

STATE OF OHIO

Office of the Clerk  
Supreme Court of Ohio  
65 South Front Street, 8<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

21-1422

Date: 11/18/21

RE: State of Ohio ex rel, KIM WYLIE VS CUYAHOGA CO PROBATE COURT  
JUDGE ANTHONY J. RUSSO AND  
MAGISTRATE JOHN R. HOMOLAK

OHIO SUPREME COURT CASE NO: \_\_\_\_\_

Dear Clerk,

Please find One Original of the following:

\*Original\*

PETITION FOR WRIT OF MANDAMUS

AFFIDAVIT OF INDIGENCE

CERTIFICATE OF SERVICE

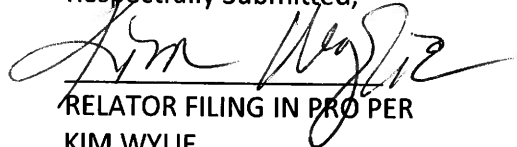
that Relator respectfully requests to be filed on her behalf, and scheduled for hearing at a  
date/time set forth by this Honorable Ohio Supreme Court.

Date: 11/18/21

CC: Respondent(s)  
File

Honorable Anthony J. Russo  
Magistrate John R. Homolak  
Cuyahoga County Probate Court  
1 Lakeside Ave West  
Cleveland, Ohio 44113

Respectfully Submitted,



RELATOR FILING IN PRO PER  
KIM WYLIE  
PO Box 18650  
Cleveland, Ohio 44118

(216) 387-5770

FILED

NOV 22 2021

CLERK OF COURT  
SUPREME COURT OF OHIO

RECEIVED

NOV 22 2021

CLERK OF COURT  
SUPREME COURT OF OHIO

IN THE OHIO SUPREME COURT

Case No: \_\_\_\_\_

State of Ohio ex rel,  
KIM WYLIE,

Relator,

-VS-

CUYAHOGA CO PROBATE COURT  
JUDGE ANTHONY J. RUSSO AND  
MAGISTRATE JOHN R. HOMOLAK

Respondent(s),  
\_\_\_\_\_/

**\*Original\***

**PETITION FOR WRIT OF MANDAMUS**

NOW COMES, KIM WYLIE, Relator presently filing in Pro Se at present, and forma pauperis, Who hereby moves this Honorable Ohio Supreme Court, by filing Relator's Pro Se Original Petition For Writ of Mandamus attached Sworn Affidavit of Relator Kim Wylie, pursuant to S.Ct.Prac.R. 12.01 through 12.10 et seq; ORC Chapter 2731, and Article IV, Section 2 of the Ohio Constitution, based upon any/all of the following:

**PARTIES PRESENTED**

(1) That Relator, KIM WYLIE, and State of Ohio ex rel.(via Ohio Attorney General, does resides at PO Box 18650, Cleveland, Ohio 44118. That this Relator has a "clear legal right" from the Respondents et al to the Federal and State Right to Equal Protection Due Process of Law and Access to the Courts that Respondents et al has "clear legal duty" provide to this Relator.

(2) That Respondent(s) Cuyahoga County Probate Court Judge ANTHONY J. RUSSO, is a Cuyahoga Co Probate Court Judge, at 1 Lakeside Ave., Cleveland, Ohio 44113. That has "clear legal

duty” provide the “clear legal right” to this Relator and General Public under the Federal and State Right under Equal Protection Due Process of Law and Access to the Courts for the sought in the herein Original Petition For Writ of Mandamus, pursuant to S.Ct.Prac.R. 12.01 through 12.10 et seq; ORC Chapter 2731, and Article IV, Section 2 of the Ohio Constitution.

(3) That Respondent(s) Cuyahoga County Probate Court Magistrate JOHN R. HOMOLAK, is a Cuyahoga Co Probate Court Magistrate Judge, at 1 Lakeside Ave., Cleveland, Ohio 44113. That has “clear legal duty” provide the “clear legal right” to this Relator and General Public under the Federal and State Right under Equal Protection Due Process of Law and Access to the Courts for the sought in the herein Original Petition For Writ of Mandamus, pursuant to S.Ct.Prac.R. 12.01 through 12.10 et seq; ORC Chapter 2731, and Article IV, Section 2 of the Ohio Constitution.

#### **JURISDICTION**

(4) That this Honorable Ohio Supreme Court retains Subject Matter Jurisdiction to hear, decide, and issue a original Mandamus Action within the Ohio Supreme Court, pursuant to S.Ct.Prac.R. 12.01 through 12.10 et seq; ORC Chapter 2731, and Article IV, Section 2 of the Ohio Constitution.

#### **STATEMENT OF THE CASE/FACTS**

(5) On **DECEMBER 26, 2014**, This Relator claims that the Respondent(s) Cuyahoga County Probate Court Judge ANTHONY RUSSO and Magistrate JOHN HOMOLAK granted the Administrator Jennifer Lynn Wylie “12/24/2014 Application For Authority to Administrate Estate of BEVERLY R. WYLIE” this Relator’s Late Deceased Mother. The Estate simply had a Single Family Home(ie bought/paid for with no reverse mortgage/loans and taxes paid in full) worth \$63,800; Household Goods and Furniture worth \$4,000; and Estate Checking Acct in the amount of \$8,200.

(7) Since this Cuyahoga Co Probate Court Civil Action was filed **in 2014 (SEVEN YEARS AGO)** to expedite the division of assets/property of our prominent African American Late Deceased Mother BEVERLY R. WYLIE Estate just as SAID Respondent Probate Court Judge/Magistrate has done on thousands of deceased white estate. Because this Probate Court is fully aware from the history of this case, that:

(A) No Inventory of my Late Deceased Mother BEVERLY R. WYLIE Assets/Property was done according to Ohio Law by these Petitioner's Sister appointed Administrator and her sycophant Attorney DONALD CANESTRARO **are now attempting to sell a fully furnished contested House without inventory it**, in violation of clearly established ORC 2115.16; Civil Rule 73(E)(7) and Local Court Rule 64.1;

(B) That the appointed Administrator and her Attorney DONALD CANESTRARO have convoluted this entire Probate Case for Six Years, in violation of Local Rule 64.4 by intentionally and in bad faith failing/refusing to create anytype Escrow Account on Estate; Closing/Opening Bank Accounts to embezzle/misappropriate/convolute said Estate/Assets; and/or by filing numerous unnecessary redundant pleadings to waste precious judicial resources; Prejudice this Relator and Rightful Heirs; and will continue to do so until any/all remaining assets of the Estate are gone or exhausted by even filing a "Complaint For Land Sale" that is actually procedurally barred under the clearly established United States Supreme Court case law precedent on Issue and/or Claim Preclusions of the Res Judicata Doctrine under the Federal Supremacy Clause BROWN V FELSON, 442 US 127(1979); ALLEN V MCCURRY, 449 US 90, 94(1980); and is even barred under Ohio Res Judicate Probate Law to attempt to relitigate a Claim/Issue Litigated previously in Probate Court. See STATE EX REL LIPINSKY V

CUYAHOGA CO COURT OF COMMON PLEAS, PROBATE DIVISION, 74 Ohio St 3d, 655 NE 2d 1303(1995).

(C) The appointed Administrator Jennifer Lynn Wylie's Attorney DONALD CANESTRARO (sycophant of the dead), and is not a Beneficiary of my Mothers Estate and the Party that hired them, owes them.

(8) This Relator states as her claim upon which relief must be granted is based upon the fact. That under clearly established Ohio Law(that the Respondent Cuyahoga Co Probate Court Judge ANTHONY RUSSO and Magistrate JOHN HOMOLAK either understands, knows, nor honors that it) expressly authorizes Probate Courts in concealment proceedings to resolve questions of title for concealed, embezzled, or conveyed assets, pursuant to ORC 2109.52. GOLDBERG V MALONEY, 111 Ohio St. 3d 211(2006) 2006 Ohio 5485; STATE ex rel LIPINSKI V CUYAHOGA Cty. COURT OF COMMON PLEAS, 74 Ohio St. 3d 19(1995); and that under clearly established Ohio Law that the Administrator can be held responsible for submitting a fraudulent document in Probate Court for the concealment of assets of the Estate which he/she represents. See ORC 2101.24; JACOBSEN V JACOBSEN, 164 Ohio St. 413(1956); SEEDS V SEEDS, 116 Ohio St. 144(1927); STATE ex rel BLACK et al exrs V WHITE, 132 Ohio Se. 58(1936); Also see GRIFFITH V GODEY, 113 U.S. 89(1885).

(9) This Relator demands that this Ohio Supreme Court Justices orders the Cuyhoga Co Probate Court Judge ANTHONY RUSSO and Magistrate JOHN HOMOLAK conduct a immediate Equal Protection Due Process Hearing on the equal division of any/all assets between SEVEN of NINE sole remaining Beneficiaries/Heirs, and that the appointed Administrator Jennifer Lynn Wylie be ordered to pay all of her Attorney(s) with her share of her inheritance. This Relator owes Attorneys NOTHING, and is not in contract nor represented by any Attorneys.

(10) Under Ohio Revised Code 2109.01, This Relator et al are the sole fiduciaries of our Late Deceased Mother BEVERLY R. WYLIE Estate. Since "A fiduciary relationship is one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority of influence, acquired by virtue of this special trust." In re Employment of Pratt (1974), 40 Ohio St.2d 107, 115, 69 O.O.2d 512, 517, 321 N.E.2d 603, 609. It is well established that "[w]here the law creates fiduciary relations, it seeks to prevent the abuse of confidence, by ensuring the disinterestedness of its agents. \* \* \*" MAGEE V TROUTWINE(1957), 166 Ohio St. 466, 468-469, 2 O.O. 53\*52 471, 472 quoting ARMSTRONG V HEIRS OF HUSTON, (1838), 8 Ohio 552; Whitaker v. Estate of Whitaker, 105 Ohio App. 3d 46(4<sup>th</sup> Appellate District, 1995).

(11) Under Ohio Law, Self dealing by a fiduciary is prohibited. R.C. 2109.44 states that "[f]iduciaries shall not buy from or sell to themselves nor shall they \* \* \* have any dealings with the estate, except as expressly authorized by the instrument \* \* \* or with the approval of the probate court \* \* \*." See, also, MAGEE V TROUTWINE(1957), 166 Ohio St. 466, 468-469, 2 O.O. 53\*52 471, 472 quoting ARMSTRONG V HEIRS OF HUSTON, (1838), 8 Ohio 552; Whitaker v. Estate of Whitaker, 105 Ohio App. 3d 46(4<sup>th</sup> Appellate District, 1995), and WALTERS V WANNEMACHER(1964), 6 Ohio App 2d 226, 35 O.O.2d 385, 217 NE 2d 695. The applicable instrument in this case contains no authorization nor court-order for the fiduciary to engage in any kind of self dealing, nor has a approval of the probate court for the loan at issue appears nowhere in the record.

(11) This Relator states as her claim upon which relief must be granted is based upon the fact that ONLY the appointed Executor/Administrator Jennifer Lynn Wylie owes a clear legal duty under the "common-fund theory of recovery" to use her share of my Late Deceased Mother's Estate to pay her attorney(s) that she has hired. Because Ohio Law allows a beneficiary who has incurred attorney fees

as the result of litigation undertaken principally for the benefit of the estate to recover expenses from the estate. See In re Estate of Fugate(1993) 86 Ohio App.3d 293; In re Estate of Brown(1992), 83 Ohio App.3d 540; In re Keller(1989), 65 Ohio App.3d 650; and In re Estate of Colosimo(1957), 104 Ohio App.

342. This Relator owes Attorneys NOTHING, and is not in contract nor represented by any Attorneys.

(12) This Relator states as her claim upon which relief must be granted is based upon the fact. That under both the 14th Amendment to the United States Constitution and under Section 16, Article I of the Ohio Constitution affirms: “....that no person shall be deprived of life, liberty, or property without due process of law”. The concept of due process has been deemed to encompass both substantive and procedural rights. In this case, we must conduct a Equal Protection procedural due process hearing. The essence of procedural due process is the right to receive reasonable notice and a reasonable opportunity to be heard. MULLANE V CERT. HANOVER BANK & TRUST, 339 US 309, 314; 70 Sct 652; 94 LED2d 865, 873(1950); and ALLSTATE INS. CO. V BOWEN, 130 Ohio St., 347, 4 O.O. 427(1936). Because these Respondent Cuyahoga Co Probate Court Judge ANTHONY RUSSO and Magistrate JOHN HOMOLAK(that are currently conspiring to cover-up fraud, and embezzlement by Administrator and Fellow Member of the Ohio BAR- Attorney DONALD CANESTRARO) know they are in the best position to evaluate the credibility of witnesses and should be very familiar with the lengthy history of this case. See SEASONS COAL CO. V CLEVELAND, 10 Ohio St. 3d 77 10 OBR 408(1984).

(13) On MARCH 23,2021, Due to the complete incompetence, corruption and total disregard for the rule of law by the Magistrate/Judge on this case to enforce Ohio Probate Statutes requiring that Estates be inventoried and escrow account be created to prevent concealment and embezzlement. The Administrator Jennifer Lynn Wylie knowingly, intentionally, and in bad faith threw away and gave away any/all property in the contested Family Property/House without providing this

Probate Court a inventory, and a family wooden strong box containing assets/money to a non-heir DOUG BOYKINS(ie, BEVERLY BOYKINS SON) to blame him for stealing any/all assets/money. That now requires that the Executor/Administrator Jennifer Lynn Wylie posted Probate Administrative Bond be revoked, and that her sychophant Attorney DONALD CANESTRARO be sanctioned/fined for living off the dead/deceased.

### **STANDARD OF REVIEW**

(14) Under Ohio Law, Mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. "The duty to be enforced by a writ of mandamus must be specific, definite, clear and unequivocal." State ex rel. Karmasu v. Tatte(1992), 83 Ohio App.3d 199, 205, 614 N.E.2d 827. It should not be issued in doubtful cases. State ex rel. Taylor v. Glasser(1977), 50 Ohio St.2d 165, 364 N.E.2d 1; State ex rel. Shafer v. Ohio Turnpike Comm.(1953), 159 Ohio St. 581, 113 N.E.2d 14; State ex rel. Cannole v. Cleveland Bd. of Edn. (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

(15) In order to be entitled to a writ of mandamus, A Relator must show: (1) a clear legal right to the relief requested (2) a corresponding legal duty on the part of the respondent to institute that action, and (3) the lack of an adequate remedy for the petitioner in the ordinary course of law. See State ex rel. Gilbert v. Cincinnati, Slip Opinion No. 2010-Ohio 1473, ¶ 15. Also see, State ex rel. Shelly Materials, Inc. v. Clark Cty. Bd. Of Commrs., 115 Ohio St.3d 337, 2007-Ohio-5022; State ex rel. Hodges v. Taft(1992), 64 Ohio St.3d 1, 3.

(16) In conclusion, This Relator claims that the herein pro se pleadings cannot be held same standards as those drafted by attorney as held/ruled by the United States Supreme Court in ERICKSON V PARDUS, 551 US 89, 94(2007); and accept must accept Pro Se Litigants allegations as true, unless they are clearly irrational or wholly incredible. Denton v. Hernandez, 504 U.S. 25, 33 (1992) unless it



appears 'beyond doubt that the pro se litigant can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U. S. 41, 355 U. S. 45-46 (1957). Further, This Relator believes that this Honorable Ohio Supreme Court has a responsibility, and legal duty to protect any and all of the accused constitutional and statutory rights. See United States v. Lee, 106 US 196, 220(1882).

### **CONCLUSION**

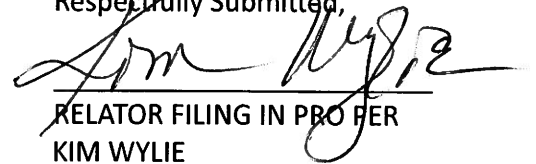
WHEREFORE, This Relator requests/demands that this Honorable Ohio Supreme Court honors/grants this Relator's Pro Se Original Petition For Writ of Mandamus, pursuant to S.Ct.Prac.R. 12.01 through 12.10 et seq; ORC Chapter 2731, and Article IV, Section 2 of the Ohio Constitution. By issuing an Order GRANTING this Relator's Original Petition For Writ of Mandamus to ORDER the Respondents Judge ANTHONY RUSSO and Magistrate JOHN HOMOLAK to perform a clear legal duty to conduct a Equal Protection Due Process Hearing that this Relator is entitled to by Clear Legal Right under Equal Protection of the Law and Access to the Courts on Relator's Motion To Show Cause, Demand To Revoke Probate Bond, and Demand For Hearing to conduct a Equal Protection Due Process Show Cause Hearing this Relator is entitled to by Right as too: (A) Why a Escrow Account has not been created in SEVEN Years; (B) Why our Mother Estate/property for over SEVEN YEARS still has NEVER been inventoried according to Ohio Probate Law but instead looted/misappropriated/pawned/pilfered by Executor and her Attorney DONALD CANESTRARO, and what total value of all items/property that is being sold in fully furnished Probate House/Estate; (C) Whether Equity or Second Mortgage has been unlawfully/illegally done on the Estate Home by either the appointed Executor/Administrator and her Attorney DONALD CANESTRARO ; (D) What the total amount of assets where on any/all open and closed bank accounts that have been embezzled/misappropriated on this Estate by the

Executor/Administrator and her Attorney DONALD CANESTRARO needs be known/disclosed now to make this Probate Case ripe for Final Account Hearing Order; (E) Why the Assets of our Late Deceased Mother's Estate should not be Equally Divided; and/or (F) Whether the Executor/Administrator's Probate Administrative Bond should be revoked for Fraud, Embezzlement, Concealment, and applied to the Estate, as all circumstances should dictate and Justice would so demand.

Date: 11/18/21

CC: Respondent(s)  
File

Respectfully Submitted,



RELATOR FILING IN PRO PER  
KIM WYLIE  
PO BOX 18650  
CLEVELAND, OHIO 44118  
(216) 387-5770

IN THE OHIO SUPREME COURT

Case No: \_\_\_\_\_

State of Ohio ex rel,  
KIM WYLIE,

Relator,

-VS-

CUYAHOGA CO PROBATE COURT  
JUDGE ANTHONY J. RUSSO AND  
MAGISTRATE JOHN R. HOMOLAK

Respondent(s),  
\_\_\_\_\_ /

SWORN AFFIDAVIT OF RELATOR KIM WYLIE

That, I/Relator- KIM WYLIE After first being duly sworn, deposes and says:

(1) On **DECEMBER 26, 2014**, This Relator claims that the Respondent(s) Cuyahoga County Probate Court Judge ANTHONY RUSSO and Magistrate JOHN HOMOLAK granted the Administrator Jennifer Lynn Wylie "12/24/2014 Application For Authority to Administrate Estate of BEVERLY R. WYLIE" this Relator's Late Deceased Mother. The Estate simply had a Single Family Home(ie bought/paid for with no reverse mortgage/loans and taxes paid in full) worth \$63,800; Household Goods and Furniture worth \$4,000; and Estate Checking Acct in the amount of \$8,200.

(2) Since this Cuyahoga Co Probate Court Civil Action was filed **in 2014 (SEVEN YEARS AGO)** to expedite the division of assets/property of our prominent African American Late Deceased Mother BEVERLY R. WYLIE Estate just as SAID Respondent Probate Court Judge/Magistrate has done on thousands of deceased white estate. Because this Probate Court is fully aware from the history of this case, that:

(A) No Inventory of my Late Deceased Mother BEVERLY R. WYLIE Assets/Property was done according to Ohio Law by these Petitioner's Sister appointed Administrator and her sycophant Attorney DONALD CANESTRARO **are now attempting to sell a fully furnished contested House without inventory it**, in violation of clearly established ORC 2115.16; Civil Rule 73(E)(7) and Local Court Rule 64.1;

(B) That the appointed Administrator and her Attorney DONALD CANESTRARO have convoluted this entire Probate Case for Six Years, in violation of Local Rule 64.4 by intentionally and in bad faith failing/refusing to create anytype Escrow Account on Estate; Closing/Opening Bank Accounts to embezzle/misappropriate/convolute said Estate/Assets; and/or by filing numerous unnecessary redundant pleadings to waste precious judicial resources; Prejudice this Relator and Rightful Heirs; and will continue to do so until any/all remaining assets of the Estate are gone or exhausted by even filing a "Complaint For Land Sale" that is actually procedurally barred under the clearly established United States Supreme Court case law precedent on Issue and/or Claim Preclusions of the Res Judicata Doctrine under the Federal Supremacy Clause.

(C) The appointed Administrator Jennifer Lynn Wylie's Attorney DONALD CANESTRARO (sycophant of the dead), and is not a Beneficiary of my Mothers Estate and the Party that hired them, owes them.

(3) That this Relator filed a Original Petition For Writ of Mandamus, pursuant to S.Ct.Prac.R. 12.01 through 12.10 et seq; ORC Chapter 2731, and Article IV, Section 2 of the Ohio Constitution, based the fact. That this Relator is entitled to by Right under Equal Protection of the Law the Respondents Judge ANTHONY RUSSO and Magistrate JOHN HOMOLAK to perform a clear legal duty to conduct a Equal Protection Due Process Hearing that this Relator is entitled to by Clear Legal Right

under Equal Protection of the Law and Access to the Courts on Relator's Motion To Show Cause, Demand To Revoke Probate Bond, and Demand For Hearing to conduct a Equal Protection Due Process Show Cause Hearing this Relator is entitled to by Right as too: (A) Why a Escrow Account has not been created in SEVEN Years; (B) Why our Mother Estate/property for over SEVEN YEARS still has NEVER been inventoried according to Ohio Probate Law but instead looted/misappropriated/pawned/pilfered by Executor and her Attorney DONALD CANESTRARO , and what total value of all items/property that is being sold in fully furnished Probate House/Estate; (C) Whether Equity or Second Mortgage has been unlawfully/illegally done on the Estate Home by either the appointed Executor/Administrator and her Attorney; (D) What the total amount of assets where on any/all open and closed bank accounts that have been embezzled/misappropriated on this Estate by the Executor/Administrator and her Attorney DONALD CANESTRARO needs be known/disclosed now to make this Probate Case ripe for Final Account Hearing Order; (E) Why the Assets of our Late Deceased Mother's Estate should not be Equally Divided; and/or (F) Whether the Executor/Administrator's Probate Administrative Bond should be revoked for Fraud, Embezzlement, Concealment, and applied to the Estate.

I declare under penalty of perjury after being sworn by the below Notary Public are true to the best of my personal knowledge, information, and belief.

Date: 11/18/21

Respectfully Submitted,

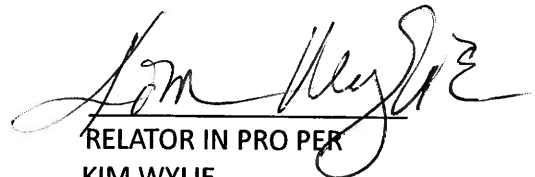
Sworn to Before Me and Subscribed

My Presence this 18 Day of November 2021

  
NOTARY PUBLIC



DAVID M. KENNEDY  
Notary Public, State of Ohio  
My Commission Expires  
June 14, 2025

  
RELATOR IN PRO PER

KIM WYLIE  
PO BOX 18650  
CLEVELAND, OHIO 44118  
(216) 387-5770

IN THE OHIO SUPREME COURT

Case No: \_\_\_\_\_

State of Ohio ex rel,  
KIM WYLIE,

Relator,

-VS-

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JUDGE ANTHONY J. RUSSO AND  
MAGISTRATE JOHN R. HOMOLAK

Respondent(s),  
\_\_\_\_\_

STATE OF OHIO )

)SS.

CERTIFICATE OF SERVICE

COUNTY OF CUYAHOGA)

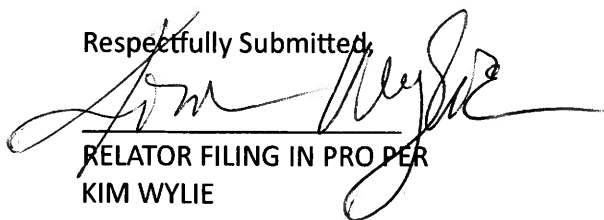
On November 18, 2021, The undersigned served a copy of this Relator's Pro Se Original Petition For Writ of Mandamus attached Sworn Affidavit of Relator Kim Wylie; Affiant Affidavit of Indigency; and Certificate of Service. Upon Respondent(s) Respondent Judge Anthony J. Russo, at the Cuyahoga Co Probate Court Judge, at 1 Lakeside Ave., Cleveland, Ohio 44113; and Respondent Magistrate Judge Anthony John Homolak, at the Cuyahoga Co Probate Court Judge, at 1 Lakeside Ave., Cleveland, Ohio 44113; and Ohio Attorney at Law- DONALD CANESTRANO, at 15950 Libby Rd, Maple Heights, Ohio 44137. By placing a copy of said documents in a sealed envelope, properly addressed with First Class US Postage being fully prepaid and depositing it in the US Mail.

I declare that the above statements are true to the best of my knowledge, information, and belief. 29 USC 1746 et seq.

Date: 11/18/21

CC: Respondent(s)  
File

Respectfully Submitted,



RELATOR FILING IN PRO PER  
KIM WYLIE  
PO BOX 18650  
CLEVELAND, OHIO 44118  
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**Address labels**

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Supreme Court of Ohio  
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