incapacitated partner. For years, Cindy had exclusive control over Ada's personal bank and credit card accounts, which comprised over $1.5 million in transactions. Significantly, Cindy cleared or closed several of those accounts immediately after the conservatorship hearing, leaving only about $200 across the remaining accounts. Appellants submitted evidence from federal court discovery that substantial transactions from Ada's personal accounts went to Cindy and her adult son.

Womack, as the fiduciary for Ada's estate, was aware of this fact. Yet Wipfli's methodology indicates it was not guided by this critical information.

2. The Documented Financial Impact of the Flawed Premise

The method Wipfli used created a significant distortion. Funds sent to Ada's accounts were allocated as Ada's personal expenses. Conversely, over $400,000 that Cindy advanced from Ada's credit accounts into Starfire were credited as Cindy's personal capital contributions. Wipfli's final report shows this single

deposit-calculation issue reduced Cindy's liability to Starfire from over $1 million to approximately $600,000—not counting the funds she used for herself from Ada's personal bank and credit accounts.

3. The Objection's Evolution from Theory to Evidentiary Support

Ian raised an early objection that an accounting which did not examine Ada's personal bank and credit accounts would be misleading. At the time, with the accounting pending and Wipfli's final report undisclosed, this was viewed as speculative and an obstruction to Womack's accounting. The post-hearing disclosure of Wipfli's final report provided concrete, document-based support for the objection. The report confirms the accounting used the standard partner presumption and involved no examination of Ada's personal accounts—contradicting Womack's prior testimony that he had "conducted Ada's estate accounting," which the courts initially found "accurate."

4. The Personal Representative's Failure to Investigate the Core Dispute

Billstein also knew of Ada's incapacity. When presented with evidence of the $400,000 credited to Cindy's capital account—a credit that directly minimized the Ian estate's recovery—he declined Appellants' request to require Womack to produce the underlying Wipfli spreadsheets for examination. By choosing not to investigate this documented discrepancy and basing his settlement on an accounting he knew was flawed, Billstein failed to fulfill his duty to protect the

beneficiaries' interests.

5. The Unresolved Dispute Requires a Forum

The post-hearing disclosure of the Wipfli accounting report fundamentally alters the record. It confirms Ian's objection and contradicts Womack's sworn testimony that he had conducted Ada's estate accounting.

Judge Souza's final order acknowledged Womack's accounting was not Ada's estate accounting, and specifically deferred our request for Womack to produce bank statement to justify his near $1 million "expenses", his additional itemized service bills, Wipfli's final allocation spreadsheets, and the 2/11/2020 meeting record which Mike and Womack's assistant Ross testified, to the pending court.

This Court affirmed that order on administrator's discretion to settle, without reviewing the truth or falsity of Womack's prior representations.

Thus, the previous probate court's warning to Ian's obstruction of Womack's property sale to complete the accounting, were all premised on a promised accounting that later proved false.

Newly uncovered evidence shows intentional misrepresentation by an officer of the court corrupting the judicial process, constituting fraud on the court under *Hazel-Atlas Glass Co. v. Hartford-Empire*, 322 U.S. 238, 247 (1944), and *Dixon v. Comm'r of Internal Revenue*, 316 F.3d 1041, 1046 (9th Cir. 2003).

Claims arising from later events are not barred, even if they involve "the same course of wrongful conduct." *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322 (1955). Whether the accounting flaws resulted from Womack's negligence or a deliberate cover-up for Cindy remains an unresolved factual question. Similarly, whether Billstein's failure to challenge the flawed accounting that formed the basis of his settlement to dismiss claims, constitutes inadequate representation, merits an evidentiary hearing.

D. The District Court Hearing Before Judge Harada Barred the Presentation of Evidence

During the hearing on intervention, when Appellants attempted to introduce evidence of inadequate representation, Appellees' counsel objected that the hearing was about the law, not an evidentiary hearing. The Court agreed. (See Opening Br. p3). The Court then asked Appellants to prove their right to intervene—a task rendered impossible by its own ruling barring to hear the necessary evidence.

E. This Sequence Created a Closed Loop That Violates Due Process Under *Loudermill*

In sequence, these limited proceedings form an unconstitutionally closed loop: (1) The probate court (Judge Souza) deferred the fraud claim to the district court; (2) The district court (Judge Harada) then held itself powerless to hear the claim, citing the probate order had approved settlement.

This violates the due process right to a meaningful hearing, as established

in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). The Supreme Court reversed a dismissal even though a hearing occurred because that hearing was limited to examining whether procedures were correct and did not allow the plaintiff to challenge the factual basis for his termination. The Court held that "[t]he hearing required by the Due Process Clause must be 'meaningful,' ... and 'must be granted at a meaningful time and in a meaningful manner.'" *Id.* at 542.

The identical constitutional flaw exists here. A hearing that bars inquiry into the core factual issue provides no meaningful opportunity at all. The lower courts' application of procedural rules to permanently foreclose a merits hearing on fraud denied Appellants any forum to present their claim—a "meaningless" post-deprivation process rejected by *Loudermill.* This also violates the fundamental due process guaranteed by the Fourteenth Amendment and Article II, Section 17 of the Montana Constitution. Accordingly, reversal is warranted to provide a forum where the substantive allegations can finally be heard, fulfilling the due process guarantee that has thus far been rendered inoperative by the previous proceedings.

F. The Inquiries in the Probate Court's Approving of the Settlement and the Intervention Under Rule 24 are Fundamentally Different

Appellees conflate the probate approval of a representative settlement with the intervention. The two are legally distinct.

The probate proceeding reviewed whether the executor's decision to settle a reasonable exercise of the discretionary authority; while the intervention inquiry

under Rule 24 presents a fundamentally different test. It serves the distinct purpose of ensuring that representative litigation does not deprive represented individuals of their right to seek judicial redress. It therefore asks an inquiry about litigation advocacy. It requires a factual examination of whether the existing party is 'capable and willing' to make the arguments on the intervenor's behalf, *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), and the burden of proof for the intervenor is "minimal," requiring only a showing that representation "may be" inadequate. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972).

While Billstein's decision not to spend estate funds on litigation and his inability to secure a litigator may have satisfied the probate court's reasonableness review, it simultaneously demonstrates his failure to meet Rule 24's "capable" requirement. That probate finding is therefore irrelevant to the separate and distinct intervention inquiry where Appellants propose to litigate pro se at their own expense and assume full responsibility for any resulting liabilities, a right expressly preserved under both Montana and federal constitution and procedural law..

III. Using the Settlement to Bar Intervention Nullifies the Separate Statutory Right Preserved by MCA § 72-3-1011

Appellees seek to use the probate court's settlement approval for two incompatible purposes: (1) as the basis for dismissing the claims, and (2) as proof that the beneficiaries are "adequately represented". This grants the probate order a

preclusive effect it does not possess, creates a procedural dead end, and nullifies a separate statutory right under MCA § 72-3-1011. That statute gives beneficiaries the right "to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement."

A. Billstein's Conflict of Interest and Unwilling to Argue for the Majority Beneficiaries Justifies Inadequate Representation

Appellees mistakenly confine "conflict of interest" to the rules governing attorneys who represent multiple clients. That definition is inapplicable here. Billstein served as a fiduciary for Ian's estate—a role that exists "solely in the interests of the beneficiaries." (MCA 72-38-802(1)) A fiduciary's duty is undivided loyalty. Any action, or inaction, that prioritizes another's interests—or his own convenience—over the beneficiaries' constitutes a disabling conflict.

The settlement itself involved conduct that triggers MCA § 72-3-1011. Appellants alleged misconduct is twofold: (a) Womack's alleged fraud and misrepresentation in procuring the settlement and fees; and (b) Billstein's inadequate disclosure and failure to challenge that conduct.

Billstein approved Womack's fees without notice to the beneficiaries, admitting this only under cross-examination in the probate court hearing. When questioned under oath whether Womack's $300 hourly charges for non-legal work were reasonable, Billstein did not answer, and Ian's probate court halted the inquiry, stating the issue was not within its jurisdiction. The evidence was

presented in the District Court where Judge Harada then refused an evidentiary hearing. Thus, whether Womack's fees were inflated and improperly depleted the estate has never been litigated.

This is not a trivial billing dispute. These fees constituted a significant portion of Womack's nearly $1 million in claimed 'expenses'—expenses which Billstein, upon Appellants' request, declined to require Womack to justify by producing Starfire's bank statements.

Other jurisdictions have ruled that charging attorney rates for non-legal fiduciary work is an abusive practice for which attorneys have been sanctioned. See Opening Br. at 21 (citing *Terry*, *Larson*, *Green*, *Kliger*).

Billstein's actions demonstrate his alignment with Womack's interests and his unwillingness to challenge the fee structure. His own stated intent to charge a comparable attorney rate for his administration reveals a shared financial interest in maintaining the very billing practice the beneficiaries contest. This pattern—approving the adversary's fees and personally benefiting from the same model—is objective evidence of a disincentive to advocate against those fees, which goes directly to the 'willingness' prong of the adequacy test set in *Forest Conservation Council*.

His agreement to pay Womack's fees without informing the beneficiaries constitutes the precise "inadequate disclosure related to the settlement" that MCA

§ 72-3-1011 expressly preserves from final discharge.

The beneficiaries have never had a hearing on this statutory claim of nondisclosure. To now use the probate approval of the settlement to block them from obtaining that hearing nullifies MCA § 72-3-1011. The prior approval of the settlement cannot be stretched to also extinguish the beneficiaries' separate, preserved statutory right to challenge its nondisclosure of the fee payments.

B. The Record Contains Objective Evidence of Billstein's Inadequacy

Appellees claim Appellants made "no showing whatsoever" of inadequate representation is both disingenuous and self-fulfilling. The verified Motion to Intervene and and the contemporaneous record contained facts satisfying the 'minimal" burden standard set by Rule 24 and *Trbovich.*

Appellees themselves successfully persuaded the court to bar any further factual or legal filings waiting for Judge Souza's approval—effectively preventing Appellants from supplementing the record. (Trans. 12/14/2022, p20, ¶¶3-18) Appellees continued this strategy at the hearing, objecting to Appellants' request to submit a supporting memorandum. (Trans., 10/1/2024, p35, ¶¶1-19) Having constrained the record, Appellees now fault Appellants for failing to present evidence they were blocked from providing.

1. Financial Alignment with the Alleged Wrongdoer's Fee Practice:

As a court-appointed attorney-administrator whose own compensation was

drawn from the estate, Billstein's alignment with a fellow fiduciary is evident. His testimony in the probate court that Womack's attorney-rate charges were reasonable, while avoiding the question of applying that rate to non-legal work, demonstrates this alignment on the precise issue he was duty-bound to scrutinize. This conflict, shaped by interests aligned with Womack's and not the estate's beneficiaries, is a classic indicator of inadequate representation.

2. Failure to Perform Basic Due Diligence:

Billstein settled fraud claims centered on accounting irregularities without first obtaining the core evidence: the final Wipfli spreadsheets indicating the expenses allocations to each partners' account that were the subject of the allegations. A representative who settles without examining foundational documents is not providing ade4quate representation.

3. Action Against Decedent's and Majority Beneficiaries' Expressed Objections

Billstein settled over the formal, documented objections of Decedent Ian and beneficiaries representing a majority interest (78.33%) in Ian's estate at the time. While a representative has discretion, consciously overriding the clear wishes of those he represents strongly suggests he is advancing interests other than theirs. Under the minimal "may be" inadequacy standard governing intervention set by *Trbovich*, this is sufficient. The District Court's refusal to allow the presentation of the facts and evidence in the hearing, was reversible error.

IV. **Appellees' Legal Authorities Are Misplaced**

1. Appellees' reliance on *In re Estate of Long* and *State ex rel. Carroll* is misplaced. Those cases guard against a proliferation of lawsuits. Here, the decedent Ian's lawsuit already existed, grounded in detailed evidence from fiduciary Womack's own written emails and court filings. The true threat, therefore, is not new litigation but the unilateral extinguishment of this documented claim by a representative whose adequacy is in question. Judicial efficiency is not served by a rule that permits serious allegations against a court officer to be buried without factual and evidentiary examination—which is the precise harm to orderly administration.

Also, *Long* itself recognized an exception where the personal representative is "incapacitated or unwilling" to act. 225 Mont. at 435. The record evidence of Billstein's unwillingness to investigate or challenge Womack places this case within that exception, not its general rule.

3. In *State ex rel. Palmer v. District Court*, this Court had already granted the beneficiary Palmer's request to appoint a new Special Administrator of her choosing, but denied her later request to pursue claims herself, due to her failure to make a compelling showing of the administrator's inadequacy. 190 Mont. at 187.

Here, Appellants did not choose Billstein; he was installed upon the petition of Ian estate's adversary, Womack. Where the representative's actions aligned with

the adversary, the *Palmer* presumption of adequacy is rebutted. Appellants have made the compelling showing *Palmer* requires: (1) Billstein's financial alignment with Womack, such as approving his $300 hourly-fees for non-legal work objected by decedent Ian, and his estate's majority beneficiaries without informing the beneficiaries, and his own plan to charge similar $290 hourly rate for the same kind of work); (2) his failure to investigate the accounting fraud (refusing to obtain Wipfli spreadsheets allocating Ada's personal expenses and Starfire's bank staement s to justify Womack's near $1 million administration "expenses"); and (3) his ignoring beneficiary inquiries about Womack's alleged misrepresentations.

4. Appellees cite *Glick v. Reverse Mortg. Sols., Inc.*, an unpublished order, and *Weaver v. Graybill, Ostrem, Warner & Crotty* for the proposition that non-attorneys cannot represent estates or corporations. (Ans. Br. 9).This argument confuses the issue. Appellants do not seek to "represent" Ian's estate. They appear in their own right, in their own individual capacities as beneficiaries whose property interests have been directly impacted by the alleged breaches of the controlling fiduciary, and they have the right to intervene when their designated representative fails to act. They acted as pro se to vindicate their personal property right is protected by the First Amendment's Petition Clause and the Montana Constitution that courts should allow "every person" to redress the injury. Mont. Const. art. II, § 16.

5. Appellees rely on *In Re the Estate of Scott*, via *Palmer*, for a "presumption of adequacy." (Ans. Br. 12). However, the *Scott* court explicitly analyzed whether the personal representative's interests conflicted with the heirs', acknowledging that "the personal representative may be in a position where his interests conflict with those of the heirs." *Id.*, at 313. It upheld the presumption only after finding the representative, also an heir, shared the other heirs' interest in maximizing the estate in his decision to abandon the claims.

The case here is contrary to *Scott* case. Billstein's personal interest does not align with the estate beneficiaries. His financial alignment with Womack's fee-taking model and his personal connection with Womack create at minimum a "position" of conflict, rebutting any presumption.

Most importantly, the District Court performed no such analysis. It did not examine Billstein's clear financial alignment with Womack's fee-taking model or that his appointment originated from Womack's petition. Instead, it barred the presentation of any evidence, which prevented the very conflict-of-interest analysis that *Scott* contemplates. This was legal error. Under *Scott*, the objective evidence of Billstein's interests being adverse to the beneficiaries' interests conclusively rebuts the presumption.

6. Appellees cite *Steffensmier* for the "offer of proof" requirement. (Ans. Br. 21-22). This argument lacks good faith. The Appellees are the ones who prevented

the Appellants making of an offer of proof. They successfully urged the Court to rule the hearing was about the law, not facts, thereby precluding the evidentiary presentation that an offer of proof would describe. (Tr. p.8-9). Having secured a ruling that barred evidence, Appellees now contend that Appellants failed to meet their burden. Yet Appellees themselves asked the court to reject Appellants' offer of proof—thereby making that burden impossible to satisfy.

7. Appellees cited *Knudsen v. Univ. of Mont.* for the burden to demonstrate prejudice. (Ans. Br. 22). Appellants have demonstrated prejudice: they were barred from presenting evidence that goes to the heart of the "adequate representation" issue—evidence that, if credited, would have compelled a different ruling. The prejudice is the denial of a fair evidentiary hearing itself.

V. The Source of Delay Is the Procedural Loop Appellees Created

Appellees cite *In re Marriage of Glass* and *Spangler v. Pasadena City Bd. of Ed.*, arguing intervention should be denied to avoid delay. This argument inverts the factual record. The delay here was not caused by Appellants, but by the procedural impasse Appellees engineered.

Critically, Ian's probate was not a court-supervised administration, and the Probate Court placed no restrictions on Billstein's authority regarding the claims and distributions—a fact Billstein himself acknowledged in his notice to the beneficiaries.

Despite this, the case was stayed for nearly two years in district court at Appellees' request pending probate approval of a settlement. This tactical choice—seeking settlement approval in probate court while fraud claims were pending in district court—created an unnecessary multiplicity of proceedings, consuming years, multiplying their service fees, and serving unjust ends, in direct violation of these attorney fiduciaries' professional conduct and duty. Appellees nevertheless invoked that limited probate proceeding to create a jurisdictional obstacle. They now cite the resulting delay, born of their own strategy, as a reason to deny intervention, attempting to blame Appellants for the stagnation.

Appellants do not seek to delay; they seek to end the delay by breaking the procedural loop that has left the fraud claims in limbo. Denying intervention would reward the strategy of creating unnecessary multiple proceedings and then citing the resulting paralysis as a reason to extinguish the claims permanently. Such a result would turn the policy against delay on its head, using it to shield a party from ever answering the substantive allegations against him. The cited cases do not support, and due process forbids, such an outcome.

CONCLUSION

The central question presented is whether beneficiaries, alleging a controlling fiduciary breached duties owed directly to them, injuring their property and personal interests—are entitled to an evidentiary hearing.

The fiduciaries here have possessed all necessary resources and means to defend themselves on the merits. Yet, for years, they have engaged in a procedural runaround, focusing solely on blocking Appellants from ever presenting the facts and evidence to a court.

To resolve this dispute and uphold confidence in the administration of justice, Appellants respectfully request:

1. Reverse the orders denying intervention and dismissing the case; and

2. Remand for an evidentiary hearing on intervention and adequacy of representation.

DECLARATION

I declare under penalty of perjury that the information I set forth in this document is true and correct to the best of my knowledge.

Respectfully submitted: 1/22/2026

Jenny Jing, Alice Carpenter, Mike Bolenbaugh

CERTIFICATE OF COMPLIANCE

I certify that this petition satisfies Rule 14 of the Montana Rules of Appellate Procedure, with Times New Roman typeface of 14 points; and 4,832 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

Jenny Jing Alice Carpenter Mike Bolenbaugh

CERTIFICATION OF SERVICE

I certify that on the 22th day of Jan., 2026, I served a true copy of this document to:

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