IN THE SUPREME COURT OF THE
STATE OF SOUTH DAKOTA

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APPEAL NO. 30820

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In the Matter of the Guardianship and Conservatorship of
Catherine A. Danielson,
A person alleged to be in need of protection.

****

APPEAL FROM THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT
CLAY COUNTY, SOUTH DAKOTA

****

HONORABLE DAVID D. KNOFF Circuit Court Judge

****

APPELLANT BRIEF

****

BRUCE DANIELSON PO Box 491
Sioux Falls, SD 57501
Pro se, Appellant

****

DAVID R. GIENAPP PO Box 14
Madison, SD 57042
Pro se, Appellee/Conservator

****

Notice of Appeal filed September 3, 2024

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II. CERTIFICATE OF INTERESTED PERSONS

CASE NO. 30820

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Pro Se Plaintiff/Appellant

(2) The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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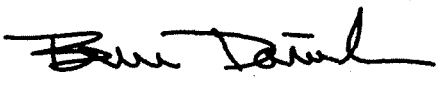
Respectfully submitted:



BRUCE DANIELSON
P. O. Box 491
Sioux Falls, SD 57101
Pro Se Appellant/Interested Party

III. Statement Regarding Oral Argument

Appellant/Objector Danielson requests an oral argument. Appellant Danielson believes that the case is nuanced and complex in both fact and law and consequently the Supreme Court would benefit from being able to question the parties to clarify the facts and issues as required.

IV. Jurisdictional Statement

Jurisdiction results from the Appellants filing a timely Notice Of Appeal pursuant to SDCL 15-26A-4.

V. Statement of Issues

I. Were the objections and questions leading to the contempt proceedings relevant and reasonable?

Appellant Danielson contends that the questions he asked were reasonable and relevant because they were based on the Conservator's failure to conform to statutory reporting requirements. and impeachment of the Conservator. See *Stratmeyer v. Engberg, 649 NW 2d 921 - SD: Supreme Court 2002: See SDCL 19-19-607 Any party may impeach a witness*

> *In a recent opinion interpreting this statute, this Court stated:*
>
> *A frivolous action exists when "the proponent can present no rational argument based on the evidence or law in support of the claim...." To fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling. Simply because a claim or defense is adjudged to be without merit does not mean that it is frivolous. Instead, frivolousness "connotes an improper motive or a legal position so wholly without merit as to be ridiculous." Ridley v. Lawrence County Comm'n, 2000 SD 143, ¶ 14, 619 N.W.2d 254, 25*

II. Was the Conservator obligated to conform to statutory reporting requirements?

Danielson contends that the position of the Court and Conservator that the Conservator has been relieved of any obligation to conform to legislative imperatives is flawed for jurisdictional and other reasons. See *State v.*

Nelson, 587 NW 2d 439 - SD: Supreme Court 1998 . SDCL 29A-5-408 is clear, the legislature uses the word shall to require conformance.

> *29A-5-408. Annual accounting--Conservator--When filed. (emphasis added)... An accounting* ***shall*** *include: ... A conservator* ***shall*** *mail a copy of the accounting to the individuals and entities specified in § 29A-5-410 no later than fourteen days following its filing. A conservator* ***shall*** *notify all persons receiving the accounting that they must present written objections within sixty days after receipt or be barred from thereafter objecting. (Emphasis added)*

III. Were the Court proceedings reversibly flawed?

Appellant Danielson contends that the Court's legal and factual conclusions are sufficiently flawed to render the Court's conclusion reversible under an abuse of discretion standard. The Appellant asserts the Order[3151] was issued without properly considering whether the topic questions by Danielson were relevant, whether the Conservator was obligated to conform to statute SDCL 29A-5-408, whether a reasonable person would find the testimony credible and whether the questions were relevant and/or impeaching.

Prunty Const., Inc. v. City of Canistota, 682 NW 2d 749 - SD: Supreme Court 2004

Cooter & Gell v. Hartmarx Corp., 496 US 384 - Supreme Court 1990

IV. Are these sanction motions reflective of an improper motive since they appear to be an effort to prevent the release of information which would further an apparent investigation into this Guardianship and Conservatorship?

The Conservator has revealed that he was recently called to an office of federal law enforcement[4038,4042] for an extended interview which, apparently, one of the issues was unauthorized access to Catherine Danielson's Social Security funds due to a failure to notify SSA and segregate accounts. The revelation of the investigation raises the question of whether

the sanctions motioned [4037] are an attempt to intimidate witnesses in the federal investigation[18 U.S.C. § 1512[1]] and therefore themselves have an improper motive. The Conservator is seeking relief without having clean hands.

The doctrine of *in pari delicto* is defined as "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." Black's Law Dictionary (8th ed 2004).

See Adrian v. McKinnie, 639 NW 2d 529 - SD: Supreme Court 2002

> *Lastly, Adrian contends that the trial court's finding that the McKinnies acted with unclean hands disentitles them to equitable relief. When claimants seek equitable relief in an instance where they would ordinarily be permitted such relief, they will nonetheless be denied the relief if they acted improperly or unethically in relation to the relief they seek. Dobbs, Law of Remedies, § 2.4 (1973). Unrelated misconduct will not bar relief: "What is material is not that the plaintiff's hands are dirty, but that he dirties them in acquiring the right he now asserts." Republic Molding Corp. v. B.W. Photo Utilities, 319 F.2d 347, 349 (9th Cir.1963). No matter how wrong the McKinnies may have been in taking excess timber off the land, those acts have nothing to do with how the agreement here was formed. The trial court's unclean hands finding will not bar equitable relief.*

See Quick v. Samp, 697 NW 2d 741 - SD: Supreme Court 2005

> *[¶ 8.] The doctrine of in pari delicto is defined as "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." Black's Law Dictionary (8th ed 2004). "The doctrine ... is an application of the principle of public policy that `[n]o court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.'" Evans v. Cameron, 121 Wis.2d 421, 360 N.W.2d 25, 28 (1985) (citing Clemens v. Clemens, 28 Wis. 637, 654 (1871)).*
>
> *18 U.S.C. § 1512*

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[1] Protection Of Government Processes -- Tampering With Victims, Witnesses, Or Informants -- **18 U.S.C. 1512. Section 1512 of Title 18** constitutes a broad prohibition against tampering with a witness, victim or informant.

18 U.S.C. § 1513[2]

V. Whether or not the statements of the Conservator should be considered credible and accepted ?

The Appellant argues that many of the assertions of the Conservator which were accepted by the Court are so clearly contradicted in the record that accepting the statements as true is an abuse of discretion. The Appellant asserts that the Conservator has made multiple statements alleging facts and law without any references to the record and many of the statements are contradicted by much better evidence such as documents and statements under oath in the record.

See *Billion v. Billion, 553 NW 2d 226 - SD: Supreme Court 1996*

> *"The term 'abuse of discretion' refers to a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." Kanta, 479 N.W.2d at 507 (citing Gross v. Gross, 355 N.W.2d 4, 7 (S.D.1984); Rykhus v. Rykhus, 319 N.W.2d 167 (S.D.1982); Herndon v. Herndon, 305 N.W.2d 917 (S.D.1981); Davis v. Kressly, 78 S.D. 637, 107 N.W.2d 5 (1961))*

VI. BACKGROUND

This appeal concerns several questions of law and fact. Bruce Danielson (Bruce), is an interested party in this proceeding, as defined in SDCL 29A-5-102(5), because he is a son of Catherine Danielson (Catherine). Catherine was living on her Clay County homestead needing or wanting little assistance from her children. Two of her daughters living miles away, Jean Cowherd (Jean) wrote, then mailed to Kay Hall (Kay) and a recruiting letter to their brother, Dan, the plan[1913]. Without the help of Dan, Jean and Kay began implementing their conspiracy to defraud Medicaid providers and victimize their mother in the process[875]. The first step was to have their mother sign papers revoking the POA, which had been implemented years before, and have her sign a new POA[872] so they could claim they were their

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[2] 18 U.S. Code § 1513 - Retaliating against a witness, victim, or an informant

mother's choice of guardian[5]. Once their mother showed the new paperwork to other family members and it was read to her she signed new paperwork revoking the POA. Nonetheless the sisters went to the Court claiming they were POA [5,95#54[3]]. They then argued their mother was demented for years apparently including at the time she appointed them POA. The claims of dementia presented to the Court misrepresented Medicare billing codes for dementia tests as Medicare diagnostic codes.[1633[4],1951[5]1953[6],3411[7]]. ON the basis of these actions the Court awarded the emergency guardianship. The submitted ex parte petition[2], the daughters Jean and Kay, acknowledged (6) Catherine A. Danielson's incapacity will not prevent her attendance at the hearing, meaning she is not in a hospital bed or restrained, and (7) Catherine A. Danielson is not an absentee meaning she is not missing. With their mother never spoke to Catherine or the family about activating their spelled out in their plan[872]. Jean, Kay and attorney Craig Thompson likely knew Catherine was at home 10 miles from Vermillion, quite mobile, and lucid and could have stood before Judge Jensen to protest.

" The "emergency" ex parte guardianship process created a great deal of stress[1063Pg107Ln20] on the 89-year-old Catherine so that by the time of the trial, held in the Vermillion courtroom almost 180 day later, the court it was agreed[1040pg13ln5] she was to have a limited guardianship and conservatorship[1104] supervision at her farm. Months later, while gardening, Catherine fell and broke a hip. As a result of events subsequent to

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[3] *"Affiant did take her mother to the Clay County Courthouse and Catherine did sign a new POA... Affiant did NOT discuss this with her brothers."*

[4] The Court failed to consider the issue of whether the Petitioners and their Attorney perpetrated a fraud upon the court by withholding the reports of Dr. Jerome Freeman a neurologist, and expert in Diagnostic and Statistical Manual (DSM) compliant evaluations for dementia and memory problems.

[5] Internet documentation explaining assessment codes — Psychoses (290-299)

[6] Bottom of page arrow showing a billing code only, not a diagnosis, 03/02/2015

[7] Some of the medical evidence presented to justify guardianship was based on billing codes indicating various functional tests had been given but the codes were represented to the Court as diagnosis of the condition being tested for. Billing for the test and diagnosing the condition are two very different things.

the broken hip, she was removed by the Co-guardians from Medicare funded rehabilitation and the next part of the plan was implemented by taking Catherine to daughter/sister Jean's home in Rapid City[875[8]] so she could be treated at some of the worst rated hospitals in South Dakota. The move also isolated her from the three family members living in the Vermillion area. On the basis of medical records which have never been disclosed Catherine was ordered into a full guardianship and conservatorship[1174] with the two conspirators as co-guardians and David Gienapp, to limited conservator[1179]. In part, the Co-Guardians obtained their position by agreeing to perform their roles without compensation and then proceeded to block Catherine's interaction with the rest of her children[1184]. The Co-Guardians began illegal third party listening, recording and/or transcribing Catherine's private telephone calls with her attorney of record and family[1268,1283,1306]. In furtherance of their plan[1913], the Co-Guardians were then allowed to "permanently" relocate Catherine from Vermillion / Sioux Falls area to Rapid City. This removed Catherine from her disabled daughter[Terese] and thus isolating Catherine from her friends and other relatives. In the years since the relocation, Catherine has not been returned to southeastern South Dakota. In anticipation of exhausting Catherine's funds, the Co-Guardians (acting as the Conservator's clerical staff) and Conservator arranged to hide funds from the Department of Social Services (DSS) Medicaid[2314], minimally fund a funeral trust[2317] for a minimum cremation and service in Rapid City with the combined cremains of her un-interred veteran husband in the Black Hills National Cemetery. At no time did the Appellant disagree with funding a fueral trust for his mother, only disagreed as a her co-executor that the amonts were insufficient to fund the Catholic service and Vermillion internment their mother desired

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[8] *In leaving the farm and moving here our house could be also checked to see if it is adequate for her reeds as a place to live.*

arrangements[2334#4,2372#8,2387#12,2478#12,2717[9],2734#4,2749#9,2761#13,2838Ln3,2838Ln4,]. Per the Order[1180[10]] issued it is the responsibility of the Conservator to sign financial matters, including contracts, which he abrogated to the Co-Guardian, Jean Cowherd as assistants. After he signed the check[2839Ln13,3081#b]. The Appellee Conservator did not sign the funeral contract with Kirk[306#f,1]. It appears the Court did not understand the significance of a person, a guardian who is prohibited from signing a financial contract, signing a contract for financial services [2840Ln1,4068Ln5]. The Co-Guardians and Conservator rejected the argument [2712#5,2775p7,3051], that as a lifelong Catholic a Catholic funeral was Catherine's funeral wishes. They also rejected that any overfunding of the funeral trust would overflow to the benefit of the disabled dependent daughter[4079Ln6,]. The Court refused to acknowledge the federal Medicaid rules submitted at hearing[4080[11]] and required the Appellant to

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[9] (email) *On Tue, May 11, 2021 at 12:32 PM, Bruce Danielson <bruce@brdan.com> wrote: Dear Conservator Gienapp, I have received your latest Conservator's Annual Report and am reviewing it. I am curious about an aspect in it. As conservator, you have the ability to transfer funds to Catherine's funeral fund to the limit allowed by Medicaid (which last I knew was over $10,000). There are two reasons to do that: 1) it would give Catherine's estate more flexibility to execute Catherine's wishes instead of her guardian's wishes and 2) any remainder could go to the trust fund of Terese as Catherine's disabled daughter. Is there a reason you have not taken the excess money in the account and done that since it would appear to be in Catherine's best interests.*

[10] ORDERED that the Conservator, David R. Gienapp, shall take control of all financial documents and things he needs to handle the financial situation. Further, the Conservator, David R. Gienapp, has the authority to either take possession or direct someone to take possession of those items that he deems necessary or appropriate as it relates to personal property, financial papers or otherwise: (emphasis added)

[11] *THE COURT: So, I will have you submit a brief on that --*

MR. BRUCE DANIELSON: Alright.

THE COURT: -- because having handled a tremendous number of probates, they are almost a super-priority, meaning first in line -- as a -- the Court cannot even proceed with a probate until I see that the state has been paid for any claim they have for Medicaid. Any claim they have for Medicaid goes first, so there's going to be no funds that are going to be available -- we can spend all you want -- you can brief the issue, and it may be that Medicaid's been making improper claims, but no special needs trust -- not -- estates just don't -- they get opened to pay Medicaid, and they get closed. That's how it works when someone's been in a nursing home. But I will give you the opportunity to send me authority to the contrary because I'd want to make sure that I was not misled in how I'm supposed to handle estates when there's a Medicaid claim, so --

submit[2950[12]] them to the Court for its education[2943[13]]. The issue of making sure Catherine had some form of the funeral[3838Ln18] she had asked for and the religious significance she desired, the majority of her children exercised SDCL 34-26-75(4)[14] [3199] to ensure Catherine's wishes with the funding set aside [3210#5,3211#II,3231#c,3267#3,3438]

Since that time, the Conservator and Co-Guardians have spent Catherine's funds mostly on paying themselves. [AppellantsBrief_30260Exhibit#1] Catherine's health has continued to deteriorate and given her advanced years (95+), the end of her life is approaching and her ability to earn additional funeral funds is minimal. However, due to Covid funding she does have some funds available to enhance her funeral trust to enable the funeral of her choice.

On May 5th, 2022, the Conservator filed a report proposing to disburse approximately $2,900 more to the Co-Guardians and an additional $554.56 to himself, which was essentially all of Catherine's remaining funds. He previously had awarded himself $4,000[2676,2712[15],4056Ln,4117Ln9[16]] for writing 132 conservatorship checks before 2020 and a few trips to examine property. When asked about the $4,000 payment the Court twisted the meaning of Appellant Danielson's answer, the Appellee had an Order he could take the $4,000 but that was not the basis because the Appellant still questions what he did to deserve it. He also awarded at least $6662.71[2840Ln12] to the Co-Guardians allegedly for expenses not

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[12] RESPONSE TO COURT REQUEST FOR DSS RECOVERY OF ASSETS RULE PURSUANT TO SOUTH DAKOTA ADMINISTRATIVE RULE: 67:48:02:05

[13] ORDER TO PROVIDE DOCUMENTATION

[14] 34-26-75. Disposition of remains--Control--Right and duty.

[15] *My notes reflect that he stated in the 2020 hearing to the effect that "the Conservator is providing services for the last year on a pro bono basis" but on September 25%, 2020 paid himself $4.000 (clearing the bank on September 28th, 2020) without explanation or permission of the Court.*

[16] Hearing Transcript: *By your own admission, you say that he was entitled to be paid $4.000, and he has received those funds, so the Court doesn't find that that was inappropriate.*

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compensation, all without any material documentation. Given Catherine's eligibility for SNAP, her SSA payments and other programs it is not at all clear what expenses the Co-Guardians incurred. An interested party, son Bruce Danielson, filed objections to the 2021-2022 Conservator's Annual Accounting, noting among other things, that the report did not contain the prescribed detailed content nor was it in the prescribed format and that this was the fifth time he had raised this complaint. The son timely objected, that since one of the factors the Court was promised when the Co-Guardians were awarded guardianship over objections, was that they would serve without pay, it was not appropriate to pay them and especially without documentation of their "expenses" and especially when they were employed for compensation by the Conservator as agents. The son proposed instead that adequate monies be set aside in a funeral trust for the Catholic funeral their mother's faith preferred, that she and her husband be interred in Vermillion with family in existing plots and that the remainder of the funeral money, if any, would then overflow to the benefit of her adult disabled dependent child. Affidavits of four of the seven living children were obtained, in accordance to SDCL 34-26-75, agreeing that the funeral of their mother's choice would be a Catholic funeral in the neighborhood where she lived most of her life and burial with family in Vermillion[3099#7].

During the son's statutory reply period to the Conservator's response to the son's objections in July 2022, the Conservator wrote the Court ex-parte with a proposed order to approve the conservator's report and disburse the monies as to the Conservator and Co-Guardians. The Conservator complained that the objecting son had not attempted to schedule a hearing, but this was not factual. In fact the son had his own health issues but had difficulties getting time scheduled with the Court. Ultimately the son was able to schedule a hearing in December 2022 only to have it canceled and pushed for various reasons not under his control, including the Court's convenience, unavailability of other parties, an emergency surgery by the

Objector and so forth. The case had most recently been postponed due to the son's disability documented by doctor's letter. Shortly after the cancellation/rescheduling the son had a surgery and while he was on heavy doses of narcotics the Court resurrected the ex-parte communication from July 2022 and signed that order[3189] without additional hearing or other notice. As point of fact, the son was in communications with the Clerk to schedule a hearing before he received notice Court's order. The Court granted the Conservator's Accounting[3005] and acted[3189] on it, without offering the other parties the opportunity to respond to the allegations. The son, Bruce Danielson, requested a stay[3209] and reconsideration[3198] which was denied and this appeal followed.

Southeastern South Dakota has a small population with close connections with members of other groups or actors in situations. Due to this, on June 15th, 2018, Dan Danielson, as an interested party, informally requested recusal[1413] of Judge Tammi Bern from hearing 13GDN16-07[1426] When Judge Bern did not recusal, on June 21st, 2018 Dan Danielson filed for formal recusal filing his AFFIDAVIT FOR CHANGE OF JUDGE & CERTIFICATE OF SERVICE[1426]. Judge Bern was no longer part of the case. Five days later, on June 26th, 2018, the formally recused judge signed the Order[1431] approving a guardian's report, utilizing the co-guardian's attorney's undocumented dreamed-up 14-day SDCL 29A-5-403 closing period for annual report objections. There was no 14-day rule in SDCL 29A-5-403 or in local rules as acknowledged by the Court[14] but the Court continued to allow attorney Craig Thompson continued inserting it on annual reports even after Attorney Thompson was corrected in 2018 and the statute changed by the Legislature to 60-day review window July 1st, 2023[1403,2260,2337,2371,2719,3041,3141,3271] apparently to halt Court's adaptation of "informal" rules which are weaponized on outsiders. The Appellant complained at the time that 14 days prevented reasonable review and welcomed the new time period.

The Appellant filed appeal # 28392 on October 3rd, 2018. The Circuit Court refused a second recusal request of Catherine's daughter, Sharon Kidder on July 6, 2018 and for different reasons of her own, issued an INFORMAL REQUEST FOR JUDGE DISQUALIFICATION and having not heard a response filed AFFIDAVIT FOR A CHANGE OF JUDGE [1479] on July 9th, 2018.

The case has continued in the same vane throughout the years until the current appeal. The Co-Guardians have proclaimed all sorts of medical diagnoses with absolutely no medical backup in their reports or required by the Court. The Conservator has continued to refuse to report in the statutory mandated format. There is no coherent accounting of the various places Catherine's money is located, how it was put there, how it was spent and how it can be tracked. Given that the remainder of Catherine's money will be spent by this final disbursement it is the last chance to set aside sufficient money for Catherine to have the desired Catholic funeral.

VII. ARGUMENT

1. Were the objections and questions leading to the contempt proceedings relevant and reasonable?

The Conservator filed a mandated annual Conservator's report. The Conservator raised the issue of compensating the Co-Guardians[3097#2c[17],2287#7[18]] in his report. And sought approval of the Court on those issues and his repeated claims that he did not have to follow

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[17] *If the Conservator intends to pay Jean Cowherd another $1,500 in undocumented payments, could the "transfer" be viewed as a "conversion of assets"?*

[18] *7. COMPENSATION OBJECTION: Guardian Jean Cowherd receives $300 a month but no detail is given to justify this amount, nor is there an explanation as to how this doesn't contradict the original court order. It is not clear what this is for, it could be to conceal the medications Catherine is being forced to ingest or it could be another way for Jean to not disclose the funds are paying the Co-Guardian's pre-guardianship accumulated attorney fees. The Co-Guardian's claimed in previous testimony and filings, Catherine could live in the Jean Cowherd home at no expense.*

SDCL 29A-5-408 formed the basis for the questions and objections of Danielson which resulted in the Court awarding sanctions.

The Appellee and the Court argue the Appellant's actions rose to the level of sanction based on being frivolous. The Supreme Court has held "*there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling*". See *Harvieux v. Progressive Northern Ins. Co., 915 NW 2d 697 - SD*:

> *[¶26.] This Court has previously defined a frivolous action as one that exists when the proponent can present no rational argument based on the evidence or law in support of the claim. To fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling. Frivolousness connotes an improper motive or a legal position so wholly without merit as to be ridiculous.*

The Appellant has cited issues in the facts and issues in the Circuit Court's interpretation of the statute.

The Appellant has attempted without success to get a conforming Conservator's report since the Appellee Conservator's first annual. The Conservator has steadfastly refused to provide a simple accounting of all of the locations where money is held since he assumed the Conservatorship. The questions which seemed to ignite the Conservator to demand sanctions, all related to what happened to the money which was returned to the account when the erroneous levy was reversed. Danielson had made his mother's account whole while the matter was resolved, but the money was never returned to him. The Conservator's recitation of Danielson's alleged malfeasance to the Supreme Court in filings [AppelleBrief_30260Pg12[19]] was clearly in contradiction of the fact the money was returned[3547], as erroneously levied. It's interesting that the Appellee Conservator states for

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[19] *It is the Conservator's position that under the reasons set forth in Bruce Danielson's Objections, there is nothing that even approaches that standard, and a number of his objections don't relate to anything that would legally aggrieve Bruce Danielson. The total number of checks written by the Conservator during the period.*

the record he never talks with the Co-Guardians.[AppelleBrief_30260Pg12[20]] But interestingly, he does send letters to Judge Knoff who never inserts them into the record with the Clerk but does not consider them ex parte when he does not inform the interested parties of the personal letter.[AppelleBrief_30260Pg9[21],3431[22]] Obviously, the Conservator recognized that the question drove directly to his credibility and fitness to be Conservator, a reasonable topic to pursue when objecting to a Conservator's report. By denying that any obligation to return the money to Danielson (who restocked his mother's account)[3429[23],3430[24],3917Ln1] the Conservator was intending to award the remaining money to himself and the Co-Guardians. This self-serving demand that payment to his benefit, superseded his obligations to pay the debts of the estate, raised questions of credibility and fitness and was therefore reasonable to pursue.

The motion for sanction followed. See Stratmeyer

The questions were not frivolous. If anything, the questions were too on point. South Dakota statute SDCL 29A-5-408 establishes a minimum level of information to be provided the Court and interested parties, by the Conservator on an annual basis. The Appellant Danielson read the provided Conservator's report and request for funding approval and identified a series of deficiencies. The deficiencies include:

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[20] *Bruce Danielson also infers some conspiracy between the co-guardian and the Conservator relating to Catherine Danielson's funeral. This is not true, and that Conservator cannot recall any conversations with the co-guardians over the past years other than greeting them at Court hearings.*

[21] Bruce Danielson references ex parte communication between the Conservator and Judge Knoff. The Conservator has never had any ex parte communication with were statements made in open Court during Court proceedings. The letter and enclosed Order that Judge Knoff ultimately signed was copied to Bruce Danielson at the time of mailing to the Judge; it was not an ex parte communication.

Judge Knoff regarding this case, and the only oral statements ever made to Judge Knoff

[22] Ex parte Communications With The Court

[23] Misrepresentations Of The Various Parties

[24] *Bruce immediately made his mother whole by depositing funds in the garnished amount.*

1) There was no accounting for the various "dark" accounts [1403,1544,2266,23142,393,] such as the funeral trust, needlessly parking money with the nursing home[4073Ln6][AppellantsBrief_30260Exhibit#2] and the accounts where the money was held that the Conservator was proposing to pay himself and the Co-Guardians.
2) There was no accounting in balance sheet or similar format.
3) The Conservator argued the *self-sacrificing* nature of the Co-Guardians, as a basis for paying them the remaining money he was not paying himself. This raised the question of whether the Co-Guardians had received the approximately $100/day *of DSS Dakota* at *H*ome *(other other)* payments [3857] they sought[872] and were not as *self-sacrificing* as the Conservator claimed.[2725#7,3047#7]
4) The Conservator included no documentation of the alleged hours he spent on the Conservatorship to justify the payments. Noting that defending himself for failing to meet statutory requirements should not be paid from the estate.
5) It is possible the sources are valid, but with the lack of transparency given through accounting principles, as supplied in SDCL 29A-5-408, it is difficult to ascertain.

The first issue with that, being that the Co-Guardians were appointed after agreeing to serve without compensation. Consequently, absent a new agreement with Court approval, it appears that the Conservator is gifting money[2840Ln12] to the Co-Guardians without obligation and which would be more reasonably placed in the funeral trust of the protectee. Since the Co-Guardians have not been cited as performing any unusual functions and since the Conservator was portraying the Co-Guardians as self-sacrificing individuals, the Appellant asked how much they had been paid by third parties such as Medicaid over the duration of the guardianship. A question which drives directly to the image of self-sacrifice the Conservator is seeking

to create. If the Co-Guardians were paid the approximately $100/day programs, such as Dakota at Home program, provide it places a distinctly different tone on their alleged self-sacrifice. Clearly, in early letters planning to initiate a guardianship the plan to apply for the program is evidence by statements such as "the house is approved" [876]

It is the contention of the Appellant, that all of the questions he asked were relevant to either shortcomings in the statutorily mandated reports, or the atmosphere of self-sacrifice that the Conservator was portraying in his efforts to allocate remaining monies to himself and the Co-Guardians.

The Conservator and Court complain that Danielson repeatedly asks questions which drive to the credibility of the Conservator and the Co-Guardians. The questions Danielson raised have to do with issues that the Court and Conservator consider res judicata. However, Danielson's goal at this point was not to contradict the decision but rather to collect information showing that the Conservator was ignoring obvious historic fraud on the part of the Co Guardians with the cooperation of Court officers, which is clearly relevant to the tone of self-sacrifice he is attempting to develop. The Court and Co Guardian apparently block these inquiries to prevent reversal of prior decisions on a SDCL 15-6-60 motion. The Conservator's "head in the sand" or as he states it "res judicata", view these issues of potential fraud also gets to the credibility of the Conservator and is therefore directly relevant. See *Reaser v. Reaser, 2004 SD 116 · SD: Supreme Court 2004*

Relevant questions cannot be the basis of a sanction and consequently the sanction should be reversed

2. Was the Conservator obligated to conform to statutory reporting requirements?

The Conservator asserts the South Dakota Supreme Court has absolved him of the statutory obligations the legislature placed on to Conservators and therefore Bruce Danielson's questions are unreasonable.

SDCL 29A-5-119 states *"Each person appointed by the court to be a guardian or conservator before July 1, 2021, shall complete the training curricula within four months after July 1, 2021. A person may not be appointed by the court as a guardian or conservator on or after July 1, 2021, until the person completes the training curricula."*

When questioned on his conformance in 2018[1617#1,1857[25]] the Conservator has previously stated that the law governing Conservator's certification requirements does not apply to him was "*An objection was also made that there was no certification completion done by the Conservator. The Conservator did not expend the time to go through this process since he had reviewed this well before being appointed, had ruled on numerous Guardianship and Conservatorship issues as a Circuit Court Judge, and has testified as an expert on Guardianship and Conservatorship in the 5th Circuit.* "[3460Ln16]. Clearly this displays an attitude that the law does not apply to him and sadly the Court has previously accepted this argument. The Appellee Conservator has moaned in his filings[1857,2177,2293,2290,2301[26],] about how Appellant Bruce Danielson always demands the certification date be included on his reports. The Appellant did not demand it, the legislature required it.

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[25] *The demand relates to Title 29 which was repealed in 1995. Without waiving the objection, no such document is in possession of the Conservator.*

[26] *An objection was also made that there was no certification completion done by the Conservator. The Conservator did not expend the time to go through this process since he had reviewed this well before being appointed, had ruled on numerous Guardianship and Conservatorship issues as a Circuit Court Judge, and has testified as an expert on Guardianship and Conservatorship in the 5th Circuit.*

The Conservator argued, and the Court accepted, that Danielson's questions and filings are unreasonable because of prior rulings by the of the 13GDN16-07 Supreme Court cases. "28392; 28699; 28859; 30260;30611" This is not true for two reasons. The first being that all of the relevant appeals have either been dismissed for lack of jurisdiction (28392; 28699; 28859;30611) or have specifically abrogated precedence (30260). The Court's reliance on cases which were dismissed for statutory shortcomings is flawed. It is long established law that a dismissed case does not establish law. See *Cable v. UNION COUNTY BD. OF COUNTY COM'RS, 769 NW 2d 817 - SD: Supreme Court 2009*

The Supreme Court has never, to my knowledge, stated that they were abrogating the statutory obligations of the Conservator. Dicta or affirmance[3536[27]] of a result or affirmance without precedential value, does not establish abrogation of the statute[3615[28],3937[29]]. No such cases have been cited. No such language has been cited. Absent those citations there is no basis for the statement that the Supreme Court[3427] has released the Conservator from the statutory obligations to report in the prescribed manner and provide the prescribed information.

The Court's assertion that fraud upon the Court can be foreclosed by res judicata is also flawed. Fraud upon the Court remains until it is corrected.

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[27] *The South Dakota Supreme Court's Order Directing Issuance of Judgment of Affirmance in case #30260 on November 13th, 2023, was an unpublished opinion order. Therefore no precedence was set.*

[28] *Not only has Bruce Danielson continuously raised the same issues after the Trial Court approved the Conservator's report where there were similar objections, but now he again does the same despite a South Dakota Supreme Court affirmance. In addition many of Bruce Danielson's objections continue to include arguments that he does not have standing to make. Without going through all of Bruce Danielson's objections some will be referenced.*

[29] (Mr. Gienapp speaking) *On November 13th, 2023, there was an order directing issuance of Judgment of affirmance. The Court considered all the briefs together with the appeal record and concluded that It was manifest on the face of the briefs and the record. The appeal Is without merit on the ground that the issues on appeal are ones of judicial discretion and there clearly was not an abuse of discretion. And the Court affirmed the judgment of this Court. And that Is in this file.*

The Court has made clear that the mandatory directive, *shall*, is not discretionary and does not allow latitude on whether or not statute requirements are met, either the format is followed, or it is not. If it is not, the filing is flawed and cannot be accepted by the Court. See *State v. Nelson, 587 NW 2d 439 - SD: Supreme Court 1998*

> *We interpret the word "shall" as "a mandatory directive" conferring no discretion. SDCL 2-14-2.1. "'This [C]ourt assumes that statutes mean what they say and that the legislators have said what they meant.'" Mid-Century Ins. Co. v. Lyon, 1997 SD 50, ¶ 9, 562 N.W.2d 888, 891 (quoting In re Famous Brands, Inc., 347 N.W.2d 882, 885 (S.D.1984)). In addition, we bear the responsibility for making the "rules of practice and procedure" for South Dakota courts and, when called upon to do so, we review proceedings to guarantee that each criminal defendant receives due process according to law. SD Const. Art. V, § 12.*

The South Dakota Legislature long ago mandated an imperative meaning of the word Shall in SDCL2-14-2.1. To make sure all understand changes in language are understood, the 2025 South Dakota Legislature decided to confront the issue of "*shall*" and "*must*" by again clarifying the mandatory nature of the words in statute by passing HB 1067.

> *Be it enacted by the Legislature of the State of South Dakota:*
>
> *Section 1.*
>
> *2-14-2.1. As used in the South Dakota Codified Laws to direct any action, the:*
>
> *(1) The term "must" manifests a mandatory directive and does not confer any discretion in carrying out the action so directed; and*
>
> *(2) The term, "shall," manifests a mandatory directive and does not confer any discretion in carrying out the action so directed.*

The Legislature is clear.

Danielson has a well-founded belief that the Supreme Court did not establish any precedence by dismissing a case, nor by a ruling that states that the ruling is not precedence. Furthermore, the Circuit court is not able to establish precedence by its own rulings, that power lies with the Supreme Court.

The legislature has established that the Conservator must report certain things, in certain ways, and Danielson's request that he do so does not become frivolous or unreasonable because the statute requires it and the Court has no power to waive it. See *Stratmeyer v. Engberg, 649 NW 2d 921 - SD: Supreme Court 2002:*

> *[¶ 23.] The trial court found that when Stratmeyer filed his lawsuit, he had a reasonable belief he would prevail, thus supporting a finding that the suit was not filed for an unjustifiable motive. "'Any doubt about whether or not a legal position is frivolous or taken in bad faith must be resolved in favor of the party whose legal position is in question.'" Ridley, 2000 SD 143 at ¶ 15, 619 N.W.2d at 260 (citation omitted). Engberg has failed to show that the action was brought for a malicious purpose or that the trial court abused its discretion.*

3. Were the Court proceedings reversibly flawed?

What was wrong procedurally? Jury Trial ??

Procedural errors, due process, clean hands (failure to disclose)

The Conservator tries to allege that a person once held in contempt for stating he "stated in filings he did not have to follow the law"[3460Ln16] on the basis of a paraphrased recall, is untrustworthy. In the first place, the substance of the statement of the Conservator as shown in the transcript is a statement that the law does not apply to him as a retired judge. In the second, place the question of that proceeding is not relevant in any way to the current proceeding.

4. Are these sanction motions an effort to prevent the release of information which would further an apparent investigation into this Guardianship and Conservatorship?

The record shows that in 2018 the Conservator was communicated with DSS Assistant Attorney General[1726], an agent enforcing federal program regulations, in what he characterized as questioning[4037]. Subsequent to the motion for sanctions, the record shows that in fact federal law enforcement was interested enough to request more information in 2024.

These requests included apparently one phone call and two in office interviews[4042]. The motion for sanctions was handled about one month before the Conservator admits being invited for a federal law enforcement office interview[4134[30]].

Absent clarity from the Conservator, the sequence of events, the demand for sanctions illustrates the appearance of a bold move to obstruct justice by intimidating a witness and attempting to suppress the release of information which might be conveyed to a law enforcement officer, in violation of federal law. See 18 U.S.C. § 1512

Specifically, it appears the Conservator's conversations with SSA were the result of his own failing to follow procedures required by SSA. . As shown in his Conservator's report he is still using the same bank account as maintained by Catherine Danielson. This is in direct contradict of SSA regulations. [4135[31]]

The doctrine of *in pari delicto* defined as "[the principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." Black's Law Dictionary (8th ed 2004). The Clean Hands Doctrine prohibits a civil action in this situation, since the Conservator did not approach the situation with Clean Hands. See *Keystone Driller Co. v. General Excavator Co., 290 US 240 - Supreme Court 19332*

> *It is one of the fundamental principles upon which equity jurisprudence is founded, that before a complainant can have a standing in court he must first show that not only has he a good and meritorious cause of action, but he must come into court with clean hands. He must be frank and fair with the court, nothing about the*

---

[30] *CONTACT WITH LAW ENFORCEMENT*
Bruce Danielson did meet and cooperate with a federal employee with law enforcement powers. It was Bruce's understanding that a situation where: 1) a person who, if alive, would be 96; and 2) who was receiving payments at an address they were not living at; and 3) there is no rep payee named; is perceived by SSA as having the indicia of fraud. During his conversation with law enforcement, Bruce Danielson truthfully answered questions asked him. The law enforcement investigator was provided the relevant information requested.

[31] SSA REQUIRED REPRESENTATIVE PAYEE (REP PAYEE) BANKING

*case under consideration should be guarded, but everything that tends to a full and fair determination of the matters in controversy should be placed before the court." Story's Equity Jurisprudence, 14th ed., § 98. The governing principle is "that 245*245 whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." Pomeroy, Equity Jurisprudence, 4th ed., § 397.*

The Appellee Conservator David Gienapp is using the Court to retaliate against perceived wrongs he believes were caused by the Appellant asking for information.

Without further disclosure by the Conservator regarding the timeline and substance of the investigation, the Supreme Court could be in the difficult position of helping the Conservator impede a federal investigation by upholding these sanctions. However, the question of sanctions can be easily disposed of by examining the reasonableness of the questions asked, using the *relevancy standard*[32]. Since the questions were all reasonable and relevant, the motive of the Conservator need not impact the decision. The flip side is not true and the granting of sanctions without understanding the motives of the persons involved risks a seriously flawed decision.

5. Whether or not the statements of the Conservator should be considered credible?

The following examples illustrate why the Court's blind acceptance of the statements of the Conservator as fact, defy logic and are abuses of discretion justifying reversal. The Conservator has been caught misrepresenting facts multiple times and yet the Court continues to blindly accept the Conservator's statements as factual. This is beyond the realm of reason and is a clear abuse of discretion on the part of the Court.

[32] Federal Rule of Evidence 401: Defines relevant evidence as evidence that can make a fact more or less likely to be true

Example 1

The Conservator claimed in a filing that Danielson allowed creditors to attach his mother's account to settle his own debts. [3601[33]].. This is clearly not factually correct and the Conservator would have known that, if he had conducted the required financial tracking and reports. In fact, the reversal of the levy for impropriety was known prior to the hearing involving guardianship where the claim was made[3718[34]] that Danielson allowed it. And the money was clearly refunded by the sheriff's office as erroneous, long before the statement to the Supreme Court. [3718Ln11].

Example 2

The Conservator and Court have repeatedly claimed that Bruce Danielson is being difficult because he wants money [AppelleBrief_30260Pg2[35]]. However, Appellant Bruce Danielson said in one of the first proceedings, that he had no financial interest in this fight. He had no claim to any inheritance because all of the estate was pledged to his brother at the wishes of his parents[1048Pg47Ln22[36]]. This obvious contradiction between the record and the Conservator's repeated parroting of

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[33] *It is understood that Judge Jensen, in his oral decision, had a number of concerns relating to Bruce Danielson's previous actions relating to Catherine Danielson's finances.*

[34] Q. *Of the $2,000.00 that was taken out of that -- out of your mother's account for your brother's garnishment, do you know If that's been paid back?*

A. (Jean Cowherd speaking) I went to Minnehaha County sheriff's department and got most of It paid back.

[35] *The Conservator argued that Bruce Danielson made false statements regarding his involvement in the false narrative filed by attorney Craig Thompson that Bruce had allowed his mother's funds to be seized to satisfy a personal debt. Bruce Danielson has not claimed In any filings that David Gienapp was involved in the ex parte guardianship and conservatorship proceeding of 2016, the trial of March 30 through April 1, 2017.*

[36] *A. In 1983 I left the family business*

Q. Okay

A. And I told my parents, as far as I was concerned, that what's theirs is theirs. I'd heard this expression from my father so many times that I've never laid claim to anything but my personal property at Beresford, or Alcester, or at the farm. You know, at that point I didn't care anymore.

alleged motives, illustrates why no credibility should be attached to the statements of the Conservator.

Example 3

The Conservator makes much of being awarded a contempt sanction[3949,3617] based against Appellant Danielson. He neglects to mention his request for sanctions was based on the statute (SDCL 15-20-19] [3117] for a debtor's exam. The Court recognized that procedural error by sua sponte and without notice, instead awarded a criminal contempt to the Conservator against the Appellant. The Court impaired Danielson's defense of the allegation by supplying a copy of the record to Danielson which was incomplete, to the extent it lacked filing links where the statement was made by the Conservator. Only recently did Danielson discover the sealing of that part of the record from his view and rectified his access to the complete record[3458Ln4]. That unsealing revealed that his recalled statement was [3118] "*The conservator has written in a past filing, he is a judge and he can do as he pleases*". That statement appears to be a reasonable paraphrase of the actual statement in the filing, which was "*An objection was also made that there was no certification completion done by the Conservator. The Conservator did not expend the time to go through this process since he had reviewed this well before being appointed, had ruled on numerous Guardianship and Conservatorship issues as a Circuit Court Judge, and has testified as an expert on Guardianship and Conservatorship in the 5th Circuit.* "[3460Ln16]. Yes, the sanction was obtained by the Conservator, but only by the expedient of misrepresenting to Danielson, that the Court provided the complete record to review.

To be more explicit regarding the transcript issues. Appellant Danielson was blocked from receiving transcripts where the Conservator made those statements, by the actions of the Court. This is evidenced by fact that approximately 700 pages in the record were sent to the Supreme Court

regarding this matter but not to Appellant Danielson. Appellant Danielson noted the page numbers did not correlate with what he was provided and had to demand those pages be unblocked from his access and then shared with him[37]. This sealing of transcripts, reports, overtly incomplete financial reports and refusals to share medical records begs the question of what is being hidden, which would be revealed by transparency.

Example 4

Danielson raised the question of additional funding for his mother's funeral trust instead of paying the Co-Guardians and Conservator. The Conservator rebutted that any overages would be returned to the state and could not be spent by the family. Danielson pointed out that any amounts not spent could be poured over to their disabled dependent sister's SSI account. The Conservator and Court claimed the money would not pour over. [2950]. The Conservator and Court continued this argument even when shown the SSA regulations and a letter from a family where that had occurred. [2950]

Example 5

Appellant Danielson has repeatedly said that his parents knew their children and they consequently gave POA to Annette (deceased) and Bruce[943]. Subsequent to father Glen's death and sister Annette's death, Catherine gave POA to sons Bruce and Dan[947]. This search for truth and the struggle is about upholding promises to his mother never about money or personal inheritance.

Certainly, Bruce's repeated questioning of the Conservator and the Co-Guardians is directed toward establishment of the credibility of the Conservator and the Co Guardians. Appellant argues that actions speak louder that prior jobs or words. Instead of responding with candor and transparency, the Conservator and Co-guardians have elected to obfuscate

[37] Appellant Danielson appreciated the efforts of the SDSC clerks in this matter.

and conceal[1200[38],1201[39],2118[40],1311,1387[41],1421[42],1439[43], 1634[44],1818[45],1822[46], 2711[47],3355[48]]. Apparently, believing in the adage the best defense is an offense they repeatedly level false accusations and sanction attempts.

The Conservator has made many and broad allegations in his statements to the Court in pursuit of both this appeal and previous sanctions. Many of those statements are in direct contradiction to facts in the record which are much better evidence than the statements of the Conservator. The Court should ignore all of the allegations of fact made by the Conservator which are not supported by specific reference to credible portion of the record.

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[38] Motion For A New Trial

[39] *The Court has been defrauded by the Petitioners and their attorney concealing a significant reason that Catherine Danielson does not want to have Kay to be her guardian. In 2010 Kay obtained access to Catherine and her husband's financial records which were stored in the business office at the location of their business.*

[40] AFFIDAVIT OF BRUCE DANIELSON REGARDING CONCEALMENT OF DOCUMENTS

[41] *26. It is my understanding that on the basis of the concealment of the mismanagement of Catherine's Medicare eligibility by the Guardians and their attorney, the Court granted Jean's request to remove Catherine to Rapid City.*

[42] - *Concealed from the Court that Catherine had stated several times since August, 2012 she had no intention of ever living in Rapid City with Jean (when Catherine had banned Jean from her farm home)*

[43] LETTER TO THE COURT FROM BRUCE DANIELSON

[44] *Petitioner's Attorney has advised the guardians to conceal the report. See In Re Discipline Of Wilka.2001 SD 148.*

[45] *7) Allowed items and possible evidence to be removed from the house and concealed*

[46] In fact he supported the position of the Co-Guardians to conceal the records using a variety of artifices, including claiming attorney client privilege between himself and the Co-Guardians, and by stating that he agreed with their objections to producing the records. That is not the behavior of an officer of the court seeking the truth.

[47] OBJECTIONS TO ANNUAL CONSERVATOR'S REPORT - *3) If Catherine's nursing home is being paid from other funds, the source of those funds should be disclosed because it implies that facts were concealed in prior proceedings. If Catherine is not entitled to Medicaid because she is insufficiently ill that should be disclosed.*

[48] *The Credibility Of The Conservator and Guardians Appellant Danielson argues that the credibility of the Conservator and Guardians 18 also before the Supreme Court based on their mutual concealment of the fact that they received money back from the Sheriff for the erroneous levy on Catherine's account and yet continue to mislead the Court by holding the incident out to imply that Bruce Danielson 1s so dishonest he steals his mother's Social Security funds.*

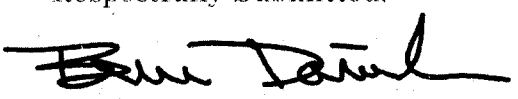
Lastly, given the recently revealed federal investigation[4037], the Conservator's complaints about Appellant Danielson requesting transparency should be viewed as an attempt to shift attention away from what is not being disclosed.

Danielson argues that the above examples clearly indicate a lack of credibility of the Conservator. Danielson argues that it is an abuse of discretion to accept any statement by the Conservator without clear references to best evidence such as business records, transcripts or testimony with firsthand knowledge.

VIII. Conclusion and Prayer For Relief

Danielson has shown that the Court erred in awarding sanctions because his filings and the questions therein were reasonable under the circumstances. The objections and questions were all directed at issues raised by the Conservator's report which clarified the statutory non-conformance of the Conservator's report, attacked the credibility and fitness of the Conservator and attacked the Potemkin village[49] of self-sacrifice the Conservator was attempting to use to justify payments to himself and the Co-Guardians. Appellant Danielson has also shown that the Court used an erroneous legal theory to determine that the Conservator did not have an obligation to follow statutory mandates when completing his annual report. Appellant/Plaintiff Danielson argues that the decision of the Circuit Court case should be reversed and the Court and Conservator directed as to the appropriate minimal acceptable standards of conformance with SDCL 29A-5.

Respectfully Submitted,



Bruce Danielson, pro se / Appellant

4th day of March, 2025
Date

[49] A "Potemkin village" is a fake or showy facade that hides an undesirable reality. The term is often used in politics and economics. The term comes from stories of *a fake portable village built by Grigory Potemkin*, a field marshal and former lover of Empress Catherine II.

CERTIFICATE OF SERVICE

I, Bruce Danielson, do hereby certify that on 4th day of March 2025, I caused copies of the foregoing **Appellant's Brief 30820 & Certificate of Service** to be served upon via USPS 1st Class mail except where noted to be served upon via USPS 1st Class mail except where noted:

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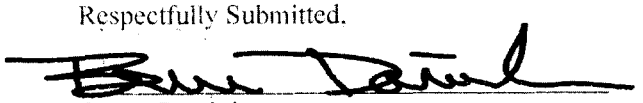

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IX. CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

In accordance with SDCL 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Century font 12, and contains 8850 words from the Preliminary Statement through the Conclusion. I have relied on the word count of MS Word, an industry standard word processing program to prepare this certificate.

This brief was checked for viruses using Microsoft Security Essentials

Respectfully submitted:

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MARCH 4, 2025

Ms. Shirley Jameson-Fergel
Supreme Court Clerks Office
500 East Capital Avenue
Pierre, SD 57501

Re: In the Matter of the Guardianship and Conservatorship of Catherine A. Danielson

13GDN16-7, #30820

Dear Ms. Jameson-Fergel:

Please find enclosed the original and two (2) copies of the *Appellant's Brief* and *Certificate of Service* with regard to the above-entitled matter.

Thank you.

Respectfully Submitted,

Bruce Danielson, pro se Appellant

Enclosures

STATE OF SOUTH DAKOTA
COUNTY OF CLAY

CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

IN THE MATTER OF THE GUARDIANSHIP
AND CONSERVATORSHIP OF:
CATHERINE ANN DANIELSON,

13GDN16-7

ORDER FOR SANCTIONS (with Additional Findings)

ADDITIONAL FINDINGS AND ORDER FOR SANCTIONS

On June 26, 2024 the Court held a hearing on the Conservator's Motion for Sanctions. The Court made a number of findings on the record at the conclusion of the hearing. The Court found that Bruce Danielson has continued to make objections that the Court determined are frivolous in nature. Sanctions are covered under SDCL § 15-6-11. The request was pursuant to § 15-6-11(c) for filing pleadings that do not meet the standard of § 15-6-11(b)(1) and (2).

The relevant portion of 15-6-11(b) is as follows:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law...

The Court cited numerous examples of the history of the case (as set out in the Court's findings) and inquired of Mr. Danielson to provide any explanation for his actions over the entirety of this case. The Court recently found Mr. Danielson in

contempt for statements made and fined him $100. The Court has held numerous hearings that are often, if not always, without merit.

Citations are allowed under § 15-6-11(c):

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision 15-6-11(b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

The Conservator motioned this Court for sanctions and served the motion on Bruce Danielson on March 27, 2024. The movant gave the proper notice to allow Mr. Danielson to withdraw his objection. Instead of withdrawing his objection, Mr. Danielson responded with an objection to the sanctions and motion to dismiss the objection. The Conservator clearly set out the conduct for which sanctions were requested. The Conservator, who is unrelated to the protected person *due to the animosity of this family*, has incurred expenses in time and effort in continually responding to Bruce Danielson. Those have been provided to the Court. The Court also notes that the animosity between the family has only shown itself to originate from Bruce Danielson. The Court also makes these additional findings:

1. On July 3, 2024 the conservator provided an Affidavit of Conservator fees to the Court with a copy to Bruce Danielson.
2. The fees total $603.31, with $102 of those fees being for mileage.
3. No response was given to the fees.
4. The Court finds imposing conservator fees and mileage are allowed under 15-6-11(c)(2), under "other expenses incurred".
5. The fees are reasonable.
6. Bruce Danielson is not a represented party.

The Court believes an appropriate sanction is to require Bruce Danielson to submit any pleadings in the above captioned matter to the Court prior to them being accepted for filing and service on the parties. The Court will enter an order after review, providing the Court's decision as to whether or not the pleading may be filed and served. The Court is also sanctioning Bruce Danielson for the costs and expenses of the Conservator in the amount of $603.31, said amount to be paid directly to the Conservator. This amount has been limited to what the Court finds is sufficient to deter repetition of conduct by Bruce Danielson that has been taking place since this case started.

IT IS SO ORDERED.

Dated July 26, 2024

David Knoff
Circuit Court Judge

STATE OF SOUTH DAKOTA
First Judicial Circuit Court
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on file in my office on this date:

SEP 03 2024

Jessica Bosse
Clay County Clerk of Courts
By: Nadyne Zimmerman-Walker

Attest:
Zimmerman-Walker, Nadyne
Clerk/Deputy

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

****

In the Matter of the Guardianship	APPELLEES WAIVER OF SUBMITTING
and Conservatorship of	AND FILING A BRIEF ON BEHALF OF
CATHERINE A. DANIELSON, a person	APPELLEE
alleged to be in need of protection	#30820

Comes now David R. Gienapp the Conservator for Catherine Danielson and waives the Appellee's right to file a brief in the above referenced appeal. The undersigned Conservator is the Appellee since the pending appeal is an appeal from the Circuit Courts granting sanctions pursuant to a motion for sanctions filed by the undersigned Conservator. The Appellant erroneously states in his Docketing Statement the appeal is from a Judgment of Contempt. An appeal from the Judgment of Contempt has previously been dismissed by this court.

The reasons for this waiver are pursuant to the affidavit on the Conservator attached hereto and by referenced adopted herein. The non filing of a brief on behalf of the Appellee is not in any way an acknowledgment of any merit embodied in Appellants position and contention. It is stated by this court in Hawkins v. Peterson, 474 N.W.28 90 (S.D.1991) and Brummer v. Stokebrand, 601 N.W.2d 619 (S.D.1999) and again adopted in Lewis v. Garrigan 931 N.W.2d 518 (S.D.2019) that "...failure of the appellee to file brief does not automatically translate to victory to the appellant. Appellant still has the burden of showing that the findings of fact are clearly erroneous or that conclusions of law are incorrect....The appeal will be decided on the merits."

As set forth in the attached affidavit the financial inability is the primary reason for the waiver as was the situation recognized in the Hawkins and Brummer cited decisions.

As a result of this waiver the Appellee has no objection to this appeal immediately being put on the Supreme Cort calendar if and when Appellant files a brief.

Dated this 17th day of January, 2025

David R. Gienapp, Conservator

AFFIDAVIT

David R. Gienapp, being first sworn on his oath submits this affidavit giving background information relating to the reasons for Appellee's waiver of filing an Appellee's brief in the latest of a number of appeals that Appellant Bruce Danielson has initiated in the South Dakota Supreme Court.

There was a contested trial relating to the guardianship and conservatorship of Catherine Danielson. I was not involved in the trial, nor did I know any of the parties. After trial and courts decision I was contacted by Judge Jensen and asked if I would serve as conservator to which I agreed and have served in that capacity since appointed in 2017. Catherine Danielson has seven children. After the trial Judge Jensen appointed two of Catherine's daughters as co-guardians for Catherine and Judge Jensen denied Bruce Danielson's request to be appointed guardian and conservator.

After the co-guardians and conservator were appointed and Catherine Danielson first needed third party care she resided in the home and was cared for by one of the co-guardians, Jean Cowherd, for over 900 days for which Jean Cowherd received very minimal renumeration. Catherine's health diminished to the point where it was necessary to place Catherine in The Good Samaritan Home in Rapid City where she still resides today.

At the time of entering Good Samaritan Catherines' only assets were what remained in her bank account and her monthly social security check. At the time of the trial Catherine had some equity in real estate that was all expended paying an attorney that Bruce Danielson had contacted relating to representing Catherine Danielson at the original trial After the commencement of her residence at Good Samaritan it didn't take long where Catherine did not possess adequate funds to pay for her residence at Good Samaritan and it became necessary to apply for Medicaid and Medicaid was approved. After Medicaid eligibility commenced, Catherine is allowed to have $60.00 a month out of her social security check. The balance of her check, after the $60.00 she gets to use for personal expenses, the balance of her monthly social security check is first expended on Medicare supplemental insurance with the remaining balance going to Good Samaritan with Medicaid paying the balance each month to Good Samaritan. She presently has a little over $2,000. In her checking account which represents the total of her expendable assets.

There obviously aren't funds available now or in the future to pay outside counsel relating to this appeal. Over the period of 7 to 8 years that I have served as Conservator I have on occasions been paid some reimbursement, but it has been minimal and the majority of the time I've expended has been on a pro bono basis. There also is a Court Order requiring Bruce Danielson to reimburse Conservator for some costs which has not been paid by Bruce Danielson nor has he filed a supersedeas bond pursuant to SDCL 15-26A-25. There have now been four or five Supreme Court appeals by Bruce Danielson and in addition, as shown by the Clerks certificate, there are numerous filings by Bruce Danielson necessitated court appearances. There now is a Clerks file with around 4,000 pages relating to a guardianship for someone on Medicaid with a net worth of around $2,000.

There absolutely are not assets available for an appellee's brief. I did reimburse myself $2,000. As partial payment for time spent on the briefing relating to Bruce Danielson's last Supreme Court appeal and there also was a payment of $300.00 for secretarial fees. The assets to prepare a brief

are not available and I am not available since I'll be in Arizona and won't return to South Dakota until late March.

Dated this 7th day of January, 2025.

David R. Gienapp

Subscribed and sworn before me
This 7th day of January, 2025

DEBBIE REUTER
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

Debbie Reuter, Notary Public

My Commission expires the 6th day of January, 2029

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of January, 2025 a true and correct copy of Appellees waiver of submitting and filing a brief on behalf of Appellee and attached affidavit was served on Bruce Danielson at his address, P.O. Box 491, Sioux Falls, SD 57101 and Craig Thompson at his address P.O. Box 295, Vermillion, SD 57069 by placing the same in the United States mail, postage prepaid.

David R. Gienapp

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

In the Matter of the Guardianship and Conservatorship of Catherine A. Danielson	13GDN16-07 #30820
A person alleged to be in need of protection	**Appellant's Objection To Appellees Waiver Of Submitting And Filing A Brief On Behalf Of Appellee**

Objection

Appellant objects to Appellees filing titled: Appellees Waiver Of Submitting And Filing A Brief On Behalf Of Appellee.

Appellant argues the following in support of the objection.

The letter and affidavit submitted together are not a waiver of submitting a brief but are in actuality a brief and affidavit submitted without correctly following procedure for those submissions. Because of these misrepresentations both should be struck from consideration. It should also be noted that the Conservator is not arguing in his appointed role but rather is arguing to create and tap a source of funds for his own benefit.

The objections to accepting the filing may be summarized in two broad categories. The first being that the filing is actually a brief and an amendment to the record by affidavit and an amendment of the record on appeal requires a different procedure which is not being employed. The second category is the fact that: 1) the Conservator is attempting by affidavit to swear to facts he has no personal knowledge of and for which better contradicting evidence is already in the record; 2) the Conservator is attempting to present his conclusory interpretation of facts and law, as fact; and 3) some of the alleged facts are plainly contradicted by documents in the record. The failings of the affidavit are alleged to be so pervasive

that the affidavit should be struck in entirety since it is not practical to go line by line.

In summary, the due process rights and equal protection rights of Bruce Danielson will be violated if these documents are not removed from the record.

Background

The Appellant Bruce Danielson, is an interested party in the guardianship, as defined in SDCL 29A-5-102(5), because he is a son of Catherine Danielson.

The appeal involves a motion to sanction. The facts show that the Appellant has repeatedly asked that the Court require the Conservator to report in the manner required by SDCL 29A-5-408[3128][3196][3200] and the Conservator has, to date, fails to conform to the statute[01/17/2025_Waiver][3263][3978][3617]. The Appellant has questioned how his mother could have no assets when placed on Medicaid, and no assets according to the Conservator's reports, and yet there is a source of funds remaining. This source of funds has been used to pay the Conservator, and additional funds are going to be released to pay the Conservator and Co-Guardians thousands of dollars.

Appellant argues that his use of statutory procedure to request conformance with federal and state law governing financial disclosures does not meet the requirements to sanction a litigant. As a consequence, this appeal was filed.

The Appellee Repeatedly Does Not Follow Proper Process

If the Appellee Conservator had followed proper procedures, and moved to amend the record, the following are some of the objections the Appellant would have made.

I. The Affidavit Amends The Record

Because the affidavit is an attempt to amend the record on appeal using an incorrect procedural method. As a consequence, the affidavit should be struck from the record.

II. Shortcomings Of The Affidavit

If the Conservator had followed the correct procedure and filed to amend the record, I would have contested the affidavit for the following reasons:

A. Hearsay - The Affidavit Is Not Confined To Facts In The Knowledge Of The Affiant

The affidavit contains multiple statements for which the conservator does not have first-hand knowledge. Or in other words, the affidavit is littered with hearsay being presented as fact.[1][2]

B. Presentation Of Contested Fact As Fact

The affidavit contains multiple statements represented as fact which are clearly contradicted by documents in the record.

For example, the Conservator states in the affidavit *"At the time of the trial Catherine had some equity in real estate that was all expended paying an attorney that Bruce Danielson had contacted relating to representing Catherine Danielson at the original trial."* However, based on the size of the note granted Dan Danielson[1844#12], the estate had no assets or in other words it was in temporary control of assets already pledged to Dan Danielson[866][2314[3]][2510][2780][4]. A fact which Appellant Bruce Danielson acknowledged[2454][5] and yet the Conservator keeps asserting that Bruce squandered his mother's assets "*At the time... an attorney that Bruce Danielson...*". It is also worth noting that David Gienapp had no basis for reopening the question of the note since all of the heirs were notified by their mother's attorney at the time five years previously and none of the heirs

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[1] *"At the time of the trial Catherine had some equity in real estate that was all expended paying an attorney that Bruce Danielson had contacted relating to representing Catherine Danielson at the original trial"*

[2] *"Catherine's health diminished to the point where it was necessary to place Catherine in The Good Samaritan Home in Rapid City where she still resides today"*

[3] *"That being a UCC-1 by Joel Arends securing his Judgment and another by Dan Danielson securing a note which is disputed, but which exists in an amount in excess of one million dollars. This obviously leaves no equity in the automobile's over and above the liens."*

[4] *"MR. GIENAPP: Well, on top of that, Mr. Arends has a $23,000.00 judgment against it. Mr. Danielson has a UCC-1 filed relating to an alleged million dollar note from Catherine Danielson.*

[5] *"once owned by Catherine Danielson were now under the judgement lien granted to Joel Arends (November 13,2018) and Dan Danielson's even earlier filed UCC-1 on the personal property (April 11th , 2018)."*

contested the validity of the note in a timely manner. David Gienapp as conservator is not empowered to contradict the estate planning of Catherine Danielson in an attempt to increase the pool of money against which he can bill.

The Appellee Conservator David Gienapp states *"I was not involved in the trial, nor did I know any of the parties."* David Gienapp was not involved at the trial stage, but he knew Bruce Danielson from a previous trial. In that trial he represented Steven C. Willis, a member of a bank fraud conspiracy convicted for churning fees. After their arrest, the conspirators attempted to cooperate by accusing Bruce Danielson of being a party to their scheme[1850]. A claim found not factual by a jury.

The Appellee Conservator David Gienapp affidavit contains statements claiming Catherine's only financial reserves were in in her bank accounts *"net worth of around $2,000*[6]*"* without mentioning the funds he placed temporarily out of reach by prepaying $8,998.65[2323pg4[7]][2840[8]] for services at Good Samaritan nursing home[2320][2718[9]], to and for which, he did not report and for which he later successfully obtained a refund[2320]. This action could be to potentially deceive, for Catherine's Medicaid eligibility, to later be refunded out of the $8,798.65[2323][10] accumulated in the account to later pay himself and the Co-Guardians, his claimed staff[AppellantBrief-30260Exhibit1&2[11]].

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[6] Affidavit attached to Appellees Waiver Of Submitting And Filing A Brief On Behalf Of Appellee
[7] 3539 Good Samaritan Society [03/30/20] $6,298.65, 3540 Good Samaritan Society [04/04/20] $1,500.00, 3547 Good Samaritan Society [05/07/20] $1,000 .00
[8] *"The way that the information was presented in the -- in the spend down by giving it to Good Sam when Catherine was part of Good Sam through the Medicare rehabilitation program and the way that we had gotten the report, it made it look like they were gifting money to Good Sam and St. Martins Village as a way to get a foothold in the building or something. It wasn't explained in the paperwork. I've heard more about it today. That was my concern about the gifting of money to buy a position into the nursing home.'*
[9] *'When Catherine went on approved Medicaid there was still unapplied money with Good Samaritan which is the reason for the $5,123.03 September deposit.'*
[10] *In addition there is a credit with Good Samaritan-St. Martin village in the amount of $8,798.65 which is being held pending the results of a Medicaid application.*
[11] Total # of Checks 184, Disbursed to Conservator $4,554.56, Disbursed to Co-Guardian Cowherd $9,862.21 up to and including 2023 Conservators Report.

The Appellee Conservator affidavit contains statements claiming he has been proceeding in this conservatorship on a pro bono basis and then acknowledges *"I did reimburse myself $2,000. As partial payment for time spent on the briefing..."* [12]

C. Legal Conclusions Presented As Fact

The Appellee Conservator David Gienapp affidavit contains multiple legal conclusions. The Appellee may be a retired SD Circuit Court judge, but it does not automatically give him the special privilege to state his legal conclusions as fact in an affidavit. [2301[13]]

The Appellee Conservator David Gienapp claims there are no funds to defend his actions[14]. If David Gienapp had performed his conservatorship functions according to the statutes, such as filing his yearly report in the Court approved CONSERVATOR ACCOUNTING format[3085[15]] instead of his yearly narrative "Conservator Report", Bruce Danielson would likely have no reason to continue asking for information. Had the Conservator acknowledged in his various financial reports up front that in fact there were significant funds parked at Good Samaritan home, there would have been no need for many of the complaints about the Conservator's reports.

The Conservator has consistently refused to acknowledge that the note from his parents to Dan Danielson, in respect of wages they owed to Dan, but did not have the cash to pay, without liquidating their real estate. That note exceeds the aggregate size of all of Catherine's assets and was acknowledged by all of the children of Catherine Danielson at the time it was signed and served on them by their mother's attorney. Bruce Danielson also acknowledges and admits; Dan

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[12] Affidavit attached to Appellees Waiver Of Submitting And Filing A Brief On Behalf Of Appellee

[13] '*An objection was also made that there was no certification completion done by the Conservator. The Conservator did not expend the time to go through this process since he had reviewed this well before being appointed, had ruled on numerous Guardianship and Conservatorship issues as a Circuit Court Judge, and has testified as an expert on Guardianship and Conservatorship in the 5th Circuit.*"

[14] "*There now is a Clerks file with around 4,000 pages relating to a guardianship for someone on Medicaid with a net worth of around $2,000.*"

[15] EXHIBIT 1 UJS-141 Conservator Accounting

Danielson is the rightful holder of Catherine Danielson's remaining meager estate as a result of promises Catherine and her late husband together made to Dan Danielson[1066Ln21]. On her instructions, she had her attorney, Todd C. Miller, write their wishes into a note and then she, as the remaining heir, signed in 2013[866]. Nonetheless, the Conservator continues to assert that somehow Dan should not have access or control of those assets but rather the Conservator should be able to award them to himself[1545[16]] by the simple expedient of declaring the note invalid to benefit himself. Not one witness has stated that Dan did not perform the services without pay nor has the Conservator ever mentioned any other reason for his statements.

Misrepresentation By Omission

Appellee Conservator David Gienapp affidavit discusses the size of the file in the instant matter. The implication is that Bruce Danielson has caused waste of the estate. The Appellee Conservator David Gienapp notes *a Clerks file with around 4,000 pages"* when in fact the file is less than 4,000 pages of which 25% are trial related, with about 10% are his own filings as conservator and then filings related to the Appellant asking the unanswered questions. However, had Bruce Danielson's request for accounting of funds been answered simply and plainly, and in conformance with statutes, virtually all of the contested paper could have been avoided. Instead once Bruce was able to figure out that there were unreported assets of Catherine, such as a meagerly funded funeral trust [2387[17]] and an unreported prepaid account with Good Samaritan [2323[18]], and concealment of the fact that the seizure of funds from Catherine's account had been

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[16] *"Daniel(sic) Danielson recently filed a notice to his mother that he was calling an alleged note due claiming $1,151,046.32, plus interest, is owed to him from Catherine Danielson. It is certainly the Conservator's opinion that this obligation is not valid for a number of legal reasons, and the claim is denied."*

[17] *Catherine Danielson. It is certainly the Conservator's opinion that this obligation is not valid for a number of legal reasons, and the claim is denied."*

[18] *"In addition there is a credit with Good Samaritan-St. Martin village in the amount of $8,798.65 which is being held pending the results of a Medicaid application"*

reversed[658[19]][3431[20]][3417][3858#12][3873#14][3430] he requested that information with specific questions. The Conservator and the Co-Guardian's attorneys refused to answer. To this day, the Conservator makes statements that Bruce 's sisters were paid very little while failing to note they agreed to serve without compensation[3344[21]]. To this date, the Conservator and the Co-Guardians have refused to answer whether or not the sisters were or were not receiving the approximate $100 per day in DSS housing assistance funds[3057[22]] they stated in 2015 they planned to receive before filing the guardianship[872].

Appellee Conservator David Gienapp affidavit neglects to mention the reason appeal #30260 was filed, was due to his filing a retaliatory motion for sanction against Bruce Danielson for asking questions surrounding the Appellee's actions in sending a personal letter to the Judge of the case, asking for a favor. Not only did the letter ask for a favor but the letter was not provided to the record until after its existence came to light[3295&3296].

The Appellee Conservator David Gienapp affidavit neglects to note the Co-Guardian's attorney, Craig Thompson, upon the issuance of the Court's Order[3951] now under appeal, threatened sanctions against Bruce Danielson[3865] if he did not agree to dismiss the issued Cowherd and Hall interrogatory request for information regarding what monies they had accepted while caring for their mother. This was a reasonable request because the answer would potentially impeach the Conservator's

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[19] *"11/17/2016 Deposit $1,831.61, Refunded garnishment money from Minnehaha Sheriff's Dept minus fees"*

[20] *"The facts surrounding the garnishment were presented without acknowledgement that the parties had reversed it even though the reversal had been completed by then. They have repeated the garnishment story without mention of the reversal and refund multiple times since then and did not correct David Gienapp when he repeated their narrative before the Supreme Court in 2023.Furthermore, they did not notify Bruce of the refund nor return funds when they controlled the accounts. Nor did they correct the record and acknowledge they had built their story on a garnishment by a dissolved corporation which was refunded."*

[21] *"The co-guardians have never indicated they wanted to be paid, or have they sought money. The $1,400. I forwarded to Jean Coward was not requested by her and was not for any payment for her services it was for minimal reimbursement for cost she expended. That was my decision based on input from Medicaid. When the $1,400. was received I contacted Medicaid to determine if it should be forwarded to Medicaid..."*

[22] Same as footnote 17

statements when the Conservator argued on their behalf, they had received virtually nothing for taking care of their mother.

This court has dismissed a filing[SCDL_30611] by Bruce Danielson for failure to notify all the parties but has allowed retired judge Gienapp to violate the same statute[23] notice requirements[CERTIFICATE OF SERVICE] enforced on Bruce Danielson. The 1st Circuit reprimanded Bruce Danielson from the bench when a filing was not delivered by USPS to interested party Carol Iverson, while the letter was correctly addressed[HearingTR_10/06/2021_Pg84Ln17], and the cause of non-delivery was in the control of the USPS. The 1st Circuit has not held the Appellee Conservator David Gienapp to the same requirements as defined in SDCL 29A-5-408[3082][24][25] and 29A-5-420[26]. A review of the Certificate of Service[3617] attached to the Appellee Conservator David Gienapp's Motion for Sanctions illustrates the issue when he served it to only Bruce Danielson.

The Appellant notes that, if an interested Party is not served, that Interested Party would be unable to know of the filings or be able to file objections. For this reason, the failure of the Appellee Conservator to properly notice all Interested Parties is fatal to the filing, the same as it has been fatal to Bruce Danielson's filings.

Statements Contradicted By The Record

The conservator states that he did not know any of the parties before joining the case. This is a false statement absent a very strained or biblical meaning of the word. The Conservator represented a business partner of a Sioux Falls bank officer.

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[23] SDCL 15-26A-4

[24] *iv. The Conservator did not execute required service on all Interested Parties to this conservatorship, the list includes*

[25] *v. The failure of the Conservator to submit required information to the Interested Parties is fatal to the motion.*

[26] No order may be entered under this section unless notice of hearing is first given to the protected person, to the beneficiaries of the protected person's estate plan, and to the individuals who would succeed to the protected person's estate by intestate succession and, if known, to any attorney or financial advisor who advised the protected person within the last five years. No trust or will may be amended or revoked without prior notice of hearing to the trustee or nominated personal representative thereof.

The partners had purchased property, with the bank officer providing the loans. The partners were charged with fraud. Some of the partnership's money came from churning SBA loans to collect origination fees. In an apparent attempt for sentence mediation, at least one of the partners alleged Bruce Danielson was a participant in the fee churning scheme. Bruce Danielson admits he was a business customer of the bank, with an account and a business loan. Bruce was acquitted at trial on the basis that the jury determined the signatures on the churned notes were forged or in other words the signatures on the churned applications differed from those of the original signature. So not only did the Conservator know of Bruce Danielson but his client potentially got a longer sentence for the partner's attempt to make false statements to frame Bruce.

Appellee Conservator David Gienapp states that the Co-Guardians received minimal reimbursement for keeping their mother. Given that the Co-Guardians planned to collect money from DSS for keeping their mother and Co-Guardian Cowherd apparently had her house pre-approved by DSS in 2015[872], it appears likely Cowherd was paid the approximately $100/day Medicaid / DSS payments. In light of the mailed plan[872], the Appellant served on the Conservator [3856] an INTERROGATORY REQUEST ONE and REQUEST FOR DOCUMENTS TO DAVID GIENAPP. Their mother was doing fine living on her own near Vermillion until she was forced by the Co-Guardians to live in Cowherd's Rapid City house. Bruce was threatened with sanctions when he questioned whether their mother was still receiving her SNAP and other benefits and also whether the Co-Guardians were collecting any reimbursement monies under any DSS Choices Waiver type program paying Jean Cowherd a daily fee of approximately $100 [3873#10[27]]. The Conservator refers to a claimed fact that Bruce spent all the assets in real estate by

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[27] be entered under this section unless notice of hearing is first given to the protected person, to the beneficiaries of the protected person's estate plan, and to the individuals who would succeed to the protected person's estate by intestate succession and, if known, to any attorney or financial advisor who advised the protected person within the last five years. No trust or will may be amended or revoked without prior notice of hearing to the trustee or nominated personal representative thereof.

hiring an attorney to defend his mother[28]. This statement ignores the fact that Dan Danielson, with the knowledge of all family members and in an arrangement brokered by Catherine's business attorney, had a note[866[29]] from his parents paying him back, for the labor he contributed to their now closed business, without adequate compensation[1998] since they would have had to liquidate the real estate to pay him. The note exceeded all of the equity owned by Catherine, so any funds spent on the attorney were in fact funds from Dan Danielson.

Contempt Motion Is An Attempt To Be Paid For Work Not Benefiting The Estate

The Appellee Conservator David Gienapp affidavit continues to claim no excess funds currently in Catherine Danielson's bank account. Bruce Danielson and the interested parties have been told this before. If this is the case, the Conservator should have no reason to not open the books in a manner consistent with SDCL 29A-5-408 which is the statutory procedure to be filed to support that statement. Since it is provable that the procedure has not been followed and the status of all accounts reported, there is no basis for the Court to accept this statement as fact.

Ultimately those statements are intended to argue that poor former Judge Gienapp is being forced to defend his noble actions without pay and therefore the Court should grant this motion, so that he can be paid for the alleged noble work without having to justify how concealing the existence of accounts and the concealment of the reversal of the improper seizure of Catherine's money benefited the estate[3616[30]]. The Motion For Sanctions Certificate of Service filed by Appellee Conservator David Gienapp shows no service to many of the interested parties[3617[31]] required to be notified.

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[28] . *"At the time of the trial Catherine had some equity in real estate that was all expended paying an attorney that Bruce Danielson had contacted relating to representing Catherine Danielson at the original trial"*

[29] Promissory Note dated 4/2/15.

[30] *8] As referenced earlier Bruce Danielson addresses an alleged claim he has against Catherine Danielson apparently relating to some garnishment of funds for an obligation he owed which supposedly occurred in 2016.*

[31] *CERTIFICATE OF SERVICE The undersigned hereby certifies that on the 27th day of March, 2024 a true and correct copy of the Motion for Sanctions was served in Bruce Danielson at his*

Conservator's Request For Procedural Privileges

The Appellee in a previous appeal[32] also chose to waive filing an appellee's brief [June 7th, 2023] and then decided to file one anyway [July 26th, 2023].

The Conservator complains in his letter that he has not been paid by Bruce Danielson. However, the issue is under this appeal and the Appellee has not followed procedure to request a bond.

The Appellee, according to the attached January 17th, 2025, letter to the SDSC Clerk Jameson-Fergel, sent the waiver only to the Co-Guardian's attorney, Craig Thompson, and Bruce Danielson but not to any other interested parties. The Appellee, in the previous appeal [30260, page 17] and many other filings, has not followed clear rules and statutes for service to all parties in a case as statutorily required. Bruce Danielson was admonished in the 1st Circuit Court when the US Post Office when a filing was not delivered to an interested party by a third party, the USPS.

> *"THE COURT: You need to make sure that you mail to all interested parties." [Transcript_10/06/2021_Pg84Ln17]*

The statute, law of the case[33] and case law definitively states lack of service to ALL parties renders the filing in default.

> *SDCL 15-6-5(b) states that service by mail is complete upon mailing and that an attorney's certificate of service is sufficient proof of service. Peterson v. La Croix, 420 NW 2d 18 - SD: Supreme Court 1988*

15-6-5(a). Service--When required.

Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written brief, notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except

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address, P.O. Box 491, Sioux Falls, SD 57101 by placing the same in the United States mail postage prepaid.

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that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in § 15-6-4.

15-6-5(c). Service on numerous defendants.

In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

29A-5-410. Notice of hearing on petition for order subsequent to appointment.

Except as otherwise provided in this chapter or as ordered by the court for good cause shown, notice of hearing on a petition for an order subsequent to the appointment of a guardian or conservator, including an order approving a guardian's report or conservator's accounting, shall be mailed to the minor, if age ten or older, to the protected person, to their attorneys of record, if any, to the relatives of the minor or protected person who would then be entitled to notice of an original petition to appoint, to any facility that is responsible for the care or custody of the minor or protected person, to the guardian or conservator, if the guardian or conservator is not the petitioner, and to such other individuals or entities as the court may order. Unless otherwise ordered by the court, the notice shall be mailed at least fourteen days prior to the hearing and shall be accompanied by a copy of the petition or other document. A minor or protected person may not waive compliance with this section, and the court may not dispense with notice to a minor or protected person unless the minor or protected person is an absentee or the court is reasonably satisfied that such notice will likely cause significant harm to the minor or protected person and the court's finding is supported by a written report of a physician, psychiatrist or licensed psychologist. If deceased, notice to a minor or protected person shall be sent to his last known address or to his successors in interest.

Diligence Of The Appellant

The Appellant has been diligent but has been forced to deal with issues beyond his control. The Appellant has no access to the record on the Court's Odyssey system and is relying on a case file supplied by the Clerk. Unfortunately, the record as supplied to the Appellant was discovered to be missing 500+ pages. He notified the clerk and is still waiting for the oversight to be corrected. Despite the diligence of the Appellant, he has still not received the complete record.

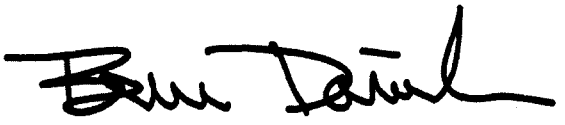
Appellant's Workaround To Remain Timely

Rather than seek an enlargement of time to file objections to the Appellees Waiver Of Submitting And Filing A Brief On Behalf Of Appellee it due to delay of the record, the Appellant is submitting this objection. The Appellant believes that he has cited sufficient examples of why the Conservator's affidavit should be removed from the record. However, if the Court needs more examples of improper use of an affidavit additional example can be supplied once the complete record is supplied to the Appellant.

Conclusion

The Appellee's submitted affidavit should be struck from the record for all of the reasons stated herein including the improper procedure, for facts not in his personal knowledge, for legal conclusions, and for submission of alleged facts when better evidence contradicting his statements is in the record. The Appellant further alleges that the problems with the affidavit are so pervasive that the affidavit should be struck in its entirety. To the extent the waiver letter is retained in the record it should be required to be resubmitted with correct representation as the Appellee's brief and required to conform to the brief rules.

Respectfully submitted,



Bruce Danielson, pro se
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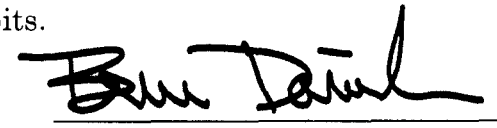
605-376-8087

Certificate of Compliance

I, the undersigned, hereby certify that the brief conforms to the requirements of SDCL 15-26a-66 by being approximately 4700 words as measured by Microsoft 365 Word excluding appendices and exhibits.



Bruce Danielson, pro se
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Sioux Falls, SD 57101-0491

CERTIFICATE OF SERVICE

I, Bruce Danielson, do hereby certify that on 18th day of February 2025, I caused copies of the foregoing ***Appellant's Objection To Appellees Waiver Of Submitting And Filing A Brief On Behalf Of Appellee & Certificate of Service*** to be served upon via USPS 1st Class mail except where noted to be served upon via USPS 1st Class mail except where noted:

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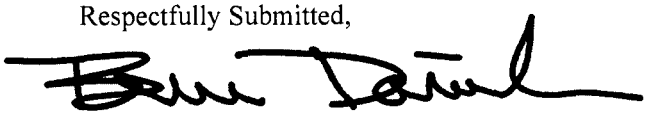
Respectfully Submitted,



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February 18, 2025

Ms. Shirley Jameson-Fergel
Supreme Court Clerks Office
500 East Capital Avenue
Pierre, SD 57501

Re: In the Matter of the Guardianship and Conservatorship of Catherine A. Danielson, #30820

Dear Ms. Jameson-Fergel:

Please find enclosed the original and two (2) copies of the Appellant's Objection To Appellees Waiver Of Submitting And Filing A Brief On Behalf Of Appellee & Certificate of Service with regard to the above-entitled matter.

Thank you.

Respectfully Submitted,

Bruce Danielson, pro se Appellant

Enclosures