No. 92305-1

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 71742-1-I
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TERRY BLOCK, as guardian of SARAH BLOCK,

Appellant,

v.

THE LAW OFFICES OF BEN F. BARCUS & ASSOCIATES, PLLC, a Washington Professional Limited Liability Company, BEN F. BARCUS and JANE DOE BARCUS, individually and the marital community comprised thereof; LEGGETT & KRAM, a Washington Partnership; PETER KRAM and JANE DOE KRAM, individually and the marital community comprised thereof,

Respondents.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

I. INTRODUCTION

Following an accident that left her daughter Sarah incapacitated, Terri Block ("Block") hired the Barcus firm to pursue claims on Sarah's behalf. After the Barcus firm recovered more than $2 million, in April 2006 the Pierce County Superior Court approved – at Block's request – payment of the agreed 1/3 contingent fee for that recovery. More than *seven years later*, in May 2013, Block sued to claw back that fee. Judge Inveen of the King County Superior Court dismissed Block's lawsuit on statute of limitations grounds, which the Court of Appeals affirmed in an unpublished opinion. Block's Petition fails to raise any issue that warrants review by this Court.

II. COUNTERSTATEMENT OF THE CASE

Block's characterization of the facts is largely divorced from the record. Following are undisputed facts supported by admissible evidence, as required by CR 56.

A. The Accident, Settlement of UIM Claims and Approval of the Barcus Firm's Fee.

On September 12, 2005, Sarah Block was driving on Interstate 5 in a car owned by the parents of a friend, when Rosalie Meeks struck her head on in a car driving in the wrong direction. Sarah was airlifted to Harborview Medical Center for treatment of severe injuries that affect her to this day.

The following day, Sarah's mother, Terri, contacted Kari Lester at the

Barcus firm. Ms. Lester went to Harborview, where she met Terri's father. Shortly thereafter the Blocks retained the Barcus firm to represent Sarah in regard to claims arising out of the accident, under an agreement that provided for a customary one-third contingent fee. CP 110-11 ¶¶ 2-3, 6; CP 136-37.

The Barcus firm promptly began working to ensure that Sarah received the maximum possible recovery for her injuries, investigating all aspects of the accident and available coverage. It learned that Ms. Meeks was covered by a $100,000 Hartford policy. It also learned that the car Sarah was driving was covered by a Farmers policy with $100,000 in UIM coverage, and a $2 million umbrella policy. CP 111-15 ¶¶ 4-12; CP 119-21 ¶¶ 24-27.

Barcus suggested that Block hire a colleague with much experience in guardianship matters, Peter Kram, to establish a guardianship for Sarah and to advise Block regarding her anticipated role as Sarah's guardian. CP 53-54 ¶¶ 3-4; CP 707-08 ¶ 3. Mr. Kram's retention agreement stated clearly that he represented Sarah Block, and that Barcus signed not as a client, but rather only as obligor to pay Mr. Kram's fees if Block could not pay. CP 54 ¶ 4; CP 707-08 ¶ 3. ***There is no evidence*** that Mr. Barcus was a close friend or client of Mr. Kram, or that his retention created a "serious conflict of interest."

Farmers asserted that Sarah was not an insured under the umbrella policy because she was over 22 years old and was not a family member who resided with the vehicle's owners. CP 141-43. The Barcus firm worked hard

to overcome this coverage defense, including extensive research into the coverage issues and a thorough investigation into the circumstances of the accident. CP 113-14 ¶¶ 8-12; CP 119-21 ¶¶ 24-28. In November 2005, the Barcus firm made a demand to Farmers for the full $2.1 million in policy limits under the UIM/umbrella policies. CP 120 ¶ 26; CP 267-311. After reviewing the materials that the Barcus firm assembled, Farmers capitulated and agreed to pay the full limits of both polices. Anticipating that Providence Health, which was funding Sarah's care, would assert a subrogation interest against the UIM settlement, the Barcus firm then worked with Mr. Kram and other attorneys to prepare paperwork necessary to establish a Special Needs Trust (the "Trust") to make it more difficult for Providence to attach those proceeds. CP 121-22 ¶¶ 29-30; CP 351-65.

In March 2006, the Barcus firm filed a petition in the guardianship case pending in the Pierce County Superior Court ("Guardianship Court"), on Block's behalf, asking the Court to approve the UIM settlement and the Barcus firm's fee, and to establish the Trust to receive the net proceeds. The petition – which Block personally verified – asserted that the Guardianship estate included $2,115,062.53, and that the Barcus firm was entitled to its full contingent fee pursuant to the agreement previously approved by the Court. CP 361-65. Block received a copy of the petition in advance in order to obtain her verification, and spoke at length with the Barcus firm about it. She

expressed concern about the amount of the fee, but agreed to pay it in light of what she later called "a huge amount of work" that the firm had undertaken on behalf of Sarah. CP 123 ¶ 31; CP 396-97; CP 446. A guardian ad litem, Judson Gray, separately recommended that the UIM settlement and related "fees and costs be approved." CP 574 ¶ 5; CP 637. On March 31, 2006, Pierce County Commissioner Thompson approved (over Providence's objection) the settlement, creation of the Trust, payment of all requested fees and costs, and deposit of the net proceeds into the Trust. CP 123-24 ¶ 32; CP 401-06. Pierce County Superior Court Judge Felnagle later denied Providence's request to revise that ruling. CP 757-67, 769-70.

Block, separately represented by Mr. Kram throughout this process, did not challenge the UIM fee at either hearing or appeal those rulings. To the contrary, she not only signed the petition asking that the fee be approved, but shortly thereafter met with the Barcus firm, attorney Jim Bush (trustee of the Trust) and Mr. Kram, and authorized in writing disbursal of funds consistent with the March 31, 2006, Order. CP 424. And a month later, Block reiterated her unhappiness with the UIM fee, but also acknowledged the Barcus firm's work for her family, and asked for its commitment to continue those efforts:

> It's important to me that you know that Dale and I do appreciate and are thankful for all you've done for our daughter Sarah. I also believe we have some of the best attorneys in Washington. I do realize our relationship is based on business *and we will probably never be at peace with the*

> *huge fees you require*, at the same time, I do believe you've done well for Sarah and I am thankful you are apart [sic] of our lives since Sarah's crash.
>
> You've all done a huge amount of work recently with Sarah's trust and fighting Providence . . . .
>
> My request is for none of you to take a break from Sarah's case until she and Dale board the plane to come home . . . .

CP 446 (emphasis added). Over the next two years, the Barcus firm honored that commitment, often for little or no compensation. It helped Block obtain approval to move Sarah back to Alaska (CP 125-26, 428-78), represented Block against Providence's subrogation claim (CP 501, 503), pursued and settled claims against Ms. Meeks for $200,000 (CP 129-30), pursued and settled a workplace injury case for Mr. Block, and investigated malpractice claims against Harborview (CP 131, 525-26).

B. Block Raises Concerns Regarding the UIM Fee, But Files Suit Well After the Statute of Limitations Has Run.

After completing work on the separate matters detailed above, the Barcus firm formally ended its representation of Block effective August 5, 2008, shortly after Block asked the firm to buy her a house. CP 541-46. Within a month, Block contacted attorney Michael Caryl to investigate the reasonableness of the UIM fee. CP 906-07 ¶ 6. Caryl requested a $10,000 retainer to pursue the matter, but rather than pay him out of the funds they had received in settlement of Mr. Block's workplace injury claims several

months earlier, Block sought the funds from the Trust. *Id.*; CP 937 ¶ 3. She wrote to Mr. Bush, stating that she "had to wait till the drunk driver case closed" before pursuing her claim against the Barcus firm. CP 645. *Thus, she knew of but did not pursue potential claims related to the UIM fee until after the Barcus firm completed other work and refused to buy her a house.*

Mr. Bush did not feel it was appropriate for the Trust to fund the fee investigation. CP 640 ¶ 7. Shortly thereafter, Block discharged Mr. Kram and hired Gordon Thomas Honeywell ("GTH") in his stead. CP 640-41 ¶ 8. In December 2008, GTH filed a petition for Block asking the Guardianship Court to authorize Block, at the Trust's expense, to hire Caryl "for a legal opinion related to fees paid to the Barcus law firm." CP 779-85. Mr. Bush opposed the motion because paying Caryl's fee would not directly benefit Sarah and the Court had previously approved the fee agreement and the UIM fee. CP 640 ¶¶ 7-8; CP 647-54. On January 16, 2009, the Guardianship Court denied Block's petition, observing that "Mr. Bush is well within his discretion in rejecting the request for $10,000 and might be outside his powers if he were to approve it." CP 1255-56. The Court further noted that it did not think "it's the job of the trust to become an investment machine to try and generate more and more money." *Id.* Mr. Barcus appeared at the hearing, understandably, to defend his reputation and to note that any lawsuit brought against his firm might involve counterclaims. CP 1257-58. The Court refused

to "give [its] stamp of approval" to Block's petition, and ordered that she could proceed with investigating the matter only at her expense. CP 1256.

By this time it was nearly three years after the UIM fee had been paid. But while the Guardianship Court granted Block authority to investigate the matter – at her expense – ***Block did not do so***. Rather, she informed Caryl that she would not pay his retainer and he declined the case. CP 906-07 ¶ 7.

Block then waited more than two years, until July 2011, before she contacted Caryl again, at which time she paid the retainer and asked him to pursue the UIM fee claim. CP 938 ¶ 3. Caryl then waited several months, until September 30, 2011, to ask the Barcus firm to turn over "the entirety of all of [its] case files …." CP 1140. His demand was abundantly clear: he wanted "not only hard copy documents that may exist in your physical file but literally everything that you may have, electronic or otherwise" and that the Barcus firm should "not send [him] a billing for" copy costs. *Id.*

In response to this sweeping request, the Barcus firm asked the Guardianship Court for a protective order clarifying its obligations with respect to the file. Block cross-moved for production of the files, and again sought authority to use Trust funds to pursue further discovery. On February 10, 2012, the Guardianship Court ordered the Barcus and Kram firms to permit Block to copy the case files at *Block's* own expense, and rejected – again – Block's request that the Trust fund the inquiry. CP 1277-79.

The Barcus firm promptly made its files available. Yet Block waited *another* year to seek the Guardianship Court's authorization for her to bring claims (a process that took less than two weeks once initiated), and then four more months to actually file suit on May 13, 2013. By that time, more than seven years had passed since the UIM matter concluded and her claims had accrued. King County Superior Court Judge Inveen summarily dismissed Block's claims on statute of limitation grounds.

C. The Court of Appeals Affirms Judge Inveen's Ruling.

Block appealed, arguing that the claims were governed by a six year statute of limitations that had not run, and that if a shorter statute controlled it was tolled pursuant to RCW 4.16.190. The Court of Appeals affirmed. It held that Block's first and third claims were not contract claims subject to a 6-year limitations period; rather they were breach of fiduciary duty claims subject to a 3-year limitations period that expired in March 2009, three years after they accrued (when the Guardianship Court approved the fee), ***and more than four years before she filed suit in May 2013***. Slip op., at 4-5.[1] It held that Block's second claim for a "determination of reasonableness of attorney fees" was "dependent upon the voiding of the fee agreement under the [sic] Block's first claim. . . . Because Block's first claim is time-barred, we need

[1] Attached as Appendix A to Pet. for Review.

not address her request for a determination of reasonable attorney fees." *Id.* at 7. It rejected the contention that the limitations period was tolled under RCW 4.16.190 due to Sarah's incapacity. Because the claims fell under TEDRA's broad definition of a "matter," and because Block herself invoked jurisdiction and venue based on TEDRA, tolling under RCW 4.16.190 ended once Block was appointed as guardian, pursuant to RCW 11.96A.070(4). *Id.* at 12-13.

III. ARGUMENT

This Court should not grant review unless a Court of Appeals opinion conflicts with Supreme Court authority, raises a significant question under the Washington Constitution, or otherwise "involves an issue of substantial public interest ...." RAP 13.4(b)(4).[2] None of these criteria are met here.

A. Application of RCW 11.96A.070(4) Does Not Conflict With Any Decision of This Court.

Block's primary challenge is that TEDRA does *not* govern her claims, and tolling under RCW 4.16.190, which tolls the limitations period while a party is incapacitated, did *not* end once she was appointed guardian. Thus, she argues that the Court of Appeals' decision conflicts with *Young v. Key Pharmaceuticals., Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989). She is wrong.

RCW 4.16.190(1) tolls the statute of limitations with respect to any causes of action that accrue while the party holding the claim is "incompetent

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[2] Pursuant to RAP 10.1(g), Barcus joins in Mr. Kram's arguments.

or disabled to such a degree that he or she cannot understand the nature of the proceedings." In *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989), this Court held that appointment of a guardian did not stop the tolling of an incompetent's claims without a "clear directive from the Legislature" to that effect. *Id.* at 224-25. But the Legislature gave that "clear directive" in 1999, when it enacted TEDRA. RCW 11.96A.070(4) states:

> The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of ... any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, ***is not tolled as to an individual who had a guardian ad litem, [or a] limited or general guardian of the estate***, ... to represent the person during the probate or dispute resolution proceeding.

Block argues that TEDRA does not apply because her claims do "not arise under" TEDRA or "involve the administration of Sarah's special needs trust." Pet. for Review at 8-9. But Block's complaint invokes TEDRA as controlling; she based the trial court's jurisdiction on its power to adjudicate TEDRA matters, and cited no other jurisdictional basis. CP 3 ¶¶ 2.1-2.2. Block also requested "an award of reasonable fee shifting attorney's fees and all costs as provided for in [TEDRA]." CP 15 ¶ 8.6. "[W]hile Block now claims that TEDRA does not apply to this case, that claim is inconsistent with her own assertions when she commenced this action." Slip op. at 12-13.

Block also ignores that the special needs trust was not the only entity being administered; there was also the guardianship estate itself. Sarah had

both a guardian (Block) represented by separate counsel (Mr. Kram) *and* a guardian ad litem (Mr. Gray), all of whom were central to the guardianship estate proceedings that Block claims were tainted – the petitions seeking approval of the Barcus fee agreement, and later, approval of the UIM settlement and the UIM fee. TEDRA clearly governs such proceedings. The "purpose of [TEDRA] is to set forth generally applicable statutory provisions for the resolution of disputes and other matters *involving* trusts *and* estates in a single chapter under Title 11 RCW." RCW 11.96A.010 (emphasis added). To this end, the legislature granted the courts "full and ample power and authority under this title to administer and settle ... *[a]ll matters* concerning the estates of incapacitated … persons." RCW 11.96A.020(1)(a) (emphasis added). TEDRA defines "matter" to "include[] any issue, question or dispute involving ... [t]he determination of *any question* arising in the administration of an estate or trust, or with respect to any nonprobate asset." RCW 11.96A.030(2)(c) (emphasis added). The "plain words of this definition of 'matter' make clear the broad scope of this term." *In re Estate of Bernard*, 182 Wn. App. 692, 722, 332 P.3d 480 (2014). Comments to the Senate Bill stated: "The term 'matter' establishes the issues, questions and disputes involving trusts and estates that can be resolved by judicial … action under the Act. This term is meant to apply broadly. . . ." *Id.*; *see also In re Estate of Kordon*, 157 Wn.2d 206, 211, 137 P.3d 16 (2006) (TEDRA applies to non-

TEDRA statutory claim if it "aris[es] in the administration of an estate").

The allegedly-tainted proceedings central to Block's claims – the petition asking the Guardianship Court to approve the fee agreement and, more significantly, the petition asking the Guardianship Court to approve the UIM settlement and the UIM fee, and to create the Special Needs Trust – are themselves proceedings subject to TEDRA – all related to the administration of the *Guardianship estate*. As the Court of Appeals correctly observed:

> This case involves the administration of Sarah Block's guardianship estate and special needs trust. Block's complaint alleges that the guardianship court did not properly approve Barcus's fee agreement. It also alleges that the guardian ad litem failed to properly evaluate Barcus's fees. Similarly, the complaint alleges that the guardianship court failed to determine whether Barcus's fees were reasonable. The complaint also alleges that Barcus improperly paid himself fees directly from a settlement instead of first placing the funds in Sarah's trust.
>
> Thus, this case involves "question[s] arising in the administration of' Sarah Block's guardianship estate and special needs trust." Accordingly, it is a "matter" under TEDRA's broad definition of that term.

Slip op. at 12-13. Thus, RCW 11.96A.070(4) negates tolling under RCW 4.16.190(1). *See Kwiatkowski v. Drews*, 142 Wn. App. 463, 496, 176 P.3d 510 (2008) ("[Plaintiff] was represented by a GAL; thus RCW 11.96A.070(4) clearly establishes that tolling does not apply."). Block's reliance on *Rivas v. Overlake Hospital Medical Center*, 164 Wn.2d 261, 189 P.3d 753 (2008), is misplaced, since no guardian was appointed in that case, and it dealt only

with the standard by which incompetency is established. It did not address the applicability of RCW 11.96A.070(4).

As TEDRA governs the claims in this case, the Court of Appeals decision does not conflict with *Young*. There is no public interest "concerning the interplay between" RCW 11.96A.070(4) and RCW 4.16.190(1). The "interplay" is simple: tolling stops once a guardian is appointed.

B. Application of RCW 11.96A.070(4) Does Not Raise Any Issues Under the Washington Constitution.

Block's argument that application of RCW 11.96A.070(4) implicates the Privileges and Immunities Clause of the Washington Constitution rests entirely on a flawed reading of this Court's opinion in *Schroeder v. Weighall*, 179 Wn.2d 566, 316 P.3d 482 (2014). The *Schroeder* Court held that a *different* TEDRA statute excluding medical malpractice actions from the tolling provisions applicable to minors and disabled persons violated the Washington Constitution's Privileges and Immunities clause because it conferred a benefit on a privileged group of citizens (medical professionals) while simultaneously burdening a vulnerable minority (minors). 179 Wn.2d at 577-78. In so holding, the Court noted that the purpose of the Privileges and Immunities Clause was to prohibit "laws that confer a benefit on a privileged or influential minority." *Id.* at 572. The *Schroeder* Court was thus concerned that medical professionals had exercised political power to insulate

themselves from suit by minors they had injured, placing a "disproportionate burden" on children who have no one in their lives with "the knowledge or incentive to pursue a claim on [their] behalf." 179 Wn.2d at 578-79.

The issues raised before the *Schroeder* Court are absent in regard to RCW 11.96A.070(4). That statute does not favor any particular group, nor disadvantage any vulnerable minority; it eliminates tolling only with respect to individuals "who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding." RCW 11.96A.070(4). The exception reasonably exists because a disabled person with a guardian has someone to look out for his or her interests. With respect to a disabled person who does not have a guardian, the tolling provisions of RCW 4.16.190 still apply. The TEDRA exception does not disadvantage anyone, and raises no constitutional issues.

C. The Court of Appeals Decision Does Not Conflict With *LK Operating, LLC v. Collection Grp., LLC.*

Block asserts that her "first claim for relief seeks to void the Barcus contingent fee agreement" and that this claim is "essentially the same as that upheld by this Court in *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 331 P.3d 1147 (2014)." Pet. Rev. at 13. But there is no conflict because *LK Operating* does not address the statute of limitations issues here.

Block's first claim for relief seeking to void the Barcus firm's fee agreement was specifically predicated on the assertion that Barcus "owed fiduciary duties to plaintiff" and had allegedly violated those duties by violating various provisions of the RPCs. Because there is no civil cause of action for violation of the RPCs – *see Hizey v. Carpenter*, 119 Wn.2d 251, 258-62, 830 P.2d 646 (1992) – the Court of Appeals correctly interpreted Block's claim as one for breach of fiduciary duty subject to a 3-year statute of limitations. Because Block's claim accrued in March 2006, her lawsuit – filed in May 2013 – was untimely. *LK Operating* says nothing about how to characterize civil claims based on the RPCs, nor did it address statute of limitations questions. *LK Operating, LLC*, 181 Wn.2d at 86-87. Block's allegations of an alleged conflict of interest – which have no support in the record – do not change the fact that she brought a breach of fiduciary claim that is time-barred. No significant public interest is affected by this case, any more than in any other case held subject to a 3-year statute of limitations.

D. Block's Remaining Issues Are Not "Of Substantial Public Interest" That Warrant Review by This Court.

1. The Court of Appeals Correctly Held That the 3-Year Statute of Limitations Applies to Block's Claims.

Block contends that the Court of Appeals erred in relying on *Meryhew v. Gillingham*, 77 Wn. App. 752, 893 P.2d 692 (1995), to conclude that her causes of action were, in substance, claims for breach of fiduciary duty, and

that she was thus not entitled to the 6-year statute of limitations applicable to contract actions. Well-settled Washington law proves her wrong.

First, the Court of Appeals did not rely on *Meryhew* to characterize her claims; it cited *Meryhew* only for the uncontroversial proposition that breach of fiduciary duty claims sound in tort, and are thus subject to the 3-year limitations period. Slip op. at 3. In construing Block's claims, the Court followed longstanding precedent that the "nature of a cause of action must be determined from a consideration of the facts alleged, and not from the name the pleader may have used to characterize such facts." *Stearns v. Hochbrunn*, 24 Wash. 206, 212, 64 P. 165 (1901). It noted that Block's first claim "alleges that Barcus and Kram owed her fiduciary duties to disclose conflicts of interest," and concluded that "[b]ecause Block's claim is based on alleged violations of fiduciary and ethical duties, it is a claim for breach of fiduciary duty." Slip op. at 4. The Court then held that Block's other claims – for a determination of the reasonableness and disgorgement of the contingent fee – were remedies derivative of the underlying fiduciary claim, and as such were subject to the same 3-year limitations period. *Id.* at 4-5, 7-8.

Block's attempt to recast her tort claims as contract actions, to evade this irresistible conclusion, is similarly addressed by established precedent. In *Davis v. Davis Wright Tremaine*, 103 Wn. App. 638, 14 P.3d 146 (2000), the court addressed and squarely rejected this very argument. It held that claims

based on duties that arise by virtue of an attorney/client relationship – e.g., the obligation to charge a reasonable fee, and as opposed to contractual duties set out in a written agreement – are governed by the 3-year tort limitation and not the 6-year period applicable to claims based on a written contract.

Block tries to distinguish *Davis* because "Barcus' claim to attorney's fees is based entirely on the specific terms of the written fee agreement." Pet. Rev. at 18. Had Block failed to pay the fee, Barcus' claim for breach of that contractual term would have been subject to the 6-year limitation period. But there was no such breach; Block paid and Barcus received *exactly* what the agreement provided. Block's claim is that Barcus breached *fiduciary* duties by accepting that fee, not the terms of the fee agreement. Her claim does not arise out of that agreement, but rather out of common law duties owed by lawyers to their clients. *Davis* controls.[3]

2. The Court of Appeals Correctly Applied RCW 4.24.005.

Block takes issue with the Court of Appeals' application of RCW 4.24.005 as an *alternative* ground for dismissing Block's second cause of

[3] None of the cases Block cites are at odds with this conclusion. The *LK Operating* Court looked to the RPCs in determining whether a particular contract violated public policy, but said nothing to imply that a claim that a fee agreement violated the RPCs transformed what is fundamentally a tort claim into a contract action. 181 Wn.2d at 86-87. Likewise, the court in *Fetty v. Wenger*, 110 Wn. App. 598, 600, 36 P.3d 1123 (2001), declined to address what limitations period applied to an "equitable claim arising out of" a fee agreement.

action seeking a "reasonableness" determination of the Barcus fee. RCW 4.24.005 establishes a limitations period for determining the reasonableness of fees in tort matters that expire 45 days after the final billing, as follows:

> Any party charged with the payment of attorney's fees in any tort action may petition the court not later than forty-five days of receipt of a final billing or accounting for a determination of the reasonableness of that party's attorneys' fees.

Review of this issue is not justified because the Court of Appeals correctly applied RCW 4.24.005. The UIM settlement and related fee was based on negligence claims against Meek. The time to challenge the UIM fee thus passed in May 2006. Block's contention that RCW 4.24.005 merely creates "a special right of action" regarding the challenge of attorney fees – a statutory claim and limitation that would be superfluous if a plaintiff needed only to recast the fee challenge as a malpractice claim – runs afoul of the plain language of the statute, as well as how courts have interpreted it. *See Barrett v. Freise*, 119 Wn. App. 823, 849-52, 82 P.3d 1179 (2003) (referring to RCW 4.24.005 as "the 45-day statute of limitation"). Because RCW 4.24.005 specifically applies to challenges to fees in tort cases, moreover, it displaces any other limitations period that Block might seek to apply. *Miller v. Sybouts*, 97 Wn.2d 445, 448, 645 P.2d 1082 (1982) (under rules of statutory construction, "a specific provision controls over one that is general in nature"); *see also*, RCW 4.16.005 (limitations periods in that chapter are

inapplicable when "a different limitation is prescribed by a statute not contained in this chapter"). No public interest in policing of attorney billing practices is affected since improper conduct can be raised with the WSBA.

The application of RCW 4.24.005 fails to present a reviewable issue for yet another, more fundamental reason – it was applied as an alternative basis on which to affirm the trial court's decision. The Court of Appeals separately held that Block's second cause of action merely sought a remedy – return of all or part of the contingency fee – for Barcus' alleged breach of fiduciary duties. Because those claims were time-barred, however, Block was entitled to no remedy. Slip op. at 7-8. Thus, even if RCW 4.24.005 does not apply, Block's claims were still untimely.

3. RCW 4.16.230 Did Not Toll the Statute of Limitations.

Block's contention that RCW 4.16.230 – which tolls the limitations period when an "injunction or statutory prohibition" prevents filing suit – tolled the statute of limitations on Sarah's claims is untimely (ironically) and wrong both factually and legally. Block did not raise this argument in the trial court *or* the Court of Appeals, and cannot raise it for the first time in seeking review by this Court. Block likely did not make this argument because she was *not* "prohibited by court orders" from pursuing the matter against the Barcus firm from 2009 through 2013. To the contrary, the Guardianship Court only forbade Block from using Trust assets to fund an investigation of

claims; it expressly allowed her to do so ***at her expense***, and she needed only to seek approval to file the lawsuit. When she eventually sought approval in 2013, the Guardianship Court authorized her to proceed in less than two weeks. CP 1255-58; 1277-79. Block simply chose not to pursue the matter further until July 2011. CP 906-07 ¶¶ 6-7, 938 ¶ 3.[4] By that point, the statute of limitations – which expired no later than March 2009 – had long since run. Such unique facts present no issue of substantial public interest.

IV. CONCLUSION

For the foregoing reasons, the Court should reject Block's Petition.

DATED this 26th day of October, 2015.

BYRNES KELLER CROMWELL LLP

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[4] Nor can Block contend that an inability to pay Caryl's retainer in January 2009 tolled the limitations period, because "a showing of hardship or understandable delay is insufficient to" toll the statute of limitations. *Petcu v. State*, 121 Wn. App. 36, 73, 86 P.3d 1234 (2004).

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true copy of the foregoing pleading was served upon the following individuals:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED in Seattle, Washington this 26th day of October, 2015.

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