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IN THE MATTER OF THE ESTATE OF MARY H. O'HARA IACAMPO, DECEASED.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A – 001682 – 24 T1 CIVIL ACTION ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: PROBATE PART WARREN COUNTY SAT BELOW: HON. HAEKYOUNG SUH, P.J.CH.

APPELLANTS' LETTER BRIEF

DAMIANO MARCELLO FRACASSO, ESQ.
ON THE BRIEF

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LETTER BRIEF STATEMENT

Please accept the filing of this letter brief in lieu of a more formal brief.

CONCISE STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

The Defendant – Appellants **BERNARD G. O'HARA, KEVIN G. O'HARA, JOHN M. O'HARA, STEVEN G. O'HARA AND KEITH G. O'HARA, APPELLANTS ("Defendants")** are the sole beneficiaries of a trust which is the sole beneficiary of their late mother's estate. Summary proceeding was brought by the Appellants' mother's estate ("Plaintiff" or "Estate") to remove a caveat, admit her will into probate and for some other relief. **(Da1 – Da6 & Da58 – Da111)**. The separate and distinct trust was not a Plaintiff (proper or otherwise) to the trial court litigation. On December 5, 2024, the trial court issued a decision in that proceeding (which did not create a fund in court or even reference a fund in court) and allowed counsel for the Estate to submit certification of services **(Da7 – Da9)**. A certification of services was submitted on or about December 16, 2024 **(Da10 – Da38)**. The certification of services did not include a written and signed agreement

[1] The procedural history and statement of facts were intentionally combined as they are inextricably intertwined.

to provide legal services as required by R.P.C. 1.5(b). It did not include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally required by R. 4:42 – 9(b).

Trial court never set a deadline to respond. Trial court went into holiday recess on December 25, 2024 through January 1, 2025 **(Da56 – Da57)**. Trial Court issued an award of attorney's fees and costs on December 27, 2024 and did not serve it upon Appellants **(Da39 – Da40 & Da50 – Da53)**.[2] No oral argument or plenary hearing was had as it pertained to the award of attorney's fees and costs which forms the basis of this appeal. Appellants learned of order for the 1st time on 12/31/2024 after filing submission earlier that morning pertaining to opposition **(Da47 – Da49 & Da52 – Da53)**. The trial court never filed a supplemental statement or opinion pursuant to R. 2:5 – 1 **(Da50 – Da51)**. The Notice of Appeal was filed on February 10, 2025 **(Da54 – Da55)**.

[2] This is the final order. See Gen. Motors Corp. v. City of Linden, 279 N.J. Super. 449, 454 (App. Div. 1995), rev'd on other grounds, 143 N.J. 336 (1996) recognizing an order "is not a final judgment appealable as of right [if] it does not include a final determination of [a party's] application for counsel fees and costs."

ARGUEMENT

I. STANDARD OF REVIEW (Not Argued Below).

The Appellate Division's standard of review of a trial court's factual findings and conclusions of law is well-settled. This Court is only bound by the findings of the court below when that are supported by adequate, substantial, and credible evidence. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484, (1974). Thus, this Court is empowered to disturb the factual findings and legal conclusions of the trial judge when it is convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice. Rova Farms id.

A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is de novo. See In re Ridgefield Park Bd. Of Educ., 244 N.J. 1, 17 (2020). Interpretation of Court Rules is subject to the *de novo* standard of review on appeal. See State v.

Dickerson, 232 N.J. 2, 17 (2018). Further, if a judge makes a discretionary decision, but acts under a misconception of the applicable law or misapplies it, the exercise of legal discretion lacks a foundation and it becomes an arbitrary act, not subject to the usual deference. Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020); Alves v. Rosenberg, 400 N.J. Super. 553, 563 (App. Div. 2008). In such a case, the reviewing court must instead adjudicate the controversy in the light of the applicable law in order that a manifest denial of justice be avoided. State v. Lyons, 417 N.J. Super. 251, 258 (App. Div. 2010); State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966); Kavanaugh v. Quigley, 63 N.J. Super. 153, 158 (App. Div. 1960).

"In the field of civil litigation, New Jersey courts historically follow the 'American Rule,' which provides that litigants must bear the cost of their own attorneys' fees." Innes v.Marzano-Lesnevich, 224 N.J. 584, 592 (2016). "However, 'a prevailing party can recover those fees if they are expressly provided for by statute, court rule, or contract.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 385 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 440 (2001)). In conformance with the strong public policy against shifting counsel fees,

R. 4:42-9(a) provides that "[n]o fee for legal services shall be allowed in the taxed costs or otherwise, except" in the following eight areas: 1) in a family action; 2) out of a fund in court; 3) in a probate action; 4) in an action for foreclosure of a mortgage; 5) in an action to foreclose a tax certificate; 6) in an action upon liability or indemnity policy of insurance; 7) as expressly provided by rules in any action; and 8) in all cases where attorneys' fees are permitted by statute. See also In re Est. of Folcher, 224 N.J. 496, 516 (2016) (listing statutes "that allow for fee shifting for the public good").

"[A] reviewing court will disturb a trial court's award of counsel fees 'only on the rarest of occasions, and then only because of a clear abuse of discretion.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

"A court abuses its discretion when its 'decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)). "[A] functional approach to abuse of discretion examines whether there are good reasons

for an appellate court to defer to the particular decision at issue." State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 App. Div. 2007)).

II. THE TRIAL COURT ABUSED ITS DISCRETION BY ENTERING AWARD OF ATTORNEY'S FEES (DURING A COURT RECESS) WITHOUT REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD (not argued below). (Da46).

The fundamental requirement of due process is an opportunity to be heard after adequate and reasonable notice. As Mr. Justice Stewart recently said in Armstrong v. Manzo, 380 U.S. 545 (1965), 'It is clear that failure to give the petitioner notice of the pending * * * proceedings violated the most rudimentary demands of due process of law. 'Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require

that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.' Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306, at 313. 'A fundamental requirement of due process is 'the opportunity to be heard' Grannis v. Ordean, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. See Hutton v. Fisher, 359 F.2d. 913, 919 (3d Cir. 1966).

This was a summary Probate Part Proceeding **(Da1 – Da6).** The trial court entered its order authorizing an award of fees and costs on December 5, 2024 **(Da7 – Da9)**. The trial court never set or communicated a deadline for the Appellants to submit an opposition to the Estate's certification in support of attorney's fees. The Estate submitted its fee certification on December 16, 2024 **(Da10 – Da46)**. This certification violated R. 4:42 – 9(c) because it did not contain a detailed and corroborated statement of fees received (or the source of the funds). The certification also provided no receipts whatsoever for any alleged expenditures. The trial court went into holiday recess from December 24, 2024 through January 2, 2025. On December 31, 2024, the Appellants wrote to the trial court seeking guidance on opposition dates and raising concerns about the "certification." **(Da47 – Da49).** It was on that date that the Estate's attorney notified counsel for the

Appellants that the Court had issued its award for fees and costs on December 27, 2024 and provided only him with a copy of this order **(Da52 – Da53)**.

The trial court's order of December 27, 2024 unlawfully deprives the Appellants of Property (money) without Due Process of Law. The 5th and 14th Amendments of the United States Constitutions both prohibit the deprivation of property by the Judiciary without Due Process of Law. A deprivation of a constitutional right may suffice to establish irreparable harm. City of Orange Twp. Bd. of Educ. v. City of Orange Twp., 451 N.J. Super. 310, 320 (Ch. Div. 2017). The Appellants were denied and therefore not afforded their fundamental right to reasonable notice and opportunity to be heard. It is fundamental that procedural due process requires notice and the opportunity to be heard. Avant v. Clifford, 67 N.J. 496, 520 n. 22 (1975). In Div. of Youth and Family Servs. v. A.R.G., 179 N.J. 264, 286, (2004), the Court reaffirmed that "[t]he basic indicia of due process are adequate notice and a meaningful opportunity to be heard." See also Borough of Keyport v. Maropakis, 332 N.J.Super. 210, 220–21, (App.Div.2000). Notice is the "first requirement of procedural due process." Avant, supra, 67 N.J. at 525, 341.

III. THE "AMERICAN RULE" BARRED AN AWARD OF ATTORNEY'S FEES (not argued below). (Da46)

The trial court also erred when awarding attorney's fees based on not only on a theory that was not raised by the Estate, but based on a completely incorrect application of "The American Rule" and R. 4:42 – 9. The trial court relied exclusively on R. 4:42 – 9(a)(2) (the "fund in court" exception) which provides as follows:

> Out of a fund in court. The court in its discretion may make an allowance out of such a fund, but no allowance shall be made as to issues triable of right by a jury. A fiduciary may make payments on account of fees for legal services rendered out of a fund entrusted to the fiduciary for administration, subject to approval and allowance or to disallowance by the court upon settlement of the account.

New Jersey has a strong public policy against the shifting of costs. This Court has embraced that policy by adopting the "American Rule" which prohibits recovery of counsel fees by the prevailing party against the losing party." The purposes behind the "American Rule" are threefold: (1) unrestricted access to the courts for all persons; (2) ensuring equity by not penalizing persons for exercising their right to litigate a dispute, even if they should lose; and (3) administrative convenience. See Grubbs v. Knoll, 376 N.J. Super. 420, 447 (App Div.

2005). Our Third Circuit Court of Appeals has recognized that individuals have the right to petition the Government for redress of grievances which, of course, includes access of to the courts for the purpose of presenting their complaints. The right of access to the courts must be "adequate, effective and meaningful and must be freely exercisable without hindrance or fear of retaliation." See Milhouse v. Carlson, 652 F.2d. 371, 373-374 (3d Cir. Pa. 1981). In Mayer v. Mayer, 180 N.J. Super. 164, 169-70 (App.Div.1981), This Court noted that counsel fees involves critical review of nature and extent of services rendered, complexity and difficulty of issues determined, and reasonableness and necessity of time spent by counsel rendering legal services.

The Estate never moved to create a fund in court. No fund in court was ever created in this case. No fund in court ever existed in this case and controversy. The "fund in court" exception to the American Rule has absolutely nothing to do with the facts or the law of this case.

As such, the trial court's award of attorney's fees and costs to the executor and its attorney to be paid by the Estate was *ultra vires* and is subject to reversal.

IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN AWARDING ATTORNEY'S FEES & EXPENSES UNRELATED TO MATTERS BEFORE THE COURT (Not Argued Below). (Da46).

The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law... on every motion decided by a written order that is appealable as of right. See R. 1:7-4. Failure to perform that duty "constitutes a disservice to the litigants, the attorneys and the appellate court." Naked conclusions do not satisfy the purpose of R. 1:7-4. Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions. See Curtis v. Finneran, 83 N.J. 563, 569–70 (1980). Without a statement of reasons, we are "left to conjecture as to what the judge may have had in mind." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Ibid.

The due process guarantee expressed in the Fourteenth Amendment to the United States Constitution includes "the requirement of 'fundamental fairness'" in a legal proceeding. D.N. v. K.M., 429 N.J.

Super. 592, 602 (App. Div. 2013). The Fourteenth Amendment to the United States Constitution and Article I, Paragraph 1 of the New Jersey Constitution also protect individuals from deprivations of life, liberty, and property, without due process of law. See Doe v. Poritz, 142 N.J. 1, 99 (1995). "In examining a procedural due process claim, we first assess whether a liberty or property interest has been interfered with by the State, and second, whether the procedures attendant upon that deprivation are constitutionally sufficient." Ibid. "The 'property' interest contemplated by the Fourteenth Amendment may take many forms over and above the ownership of tangible property." Accordingly, a person may have a property interest in a "benefit." "The chief ingredient of this kind of 'property' interest ... is a 'legitimate claim of entitlement.'" In other words, "[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He [or she] must have more than a unilateral expectation of it." See Thomas Makuch, LLC v. Twp. of Jackson, 476 N.J. Super. 169, 184–85 (App. Div. 2023), cert. denied, 256 N.J. 436 (2024) (citations omitted).

The trial court ordered "The Estate of Mary M. O'Hara" to pay "the Plaintiff Vincent Iacampo" and "The Plaintiff's Attorney" William E Mandy

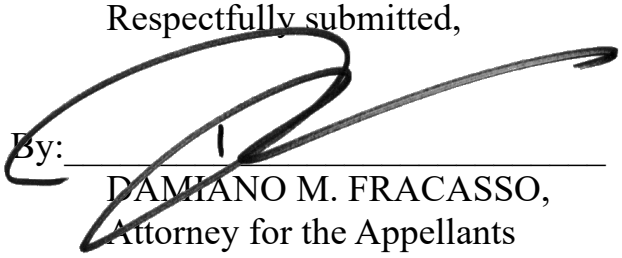
PC the joint and several sums of $19,050.00 and costs of $966.10. The trial court's statement of reasons does not explain "the why and the wherefore" of how it arrived at this amount and why it awarded fees and costs for work which was completely unrelated to the Estate. The trial court's statement of reasons dopes not explain "they why and wherefore" behind awarding attorney's fees for work which the Estate did not prevail on. The trial court also did not explain "the why and wherefore" as to why "the Plaintiff Vincent Iacampo" and "The Plaintiff's Attorney" William E Mandy PC" are being awarded unallocated attorney's fees and costs to be paid by the Estate when Iacampo is the executor and Mandry is the attorney for the Estate. The trial court did find that the Estate's Attorney's hourly fee was "excessive" and that he exaggerated the amount of time he spent performing certain tasks. **(Da45)**. The trial court also erred by awarding costs and expenses other than court filing fees (which are subject to judicial notice) without any supporting evidence that the costs and expenses awarded (postage fees and "Lexis research") were actually incurred and who, if anyone, actually incurred the expenses. A party facing the deprivation of property (money) is entitled to the same Due Process protections during the adjudication of an application for attorney's fees and expenses as they would a trial. The Appellant's were not afforded that right.

V. AMOUNT OF ATTORNEY'S FEES AND EXPENSES AWARDED BY THE TRIAL COURT WAS UNREASONABLE (not argued below). (Da46).

An attorney's fees award of $19,050.00 and costs of $966.10 to successfully remove a caveat (which the Appellants consented to), appoint and executor, dismiss an arbitration which had absolutely nothing to do with this estate probate litigation and compel the delivery of an original copy of a trust document which had absolutely nothing to do with estate probate litigation was excessive, unreasonable and manifestly unjust under the circumstances.

DATED: April 13, 2025

Respectfully submitted,



By:_____
DAMIANO M. FRACASSO,
Attorney for the Appellants

In the Matter of the Estate of Mary H. O'Hara Iacampo, Deceased	:SUPERIOR COURT OF NEW JERSEY :APPELLATE DIVISION :DOCKET NOS. A-001682-24 T1 : :CIVIL ACTION :ON APPEAL FROM: :SUPERIOR COURT OF NEW JERSEY :WARREN COUNTY :CHANCERY DIVISION-PROBATE :PART :DOCKET NO. 24-0167 : :SAT BELOW: :HON. HAEKYOUNG SUH, J.S.C.,

RESPONDENT'S AMENDED LETTER BRIEF

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William E. Mandry, Esquire
On the Brief

Dated: July 31, 2025

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The within Letter Brief is being submitted to this Honorable Court pursuant to Rule 2:6-2b and in opposition to the Petitioners' filing. Kindly, consider the same on behalf of the Respondent, Vincent Iacampo, Sr.

PRELIMINARY STATEMENT

The within Appeal was filed by the Petitioners in an attempt to overturn an Order of the Honorable Haekyoung Suh, P.J.Ch., of December 27, 2024, and entered by the Court consistent with the provisions of ***R***. 4:42-9(a)(2). The Court determined that there existed a "fund-in-court" which was being preserved or protected by the actions of Vincent Iacampo, Sr., as Executor and Trustee of his late wife, Mary M. O'Hara-Iacampo through her Trust designated as the Mary M. O'Hara-Iacampo Trust, (hereinafter referred to as "Mary's Trust"). (Pa1-30)

The Respondent's actions in filing the litigation did not benefit himself personally. The litigations were carried out in order to preserve his late wife Mary M. O'Hara-Iacampo's intent under her Last Will and Testament (Pa31-37) and the Mary M. O'Hara-Iacampo Trust each dated, January 27, 2016.

It is unfair to impose upon Mr. Iacampo the obligation to pay his own personal money to satisfy his late wife's intent. This is why the Honorable Haekyoung Suh, P.J.Ch., followed the mandate of ***R***. 4:42-9(a)(2) in determining that the Respondent, in litigating this matter, was acting to satisfy the intent of his late wife's Last Will

and Testament as well as her Testamentary Trust that named him as Executor and Trustee.

The Court below determined that counsel fees were appropriately awarded under Rule 4:42-9(a)2 from a "fund-in-court". It is common practice to award counsel fees out of a trust fund, which is the subject-matter of the litigation and for that reason under the control of the Court and subject to payment of counsel fees pursuant to Rule 4:42-9(a)(2). ***Trimarco v. Trimarco*** 396 N.J. Super 207 at 216 (App. Div. 2007).

PROCEDURAL HISTORY

On October 11, 2024, this office filed a Verified Complaint for a Summary Action before the Superior Court of New Jersey, Chancery Division-Probate Part, Warren County under Docket No. 24-0167. (Pa38-75)

The Respondent, Vincent Iacampo, Sr., was named as Executor under his late wife, Mary M. O'Hara-Iacampo's Last Will and Testament dated January 27, 2016, (Pa32) and Successor Trustee under her Revocable Living Trust dated January 27, 2016. (Pa7) The Complaint filed by Respondent sought the following relief:

(a) Discharge a certain "Caveat Against Probate of Alleged Will/Administration" dated May 30, 2024;

(b) To compel production of the original document the Revocable Living Trust of Mary M. O'Hara-Iacampo designated as Mary's Trust;

(c) For an Order appointing Vincent Iacampo, Sr., as Executor of the Estate of his late wife, Mary M. O'Hara- Iacampo and as Trustee of Mary's Trust;

(d) To determine whether or not the *In Terrorem* Clause, or "no contest clause" contained within Mary's Trust is enforceable as against Mary M. O'Hara-Iacampo's heirs designated in Mary's Trust;

(e) For an Order to suspend any action demanded by the respondents to compel Arbitration;

(f) For an Order for an Accounting of all assets of the estate, trust assets and for a return of all assets improperly acquired by the "Interested Parties" named in the Complaint; and

(g) For an Order for attorney's fees and costs in association with the application. (Pa38-75)

On December 5, 2024, the Honorable Haekyoung Suh, P.J.Ch., entered an Interlocutory Order after oral argument granting Respondent the bulk of requested relief. (Da07-09)

The Court ordered that the 1) Caveat filed by the defendants be discharged by consent, 2) that the defendants return the Original Revocable Living Trust of Mary M. O'Hara-Iacampo, 3) the Court appointed the Respondent Vincent Iacampo, Sr., as Executor of the Last Will and Testament of his wife Mary M. O'Hara-Iacampo, 4) Letters of Administration were issued naming the Respondent as Administrator

of his late wife's estate, and 5) that the Respondent be appointed as Successor Trustee under the Revocable Living Trust of Mary M. O'Hara-Iacampo, 6) the Petitioners were restrained from pursuing their false narrative in demanding that the issues contained in the Complaint be arbitrated, and 7) the Court requested a Certification of Services for counsel fees "for the Court's consideration pursuant to Rule 4:49-9 et seq. within fifteen (15) days of the date of the Order." (Da07-09)

Within ten (10) days of the entry of the December 5, 2024 Order, Respondent's attorney submitted a Certification of Legal Services "...for Your Honor's consideration in accordance with the Order of December 5, 2024, in connection with this matter". (Da10-32) Damiano M. Fracasso, Esquire, counsel for Petitioner, was timely copied with that writing as well as the Certification of Legal Services. (Da10)

Having received no objection from the Petitioner's office, on December 27, 2024, Judge Suh entered an Order as follows:

> **"IT IS** on this 27th day of December 2024, **ORDERED,** that the Estate of Mary M. O'Hara shall pay to the plaintiff, Vincent Iacampo, Sr., and to the plaintiff's attorney, William E. Mandry, P.C, the following:
>
> 1. Attorney's fees in the amount of $19,050, within 30 days of the date of this Order;
> 2. Costs in the amount of $966.10 within 30 days of the date of this Order; and
>
> **IT IS FURTHER ORDERED,** that a copy of this Order shall be served upon all parties herein within 7 days of the date hereof." (Da39-40)

Attached to Judge Suh's Order of December 27, 2024, is a Statement of Reasons pursuant to ***R.*** 1:7-4(a). (Da41-46) Judge Suh detailed the appellants' obstructionist behavior in failing to remove a baseless Caveat, for failing to return the original Trust document and objecting to naming the Respondent Vincent Iacampo, Sr., as Executor and Trustee. Judge Suh restrained the defendants from their specious demand that Mr. Iacampo defend before the American Arbitration Association.

Judge Suh ordered that the attorney fee submissions were and are chargeable to the Estate of Mary M. O'Hara-Iacampo stating:

> "Plaintiff's fees are chargeable to the Estate because the bulk of the work performed inured to the benefit of the Estate. Defendants filed a caveat. Without its removal, plaintiff was unable to administer the Estate. Plaintiff also needed the original Revocable Living Trust for decedent, which defendants refused to surrender. Again, without the original trust document, plaintiff who was appointed the successor trustee, could not administer the trust for the beneficiaries. Plaintiff's lawsuit was also required to pump the brakes on the arbitration that defendants had instituted without the assent of the plaintiff as executor of the Estate. The legal work performed by Mr. Mandry falls squarely within the scope of R. 4:42-9(a)(2)." (Da44-45)

The Statement of Reasons carefully analyzed the facts of the case and particularly focused on ***R.*** 4:42-9(a)(2), stating facts and applying same to the law

in reaching her conclusions in favor of the Respondent.

Judge Suh further opined under ***Rendine v. Pantzer,*** 141 N.J. 292 (1995), as to the reasonableness in the calculation of the "loadstar" which is calculated by multiplying the number of hours reasonably expended by the prevailing parties' attorney during the litigation by the attorney's reasonable hourly rate.

The Court properly analyzed the relevant case law to determine that there exists a fund-in-Court under the Court's jurisdictional authority in Mary's Trust. Judge Suh determined that "Plaintiff's fees are chargeable to the estate because the bulk of the work performed inured to the benefit of the estate." (Da44)

At the end of the day, the Respondent prevailed. Judge Suh made it clear on the record that Petitioners' positions taken were not supported by a plain reading of the estate documents and settled case law. Respondents attempted to intimidate a man in his nineties and still grieving from his wife's death. Not backing down, Vincent Iacampo, Sr., the Respondent forged ahead, litigated this case and upheld his deceased wife's intent in acting as Executor and Trustee of her estate.

STATEMENT OF FACTS

Vincent Iacampo, Sr., and Mary M. O'Hara-Iacampo were married in 2008. (Pa41)

In 2016, each executed a Last Will and Testament naming each other as Executor/Executrix as well as Revocable Living Trust documents naming each as

Surviving Trustee. The documents mirrored each other. (Pa44-45)

Mary M. O'Hara-Iacampo died on December 10, 2023, in the County of Warren and State of New Jersey. (Pa43)

After the decedent's passing, the Respondent, Vincent Iacampo, Sr., requested the decedent's original Trust documents as well as the original Will from the Petitioners. Without these original documents, no action could be taken to administer the decedent's Estate. (pa43)

The Petitioners refused to deliver to the Respondent, the original Last Will and Testament of the decedent and her original Trust document for administration so that the estate could be administered in a timely manner. (Pa43)

The original Will was delivered to Respondent's counsel's office on May 31, 2024 almost six (6) months after Mrs. O'Hara-Iacampo's passing and after multiple requests were made of the Appellants. Contemporaneous with the delivery of the original Will, Bernard G. O'Hara filed a "Caveat against probate of alleged administration" on May 30, 2024. (Pa45-46)

The Petitioner then filed a Commercial Arbitration Demand with the American Arbitration Association to compel Arbitration. (Pa49)

Since the plaintiff did not have the original Mary M. O'Hara- Iacampo Family Trust and Last Will and Testament documents, Mary's Trust could not be subject to administration by the Warren County Surrogate's Court. The named successor

trustee Vincent Iacampo, Sr., could not be appointed as Successor Trustee or Executor. (Da44-45)

The obstructionist positions of the Petitioners left the Respondent with necessity to take legal action and file a lawsuit against the Petitioners as a Summary Action in the Superior Court of New Jersey, Chancery Division, Probate Part before the Honorable Haekyoung Suh, P.J.Ch. (Pa38-75)

Despite plain language in the Last Will and Testament and Mary's Trust regarding the Respondent as Successor Trustee and Executor in her Last Will and Testament and a false claim by Petitioners to compel the Respondent to arbitrate, the Petitioners stonewalled the Respondent and prevented him from fulfilling his late wife's wishes as clearly stated in her Testamentary documents.

POINT I

THE STANDARD OF REVIEW FOR ATTORNEY'S FEES APPLICATIONS UNDER RULE 4:42-9(a)(2) IS A CLEAR OR MANIFEST ABUSE OF DISCRETION.

New Jersey Courts have emphasized that under Rule 4:42-9(a)(2) the award of attorneys' fees is discretionary and will not be reversed unless there is a clear demonstration of a manifest abuse of discretion.

The Court on appeal will disturb a trial court's determination on counsel fees "only on the rarest occasions, and then only because of a clear abuse of discretion." ***Rendine v. Pantzer*** 141 N.J. 292, 317 (1995); accord ***Packard-Bamberger & Co. v. Collier*** 167 N.J. 427, 444 (2001). However, such determinations are not entitled to any special deference if the judge "misconceives the applicable law, or misapplies it to the factual complex." ***Kavanaugh v. Quigley*** 63 N.J. Super. 153, 158 (App. Div. 1960); see also ***Manalapan Realty, L.P. v. Twp. Comm. Of Manalapan*** 140 N.J. 366, 378 (1995)(holding that a "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference"). Still, where case law, statutes, and rules are followed and the judge makes appropriate findings of fact, a fee award is entitled to substantial deference. ***Yueh v. Yueh*** 329 N.J. Super. 447, 466 (App. Div. 2000).

There has been no abuse of discretion in Judge Suh's thoughtful analysis of the facts and law in this case. Judge Suh correctly determined that the Executor and Trustee, Vincent Iacampo, Sr., was required to expend his personal funds in filing a Summary Action to administer his wife's estate. Mr. Iacampo's actions satisfied the intent of his late wife Mary M. O'Hara-Iacampo in his being named as Executor and Successor Trustee and other relief from the unsubstantiated demands made by the Petitioners.

The Petitioners ignored the written mandate of Mary O'Hara-Iacampo as stated in her Last Will and Testament and Mary's Trust. The Petitioners prevented the administration of the decedent's estate. There was no abuse of discretion by the Court below in entering the Orders being appealed by the Petitioners.

POINT II

THE COURT BELOW WAS CORRECT IN DETERMINING THAT A "FUND-IN-COURT" EXISTS IN THIS CASE IN AWARDING COUNSEL FEES AND COSTS TO THE RESPONDENT.

Rule 4:42-9(a)(2) permits attorney's fees to be awarded out of a fund-in-Court. The exception applies in a suit to "construe a will or a trust agreement" because the estate or trust fund is "the subject-matter of the litigation and for that reason under the control of the court." ***Trimarco v. Trimarco*** 396 N.J. Super. 207 (App. Div. 2007) at 216 (quoting ***Cintas v. Am. Car & Foundry Co.***, 133 N.J. Eq. 301, 304 (Ch. 1943). Affd in part, rev'd in part 135 N.J. Eq. 305 (E. & A. 1944)).

"Fund-in-court" is an equitable term of art. ***Henderson v. Camden Cnty. Mun. Util. Auth.***, 176 N.J. 554, 564, 826 A.2d 615 (2003). "The fund[-]in[-]court exception generally applies when a party litigates a matter that produces a tangible economic benefit for a class of persons that did not contribute to the cost of the litigation." ***Henderson*** 176 N.J. at 564.

The exception applies "when it would be unfair to saddle the full cost [of the litigation] upon the litigant for the reason that the litigant is doing more than merely advancing his [or her] own interests." ***Sunset Beach Amusement Corp. v. Belk*** 33 N.J. 162 834 (1960); accord ***Henderson*** 176 N.J. at 564.

Accordingly "when litigants through court intercession create, protect or increase a fund for the benefit of a class of which they are members, in good conscience the cost of the proceedings should be visited in proper proportion upon all such assets." ***Sarner v. Sarner*** 38 N.J. 463, 469, 185 A.2d 851 (1962).

A "pot of money" or actual fund in the possession of the court is not required. ***Trimarco v. Trimarco*** 396 N.J. Super. 207, 215, 621 (App. Div. 2007); accord ***Henderson*** 176 N.J. at 564; ***Sarner*** 38 N.J. at 468. It is sufficient if, as a result of the litigation, the fund is brought under the control of the court." ***Trimarco*** supra at 215-16.

As stated in ***Trimarco***:

> "It is not necessary that the fund be actually and physically in the possession of the court, or in the hands of the clerk of the court, or a receiver, or a trustee. It is sufficient if, as a result of the litigation, the fund is brought under the control of the court. An illustration of this is a suit to construe a will or a trust agreement. In such suits it is common practice to award counsel fees out of the decedent's estate or the trust fund, neither of which is in court, but is the subject-matter of the litigation and for that reason under the control of the court." ***Id.*** at 215-216. (emp. add.)

Therefore, it is clear under cited case law as applied to the facts in this case, that a "fund-in-court" exists. The Court below determined that the estate and trust are the subject matter of the litigation and the Respondent is a party before the Court and therefore, it is within the Court's jurisdictional authority to apply Rule 4:42-9(a)(2) to award counsel fees to the Respondent's attorney.

POINT III

THE RESPONDENT DID NOT ACT TO BENEFIT HIMSELF IN FILING THE LITIGATION AND THEREFORE THE FUND-IN-COURT EXCEPTION APPLIES.

In the instant case, Vincent Iacampo, Sr., the Respondent, was required to file a Summary Action under Rule 4:67-2 requesting that the Court below enter an Order for various relief related to discharge of a Caveat, the return of an original Trust Agreement of the Mary M. O'Hara-Trust, to have the Respondent named as Executor of his late wife's Estate as well as Trustee of the Mary M. O'Hara-Iacampo Trust. Further relief was sought to restrain the Appellants from compelling a AAA Arbitration and ignoring the Supreme Court's mandates confirming that a litigant cannot be compelled to submit to arbitration without consent or proper notice.

Since the Will is what is described as a "pour over" document, Vincent Iacampo, Sr., has not and will not receive anything from his late wife's testamentary

dispersion of her assets under her Last Will and Testament dated, January 27, 2016, or the Mary O'Hara-Iacampo Trust dated January 27, 2016. Any benefits in a financial sense derived after Vincent Iacampo, Sr.'s wife's decease on December 10, 2023 inures to the benefit of her sons, the Petitioners in this matter.

The Petitioners all wrongfully stonewalled the Respondent in this case. Without the thoughtful action of the Respondent in retaining counsel and filing the Order to Show Cause, and seeking appropriate relief, the intent of Mary O'Hara-Iacampo would never have been satisfied.

POINT IV

THE RESPONDENT HAD AMPLE TIME TO RESPOND TO THE CERTIFICATION SUBMITTED TO THE COURT BELOW.

The Respondent submitted a Certification of Services on December 16, 2024. (Da10-38) The Court entered its Order of December 27, 2024, thirteen (13) days after submission of the Certification of Services. (Da39-40)

Even accepting Petitioner's argument that the Court was closed for a legal holiday on December 27, 2024, the Petitioner still had ten (10) days from the day of submission on December 16, 2024, through December 25, 2024, in order to respond

to the Respondent's submission or to request an adjournment of Judge Suh's decision until after the holiday session.

The Petitioner never filed a Motion for Reconsideration pursuant to Rule 4:49-2 as a Motion to Alter or Amend the Court's Order of December 27, 2024. That Rule states in pertinent part, as follows:

> "A motion for rehearing or reconsideration seeking to alter or amend a judgment or final order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The Motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or final order sought to be reconsidered and a copy of the court's corresponding written opinion, if any." Rule 4:49-2.

No such motion was filed by the Petitioners. Instead, the Petitioners claim that they were treated unfairly by the Court. A Motion for Reconsideration would have addressed the Petitioner's invalid claims that counsel fees were wrongfully awarded due to a scheduling issue. The Petitioners took no action to respond in a timely manner.

POINT V

THE PETITIONERS' ASSERTION THAT ATTORNEY'S FEES AND COSTS IN UNRELATED MATTERS WERE CONSIDERED BY THE COURT BELOW IS NOT SUPPORTED BY THE RECORD.

In Judge Suh's Order of December 27, 2024, the Statement of Reasons pursuant to Rule 1:7-4a contained a thoughtful analysis of Respondent's Certification of Services submitted. Her Honor reviewed the billing submissions and modified the attorney fee bill as Her Honor deemed appropriate. The billing rate of the Respondent's attorney was reduced from $450.00 an hour to $375.00 an hour.

Judge Suh's analysis revealed that "Plaintiff's fees are chargeable to the Estate because the bulk of the work performed insured to the benefit of the Estate" (Da44)…The legal work performed by Mr. Mandry falls squarely within the scope of R. 4:42-9(a)(2)". (Da45)(emp. add.)

As stated in Point I, the standard of review for attorney's fees applications under Rule 4:42-9(a)(2) is "a clear or manifest abuse of discretion." ***Rendine***, supra at 317.

Consideration was taken by Judge Suh in awarding the attorney's fees and costs to Respondent's attorney because Judge Suh opined, "Plaintiff prevailed on the bulk of his requested relief." (Da41)

Judge Suh also conducted a careful analysis of the holding in ***Rendine*** in calculation of the "loadstar" and other relevant case law in entering the award to the Respondent and William E. Mandry, P.C., in entering the Order on December 27, 2024.

The billing contains adequate detail for the Court to make its decision and there was no abuse of discretion in the Court's entering of the Order on December 27, 2024. The award is not unreasonable as asserted by the Petitioners. The Petitioners lost the case and asserted false narratives which required the filing of the litigation in failing to send the plain language of the decedent's Last Will and Testament and Trust documents. Petitioners wrongfully withheld original estate documents preventing probate of the decedent's estate. There was no abuse of discretion by the Court below to correct the devious plot of the Appellants in preventing the Respondent from administering his beloved wife's estate.

CONCLUSION

The record supports Judge Suh's Order of December 27, 2024. There was no abuse of discretion by the Court below. Petitioners again distort the rule of law again pressing forward with a clear failure to allow the Respondent to follow Mary M. O'Hara-Iacampo's intentions in her testamentary writings. The Petitioners ignored the fact that Rule 4:49-2(a) applies to the facts in this case and failed to grasp the concept of a "fund-in-court" as set forth in case law cited herein. Now the Petitioners

have filed the within Appeal. Their positions ignore Black Letter Law again expending their own trust assets on Respondent's attorney's fees in opposing their within misguided appeal.

The Respondent had to take action to uphold his deceased wife's intent. It is unfair for him to pay for an attorney "there is a fund-in-court in the hands of a fiduciary who is a party before the Court and it is within the Court's jurisdictional authority to deal with it". ***In Re Estate of Thornton*** 169 N.J. Super. 360, 369 (App. Div. 1979).

For all of these reasons, it is respectfully submitted that Petitioners' Appeal be dismissed with prejudice.

Respectfully submitted,

William E. Mandry, P.C.
By: William E. Mandry, Esq.
Counsel for the Respondent

Dated: July 31, 2025

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IN THE MATTER OF THE ESTATE OF MARY H. O'HARA IACAMPO, DECEASED.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A – 001682 – 24 T1 CIVIL ACTION ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: PROBATE PART WARREN COUNTY SAT BELOW: HON. HAEKYOUNG SUH, P.J.CH.

APPELLANTS' LETTER REPLY BRIEF

DAMIANO MARCELLO FRACASSO, ESQ.
ON THE BRIEF

BRIEF TABLE OF CONTENTS

ARGUMENT

I. RESPONDENT'S BRIEF SETS FORTH NO LEGALLY OR FACTUALLY MERITORIOUS ARGUMENT TO OVERCOME APPELLANTS' ARGUMENTS THAT THE TRUST AND THE ESTATE ARE *TWO* (2) COMPLETELY DIFFERENT AND DISTINCT ENTITIES AND THAT THE TRUST IS NOT AND NEVER WAS A PARTY TO THE LITIGATION WHICH FORMS THE BASIS OF THIS APPEAL.

Respondent's[1] Appendix verifies that there exists (1) the Revocable Living Trust of Mary M. O'Hara-Iacampo ("Trust") **(Pa1)** ***and*** the separate and distinct (2) Estate of the Mary M. O'Hara-Iacampo ("Estate") **(Pa31)**. They are *two* (2) separate and distinct legal entities. Respondent's Brief sets forth no legally or factually meritorious argument to overcome Appellants' arguments that the Trust and the Estate are *two* (2) completely different and distinct entities and that the trust is not and never was a proper Plaintiff or Defendant in the litigation which forms the basis of this appeal.

In light of the forgoing, the trial court committed reversible error not only by granting the Trust relief (enjoining the AAA Arbitration proceeding), but also

[1] Appellants note that all references to "Respondent" in the Respondent's Brief and Appendix are singular and singular possession. Never plural or plural possessive (***Passim)***. If the Respondent were both the Estate and the Trust, then Respondent would have referred to itself as "Respondents" and "Respondents'" in the possessive.

awarding the Estate attorney's fees and costs for work allegedly performed on behalf of the Trust. The later was also not meritoriously addressed in the Respondent's Brief.

II. RESPONDENT'S BRIEF SETS FORTH NO LEGALLY OR FACTUALLY MERITORIOUS ARGUMENT TO OVERCOME THE APPELLANTS' ARGUMENTS THAT THEY DID NOT RECEIVE PROPER NOTICE AND OPPORTUNITY TO BE HEARD ON THE AWARD OF ATTORNEY'S FEES.

Respondent's Brief sets forth no legally or factually meritorious argument to overcome the Appellants' arguments that they did not receive proper notice and opportunity to be heard on the award of attorney's fees. The trial court never made a statement pursuant to R. 2:5 – 1 addressing this issue. As such, the Appellants' Due Process rights were violated by not having reasonable notice and opportunity to be heard on the issue of departing from the "American Rule," the amount of attorney's fees sought (and awarded) or the basis for the award.

In light of the foregoing, the trial court committed reversible error when making an award of attorney's fees and costs (thus depriving the Appellants of property) with Due Process of Law.

III. RESPONDENT'S BRIEF SETS FORTH NO LEGALLY OR FACTUALLY MERITORIOUS ARGUMENT TO OVERCOME THE APPELLANTS' ARGUMENTS THAT THE TRIAL COURT FAILED TO CONSIDER OR ANALYZE ALL OF THE REQUIREMENTS SET FORTH IN R.P.C. 1.5(B) AND R. 4:42 – 9(B).

The Respondent's certification of services did not include a written and signed agreement to provide legal services as required by R.P.C. 1.5(b). The submission did not include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally required by R. 4:42 – 9(b). It is axiomatic that without this mandatory information, the trial court judge's decision inescapably lacks sufficient findings to evaluate the specific award determination. See Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 387 (2009). Its absence leaves this Court of review lacking the ability to substantively consider the propriety of the award and "[is] left to conjecture as to what the judge may have had in mind." and thus "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990).

IV. AS A MATTER OF LAW AND FACT, NO "FUND IN COURT" WAS APPLIED TO BE CREATED OR ACTUALLY CREATED BY THE TRIAL COURT IN ITS ORDER OF DECEMBER 5, 2024 AND STATEMENT OF REASONS.

As a Matter of Law and Fact, no "Fund in Court" was applied for to be created **(Da75 – Da76)** or actually created by the trial court in its order of December 5, 2024 **(Da7 – Da9)** or its statement of reasons **(1T)**. Respondent recites *dicta* from other cases about what a "fund in court" is as a general concept. The Appellants do not dispute that a "fund in court" is a valid legal concept in New Jesey. They robustly dispute that the trial court had a valid legal and / or factual basis to *sua sponte* create one… in a fee award… under these particular facts, pleadings and circumstances… without reasonable (or any) notice to or opportunity for the Appellants be heard on the issue.

'Fund in court' is not too happy a term. It is a shorthand expression intended to embrace certain situations in which equitably allowances should be made and can be made consistently with the policy of the rule that each litigant shall bear his own costs. The difficulty with the term is that literally it may connote a fund within the precincts of the court in a physical or geographic sense whereas 'in court' refers to the jurisdictional authority of the court to deal with the subject matter. And for that matter, the existence of power in the court to

control the subject matter is not itself enough to demonstrate the existence of a 'fund in court' within the purpose of the rule. In general, allowances are payable from a 'fund' when it would be unfair to saddle the full cost upon the litigant for the reason that the litigant is doing more than merely advancing his own interests. See Sunset Beach Amusement Corp. v. Belk, 33 N.J. 162, 168 (1960).

Respondent argues that Mr. Iacampo used his own money to pay the lawyer he hired to take an adverse interest against the Appellants (the sole beneficiaries of the Trust which is not even a party to this litigation). There is no proof in the record (which complies with R. 1:6 – 6 or otherwise) to support that Mr. Iacampo paid Mr. Mandy one thin dime of his own money (or why he did when he had no legal obligation to do so). This is germane as it pertains to the "fund in court" issue, but also because the trial court judge ordered that the Estate pay both Mr. Iacampo ***and*** William E. Mandy, PC the ***unallocated*** combined amount of $20,016.10. Not only is there no basis in law or fact to do so, that order violates R.P.C. 5.4(a) because it shares legal fees with a non – lawyer.

This Court must also not overlook the fact that Mr. Iacampo self-servingly (and unsuccessfully) attempted to disinherit the trust under the *in terrorem*

clause of the will even though neither the trust nor the beneficiaries did anything to the estate which even remotely would trigger that concept.

Mr. Iacampo also directed the Estate's attorney to sue on behalf of the Estate to enjoin the AAA Arbitration proceeding involving the completely separate Trust and the Appellants (who are the sole beneficiaries of the Trust). These two selfish acts alone establish that Mr. Iacampo was only acting to benefit himself and his lawyer as opposed to the Estate or the Beneficiary of the Estate or the Beneficiaries of the Trust.

If Mr. Iacampo won on the *in terrorem* clause argument, he would have kept all of the estate's money and the trust's money for himself. By delaying this process, he also got to have sole use and occupancy of the Mrs. O'Hara – Iacampo's Trust's share of the home. Mr. Iacampo did not need to be appointed executor of the estate to perform his fiduciary duties as the trustee of the Trust to lawfully and diligently sell the Trust's share of the real estate and distribute the net proceeds to the beneficiaries (the Appellants). The Estate did not receive any benefit from having the completely unrelated AAA arbitration enjoined. The Estate did not receive any benefit from the meritless *in terrorem* clause argument being advanced. The Estate did not benefit from being ordered to pay Mr.

Iacampo and Mr. Mandry's firm attorney's fees and costs. The Estate did not benefit from anything else contained in the Court's Order of December 5, 2024 or sought in the Estate's complaint **(Da75 – Da76)**.

Moreover, Mr. Iacampo stood to earn a generous executor's commission as a result removing the caveat (which the Appellants consented to) **(Da7)** and then being appointed executor of the Estate. See N.J.S.A. 3B:18 – 14. Finally, the trial court made no specific findings as to what specific tasks and specific time spent was directly attributable to legal fees and expenses (reasonable or otherwise) expended for the benefit of anyone other than Mr. Iacampo. The record is bare as to what services were performed by an attorney and what services were performed by para – professional(s). This is especially so considering that absolutely no entitlement to real or personal property was in dispute and absolutely no money was sought to ordered or actually ordered to be paid into a "fund in court" under the authority of R. 4:57 – 1, *et seq*.

V. THE FEE AWARDED ($19,050.00) FOR BRINGING AN ACTION TO REMOVE A CAVET (WHICH WAS CONSENTED TO AND DEEMED BY THE TRIAL COURT TO HAVE BE RECORDED IN GOOD FAITH) IS EXCESSIVE.

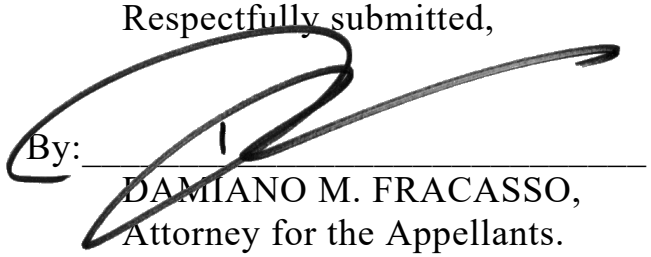
The only relief granted in the December 5, 2024 Order which even remotely benefitted the Estate was the removal of the caveat so Mr. Iacampo could be appointed (and, as a result, earn his commission for doing so) **(Da7 – Da9)**. The Appellants consented to this relief **(Da7)**. Everything else litigated in the Respondent's Complaint was of absolutely no benefit to the Estate or its sole beneficiary and much of it was denied **(Da7 – Da9)**. Against that backdrop, the trial court ordered the Estate to pay Mr. Iacampo ***and*** William E. Mandy, PC the ***unallocated*** combined amount of $20,016.10 to seek and then obtain that relief by consent. That award is excessive and a reversible abuse of discretion. This is especially so considering the lack of detail and specificity for the fee award in the December 27, 2025 Statement of Reasons **(Da41 – Da46)**.

VI. THE BALANCE OF THE RESPONDENT'S ARGUMENTS LACK SUFFICIENT MERIT AND DO NOT WARRANT DISCUSSION.

The balance of the Respondent's arguments lacks sufficient merit and do not warrant detailed discussion and analysis.

Dated: August 21, 2025

Respectfully submitted,



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