No. 97659-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE ESTATE OF K. WENDELL REUGH, Deceased

JoLynn Reugh-Kovalsky, Mark Reugh and Jim Reugh,

Petitioners.

RESPONDENT INLAND NORTHWEST COMMUNITY FOUNDATION'S ANSWER TO REUGH-KOVALSKY/GILL PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals affirmed the trial court's removal of co-personal representatives and co-trustees and the appointment of a successor to both those positions because of a clear breach of fiduciary duties and a clear conflict of interest. None of the issues identified in the *Petition for Review* are supported by the record, none justify further consideration under RAP 13.4, and this Court should decline review.

II. STATEMENT OF THE CASE

K. Wendell Reugh executed two estate planning documents on January 4, 2011. The first was a last will and testament ("Will"). CP 335-40. The second was a revocable living trust agreement ("Trust"). CP 342-53. The Will is a standard pour-over will which, except for certain minor items of personal property, required all property to be transferred into the Trust at Mr. Reugh's death to be held, administered and distributed according to its terms.[1] CP 335-40. The Trust is the vehicle through which Mr. Reugh chose to distribute his vast wealth. It grants a number of pecuniary bequests to Mr. Reugh's friends and family members, including

[1] Washington has adopted the Uniform Testamentary Additions to Trust Act, RCW 11.12.250, which expressly endorses the use of pour-over wills to fund a trust and specifically allows a trust to be funded for the first time by a pour-over will.

gifts of $1.5 million to each of his three children, JoLynn Kovalsky, Mark Reugh and James Reugh. CP 344-46. Inland Northwest Community Foundation ("INWCF") is designated as the remainder beneficiary of the Trust and is entitled of all remaining assets in the Trust after all other distributions have been made. CP 347. The Trust directs that the residuary be distributed to INWCF, to be held as an endowed donor-advised fund known as the Wendell and MaryAnn Reugh Family Fund. CP 347-48.

Mr. Reugh passed away on March 22, 2015. His daughter, JoLynn Kovalsky, and longtime business manager, Steve Gill, were appointed to serve as co-personal representatives of the Estate and co-trustees of the Trust after the personal representatives and trustees nominated in the Will and Trust declined their appointments. CP 1-20.

Ms. Kovalsky and Mr. Gill promptly made distributions totaling $4,895,000.00 to each of the other beneficiaries (including $1.5 million to each of Mr. Reugh's children) in the precise amounts specified in the Trust CP 446-81. Ms. Kovalsky and Mr. Gill subsequently filed tax returns on behalf of the Estate confirming that INWCF would receive "100% of [the] Estate Residue." CP 511, 550. The tax returns listed a distribution to INWCF in the anticipated amount of $16,675,286. CP 511, 550.

Apparently sensing that Ms. Kovalsky and Mr. Gill were reluctant to distribute such a large sum to charity, the Estate's former attorney, Thomas Culbertson, counseled them on the duties owed to INWCF. In a January 8, 2016 letter, Mr. Culbertson advised Ms. Kovalsky and Mr. Gill that they (1) owed a duty of impartiality to all beneficiaries; (2) could not favor the interests of any beneficiary or beneficiaries over another; (3) owed a duty of full disclosure; and (4) could not treat INWCF as an adversary. CP 185.

On January 26, 2016, Ms. Kovalsky and Mr. Gill ignored these duties and sent INWCF a letter offering $2.2 million in satisfaction of a "charitable disposition" in Mr. Reugh's will. CP 585. Ms. Kovalsky and Mr. Gill *did not* disclose that INWCF was named as the *remainder* beneficiary and was in line to receive the *entire* residuary, nor did they disclose that the residuary would likely exceed $16 million. CP 827. In January 2017, after INWCF rejected the $2.2 million offer, Ms. Kovalsky and her siblings *claimed the residuary for themselves*. In a letter from their attorney, Ms. Kovalsky and her siblings asserted that the Trust was "invalid" and that their father's true intent was for his assets to pass to his children rather than to INWCF. CP 578-83. They also threatened INWCF with litigation (and collection of attorney fees and costs) unless it agreed to walk away CP 578,

582. On March 6, 2017, Petitioners acted on that threat by filing a TEDRA Petition seeking to "invalidate" the Trust. CP 355-89. In their capacities as Personal Representatives, Ms. Kovalsky and Mr. Gill then filed an Answer to the Petition in which they "admitted" the allegations about the purported "invalidity" of the Trust on behalf of the Estate. CP 391-401.

INWCF filed a motion to remove Ms. Kovalsky and Mr. Gill as Personal Representatives and Trustees which was argued on December 8, 2017. CP 82-96, 321-722. Before proceeding with the hearing, the trial court addressed an objection that INWCF had not followed proper procedure in seeking Ms. Kovalsky's and Mr. Gill's removal. CP 825; RP 5-6. The trial court offered the option of scheduling a separate hearing at a later date in order to eliminate any purported prejudice that might have been caused to Ms. Kovalsky and Mr. Gill by the alleged procedural defect. RP 6-7; CP 825-826. That offer was declined. RP 6-7. The hearing proceeded with all parties addressing the specific grounds for removal. At the conclusion of the hearing, the trial court agreed removal was appropriate and that a successor Personal Representative and Trustee would be appointed. RP 37-38. At the December 22, 2017 presentment hearing, INWCF suggested Northwest Trustee & Management Services, L.L.C. as

successor, Petitioners refused to suggest a successor, and the trial court appointed the only suggested successor. CP 824-829.

The removal order is supported by detailed findings of fact and conclusions of law. The trial court found that Ms. Kovalsky and Mr. Gill committed a "serious breach of their fiduciary duties to INWCF [by] making a heavily discounted offer without disclosing the anticipated amount of the distribution." CP 834. The trial court also found that Ms. Kovalsky harbored an "irreconcilable" conflict of interest that prevented her from fulfilling her fiduciary duties owed to INWCF as Personal Representative and Trustee while, at the same time, pursuing a competing claim to funds as a beneficiary. CP 833. Finally, the trial court found that Mr. Gill was likewise unable to fulfill his fiduciary duties to INWCF because, like Ms. Kovalsky, he had taken an official position on behalf of the Estate that the Trust was "invalid" and that Petitioners, rather than INWCF, were entitled to the residuary. CP 834.

III. ARGUMENT

A. Division III's Opinion is Consistent with Washington Law on Non-Intervention Wills.

The Petition for Review incorrectly argues that the trial court "lost" jurisdiction pursuant to RCW 11.68.110 once the Personal Representatives were granted non-intervention authority. Washington case law (and the

probate code) recognize that while the trial court's involvement in a nonintervention estate is somewhat limited, it is not obsolete as Petitioners contend. *In re Estate of Rathbone,* 190 Wn.2d 332, 345, 412 P.3d 1283 (2018). The Petition for Review must be denied for two primary reasons.

First, Ms. Kovalsky and Mr. Gill waived any "jurisdiction" arguments because they were not raised with the trial court and Petitioners were precluded from doing so on appeal. *In re Detention of Ambers*, 160 Wn.2d 543, 557 n.6, 158 P.3d 1144 (2007) and *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983).

Second, even if this issue had been properly raised, review is not appropriate because RCW 11.68.070 is not "jurisdictional". As this Court has clarified, "jurisdiction" refers to a court's *authority* to remove a personal representative under RCW 11.68.070 if the statutory criteria are satisfied. *Estate of Rathbone* 190 Wn.2d at 339 n.4. ("Although our cases refer to a court's power to act in nonintervention probates as 'jurisdiction,' they are referring to the statutory grant of 'authority' to decide the issue addressed in that particular statute [RCW 11.68.070]."). Where, as here, the party seeking removal expressly invokes RCW 11.68.070, the court is authorized to reassume control over the probate and decide whether the personal representative should be removed for failing to comply with his or her

fiduciary duties. *Id.* at 342. *Rathbone* explicitly contemplated the exercise of this authority to remove or restrict the powers of a personal representative for failing to comply with fiduciary duties. *Id.* at 342. As clearly stated in *Rathbone,* RCW 11.68.070 is, therefore, not "jurisdictional" and there is no threshold jurisdictional requirement. Once the statute is invoked, the trial court simply proceeds to determine whether the criteria for removal have been met. *Id.* at 342. See also *In re Estate of Jones*, 152 Wn.2d, 1, 9, 93 P.3d 147 (2004). (Beneficiaries had the authority to invoke jurisdiction, and the trial court had the jurisdiction to decide, if the personal representative discharged his duties pursuant to RCW 11.68.070.)[2]

INWCF invoked RCW 11.68.070 and demonstrated that the criteria for removal were met[3]. That is all that the statute requires. Accordingly, the question is whether the trial court properly exercised its broad discretion to remove Ms. Kovalsky and Mr. Gill. *In re Estates of Aaberg*, 25 Wn. App.

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[2] Petitioners' reliance on *In re Estate of Ardell,* 96 Wn.App. 708, 980 P.2d 771 (1999) actually supports the decision of the Court of Appeals. *Ardell* provides that while an order of solvency in a non-intervention estate divested the court of jurisdiction, that jurisdiction could be invoked if another person authorized by statute petitions the Court to examine the administration of the estate, and the filing of a petition for removal the personal representative pursuant to RCW 11.687.070 (as in the present case) properly invoked that jurisdiction. *Id.* at 715-716.

[3] The Petitioners further invoked jurisdiction when they filed the Petition to invalidate the Trust specifically invoking jurisdiction for both the Estate and Trust (CP 355-368), when they served INWCF with a Summons to defend that action (CP 25-26), and when they entered an Order consolidating that action with the Estate matter. CP 64-65.

336, 339, 607 P.2d 1227 (1980); *In re Estate of Ehlers*, 80 Wn. App. 751, 761, 911 P.2d 1017 (1996); *In re Estate of Beard*, 60 Wn.2d 127, 132, 372 P.2d 530 (1962). As addressed below, the trial court properly exercised that discretion under long-standing Washington law and review is not appropriate.

B. Division III's Opinion is Consistent with Washington Law on Removal of a Personal Representative and Trustee.

Ms. Kovalsky and Mr. Gill contend that a personal representative may not be removed "on a whim", argue that a showing of misconduct with "specificity" is required, and then summarily conclude that no breach of fiduciary duties or conflict of interest existed. Instead, Ms. Kovalsky and Mr. Gill equate this matter as an "interpersonal" conflict and a mere dissension between heirs. They then suggest that if INWCF had a disagreement with the Personal Representatives' decisions, its remedy was limited to an accounting once the estate was closed pursuant to RCW 11.68.100-110.[4] Ms. Kovalsky and Mr. Gill ignore longstanding Washington law and the clear record before the trial court.

As personal representatives of the Estate and trustees of the Trust, Ms. Kovalsky and Mr. Gill stood in a fiduciary relationship to INWCF and

[4] *Petition for Review,* pg. 10-11.

the other beneficiaries. *In re Estate of Larson*, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985); *In re Estate of Ehlers*, 80 Wn. App. At 757. They were required to INWCF with "the highest degree of good faith, diligence and undivided loyalty" and were prohibited from advancing their own interests at its expense. *Ehlers*, 80 Wn. App. at 757; *Tucker v. Brown*, 20 Wn.2d 740, 768, 150 P.2d 604 (1944); *In Estate of Drinkwater*, 22 Wn. App. 26, 30, 587 P.2d 606 (1978). If even one ground for removal suffices, the decision for removal should be upheld on appeal. *In re Estate of Jones,* at 10.

The grounds for removal were clear and undisputed. Ms. Kovalsky and Mr. Gill were expressly warned by Mr. Culbertson that their fiduciary duties prohibited them from advancing their own interests to the detriment of INWC, advised them of their duty of full disclosure, and warned against treating INWC as an adversary CP 185-186. Ms. Kovalsky and Mr. Gill ignored those warnings and explicit Washington law.[5] CP 185-186. Instead, they offered $2.2 million in full satisfaction of INWCF's right to a

[5]Throughout these proceedings, Ms. Kovalsky and Mr. Gill described INWCF as a "financial predator" attempting to steal the Reugh children's inheritance by making a "transparent" and "naked power grab." *Petitioners' Brief. at 2, 11, 25, 34, 49.* On the face of the Will and Trust, INWCF is the main beneficiary. Petitioners' improper characterizations reflect the adversarial manner in which INWCF was viewed (and ultimately treated) as a beneficiary.

distribution, without disclosing that INWCF was in line to receive more than $16 million as the remainder beneficiary. CP 827. Ms. Kovalsky and Mr. Gill knew that the distribution to INWCF would far exceed that amount—a fact confirmed by Estate tax returns signed by Ms. Kovalsky and Mr. Gill detailing a residuary distribution to INWCF in the anticipated amount of $16,675,286. CP 511-12, 550[6]. Inexplicably, Ms. Kovalsky and Mr. Gill did not disclose the anticipated value of the distribution to INWCF and did not inform INWCF that it was the *remainder* beneficiary and was entitled to a distribution of whatever remained of Mr. Reugh's substantial assets. Instead, Ms. Kovalsky and Mr. Gill made a vague reference to a "charitable disposition" and implied that the value was $2.2 million. CP 585.

Failing to disclose INWCF's status as the remainder beneficiary and the anticipated value of the distribution was inexcusable. Ms. Kovalsky and Mr. Gill owed INWCF the highest degree of good faith, diligence, and undivided loyalty. *Larson*, 103 Wn.2d at 521; *Ehlers*, 80 Wn. App. at 757. The fact that they offered $14 million less than INWCF would otherwise have received by itself amounted to a breach of fiduciary duties. However, *failing to inform INWCF that the offer was heavily discounted* was

[6] In addition, Mr. Culbertson specifically provided a summary of Mr. Reugh's assets and values of those assets. CP 560-70

completely beyond the bounds of proper fiduciary conduct. Ms. Kovalsky and Mr. Gill clearly hoped that INWCF would see the sizeable sum of $2.2 million and accept their offer without asking questions. There could not be a more clear-cut example of a breach of fiduciary duty. The trial court's decision to remove Ms. Kovalsky and Mr. Gill based on the undisputed duties owed to INWC and the blatant breach of those duties was consistent with Washington law.

1. Ms. Kovalsky breached her fiduciary duties to INWCF by making a competing claim to the residuary estate.

Ms. Kovalsky, while acting as Personal Representative and Trustee, asserted a competing claim to millions of dollars that Mr. Reugh's estate planning documents unmistakably leave to INWCF. As the trial court correctly concluded, Ms. Kovalsky's decision to claim those funds for herself created an "irreconcilable conflict of interest" that precluded her from fulfilling her fiduciary duties to INWCF. CP 833.

Ms. Kovalsky insists that no conflict existed because Washington law allows a personal representative to claim estate assets as a beneficiary relying on *In re Estate of Ehlers.*[7] The fact that a personal representative is also a beneficiary, standing alone, does not create a conflict of interest. However, a conflict arose when Ms. Kovalsky staked a competing claim to

[7] *Petition for Review,* pg. 12, fn. 8.

other assets that were left to *another* beneficiary and took the improper action to recover on that claim. Ms. Kovalsky had a duty to treat INWCF with the utmost faith, diligence and undivided loyalty. *Larson*, 103 Wn.2d at 521; *Ehlers*, 80 Wn. App. at 761. Having asserted a competing claim and elevating her own interests above INWC (and the manner in which she attempted to assert that claim) is a textbook conflict. *Tucker*, 20 Wn.2d at 768; *In re Estate of Drinkwater,* 22 Wn. App. at 30. Ms. Kovalsky's reliance on *Ehlhers* is without merit. In *Ehlers,* the Court found that removal was not appropriate because the non-pro-rata distribution of property was authorized by statute and did not cause any harm to the other beneficiaries. *Id.* at 761. As set forth in the record, that did not occur here. The trial court's decision to remove Ms. Kovalsky was consistent with long-standing Washington law.

2. Ms. Kovalsky and Mr. Gill breached their fiduciary duties to INWCF by taking the position that the Trust is "invalid."

The trial court found that Ms. Kovalsky and Mr. Gill breached their fiduciary duties by filing an answer to the First Amended Petition to Contest the Validity of a Trust ("Petition") admitting that the Trust was "invalid." CP 834. Ms. Kovalsky and Mr. Gill insist no conflict existed because it was simply a request for a judicial determination of the Trust's validity and,

curiously, assert that they did not interfere with the rights of beneficiaries to receive assets.[8]

In filing their Answer, Ms. Kovalsky and Mr. Gill committed the Estate to the position that the Trust was invalid—and, by extension, that the residuary should be distributed to the Reugh children. In contesting the validity of the Trust, Ms. Kovalsky and her siblings were not making a dispassionate request for "guidance" on how the residuary should be distributed. They were claiming the residuary for themselves to the detriment of INWCF. That objective was clearly stated by (1) the Petitioners' letter of January 27, 2017 letter where they asserted that, despite having named INWCF as his remainder beneficiary, Mr. Reugh's true intent was "to ensure that his children received his assets directly," CP 578, (2) Petitioners' threat of protracted and expensive litigation, CP 582, and (3) the filing of the Petition to invalidate the Trust. CP 355-389. The trial court correctly identified this conflict under Washington law as addressed above.

3. The trial court did not err in imputing Ms. Kovalsky's conflict of interest to Mr. Gill.

Contrary to the *Petition for Review*, the fact that Mr. Gill was not a beneficiary under the Will or the Trust does not preclude a finding of a conflict. Mr. Gill was aligned with Ms. Kovalsky and actively supported

[8] *Petition for Review,* pg. 12, fn. 8.

the efforts to divert the residuary away from INWCF. Although Mr. Gill did not file the Petition to invalidate the Trust, he did answer it, and did so by "admitting" its invalidity. Under these circumstances, imputing the conflict to Mr. Gill was appropriate. *In re Estate of Jones,* 152 Wn.2d at 7. (Trial Court properly refused to appoint successor personal representative after removal as proposed successor was "in league" with the original personal representative and was disqualified due to the conflict of interest.)

In this case, the record before the trial court demonstrated that Mr. Gill was "in league" with the principal wrongdoer, Ms. Kovalsky. Mr. Gill knew that Ms. Kovalsky and her siblings were fighting to wrest the residuary away from INWCF, and he supported her in that conflicted position at every turn. The trial court was justified in deeming Mr. Gill equally conflicted. Review is not warranted.

C. Petitioners' claims that INWCF lacked "standing" are unavailing.

The *Petition for Review* contends that INWCF lacked "standing" to seek removal under RCW 11.68.070, arguing that INWCF is not an "heir," "devisee" or "legatee" under the Will.[9] Review is not appropriate for four reasons.

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[9] *Petition for Review,* pg. 13.

First, this argument was not raised at the trial court and was properly rejected by the Court of Appeals. *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 853, 50 P.3d 256 (2002); and RAP 2.5(a)[10]. Petitioners' argument that RAP 2.5 permits review for "failure to establish facts upon which relief can be granted" is also misplaced. This exception only applies where the proof of particular facts at the trial court is required to sustain a claim and does not apply to facts on which the parties agree. *In re Adoption of T.A.W.,* 188 Wn.App. 799, 808, 354 P.3d 46 (2015), *State v. Clark,* 195 Wn.App. 868, 874, 381 P.3d 198 (2016). As addressed above, the undisputed facts before the trial court showed that (1) INWCF is the main beneficiary of Mr. Reugh's pour-over will and is clearly an "heir, devisee, [or] legatee" and (2) Ms. Kovalsky and Mr. Gill attempted to circumvent the testamentary plan to directly profit to the detriment of INWCF. These facts clearly support the relief sought to remove Ms. Kovalsky and Mr. Gill.

Second, to have standing, a party need only be in the law's "zone of interest" and suffer harm. *Nelson v. Appleway Chevrolet, Inc.* 160 Wn.2d 173, 186, 157 P.3d 847 (2007).

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[10] The *Petition for Review* asserts that "standing" to seek relief under RCW 11.68.070 is a threshold jurisdictional requirement that cannot be waived. As noted above RCW 11.68.070 is not jurisdictional. *Rathbone*, 190 Wn.2d at 339 n.4, 342. Accordingly, the ordinary waiver rules apply.

Third, the purpose of RCW 11.68.070 is to provide protection to beneficiaries and other interested parties when a personal representative breaches fiduciary duty. *In re Estate of Jones,* 152 Wn.2d at 10–11. INWCF fits squarely within that framework.

Fourth, INWCF does in fact have "standing." Mr. Reugh's will is a standard pour-over will. The Trust calls for INWCF to receive whatever remains of the estate after the pecuniary bequests to Mr. Reugh's family members and friends have been made. CP 202. INWCF is clearly a "devisee" or "legatee" in this circumstance. A devisee is "a recipient of property by will." *In re Estate of Hitchcock*, 140 Wn. App. 526, 532, 167 P.3d 1180 (2007). A legatee is "one who is named in a will to take personal property; one who has received a legacy or bequest."[11] *Id.* The argument that INWCF does not meet either definition because its right to a distribution is not mentioned in the Will itself puts form over substance. The Will and Trust were "integrally related components of a single testamentary scheme." *Clymer v. Mayo*, 473 N.E.2d 1084, 1092 (Mass. 1985). The Legislature has expressly endorsed the use of pour-over wills as

[11] A "legacy" is defined as "[a] gift by will, [especially] of personal property and often money." LEGACY, *Blacks Law Dictionary* (10th ed. 2014). A "bequest" is defined as "money or other property that a person arranges to give to someone or an organization upon death; [especially] property ([usually] personal property or money) disposed of in a will." BEQUEST, *Blacks Law Dictionary* (10th ed. 2014).

a means of gifting probate assets. RCW 11.12.250. It therefore stands to reason that the Legislature would not draw a distinction between "devisees" and "legatees" whose names appear on the face of a will and those who receive gifts of probate assets via a pour-over clause.

If the argument set forth in the *Petition for Review* was adopted, the only people who would have "standing" to petition for the personal representatives' removal would be the recipients of minor articles of personal property. The main beneficiaries would be left without recourse if the personal representatives decided to distribute the funds to someone else (or to themselves) as Ms. Kovalsky and Mr. Gill attempted to do so here.

Contrary to the assertion in the *Petition for Review*, *Hitchcock* does not dictate a different result. The will at issue in *Hitchcock* was not a pour-over will. Accordingly, the court had no occasion to consider whether a beneficiary who receives a gift of probate assets by operation of a pour-over clause would be prohibited from petitioning for removal under RCW 11.68.070. The holding in *Hitchcock* is limited to beneficiaries of testamentary trusts. *In re Estate of Hitchcock* at 532.

D. The Trial Court Appropriately Appointed a Successor Institutional Personal Representative.

Petitioners maintain that review is required because the Reugh children should have been allowed to select the new personal representative

pursuant to the terms of the Will.[12] Review is not appropriate for three reasons.

First, Petitioners waived the argument by not raising it below. *State v. Riley*, 121 Wn.2d at 31; *Wingert v. Yellow Freight Sys. Inc.*, 146 Wn.2d at 853 and RAP 2.5(a).

Second, neither the Will nor the Trust gives the Reugh children the right to select a successor when a personal representative or trustee is *removed*. Article IV of the Will only allows the Reugh children to select a successor when an individual who was nominated as a personal representative is "unwilling or unable to serve," or when an appointed personal representative deems it "necessary or advisable" to appoint an ancillary personal representative. CP 337, 338. The Trust only allows the Reugh children to select a successor in the event of the "death, resignation, or inability" of a nominated successor trustee to serve. CP 350.

Third, assuming *arguendo* that the Reugh children *did* have an absolute right to choose the replacement, they forfeited that right by refusing to submit a proposed replacement when invited to do so by the trial court. At the December 8, 2018 hearing, the trial court directed the parties to agree upon a successor personal representative and trustee—or, if no

[12] *Petition for Review*, pg. 16.

agreement could be reached, to submit their respective choices to the court for a final determination. RP 42-43; CP 738. No agreement was reached. INWCF proposed Northwest Trustee & Management Services, L.L.C. as its chosen successor. RP 42-43; RP 49; CP 738-785. Petitioners *refused* to submit a proposed successor, as did Ms. Kovalsky and Mr. Gill on behalf of the Estate. RP 48-49.

E. Division III Appropriately Awarded INWCF Attorney Fees and Costs and Fees and Costs Should be Awarded here.

Division III correctly exercised its broad discretion pursuant to RCW 11.96A.150 and RAP 18.1 and appropriately awarded INWCF its attorney fees and costs. Review is not appropriate here.

An award of attorney's fees and costs in a TEDRA proceeding are governed by RCW 11.96A.150. The court has "considerable discretion" in making such an award. *Atkinson v. Estate of Hook*, 193 Wn. App. 862, 874, 374 P.3d 215 (2016). The court may consider "any and all factors that it deems to be relevant and appropriate." RCW 11.96A.150(1); *In re Estate of Burks,* 124 Wn.App. 327, 333, 100 P.3d 328 (2004). Awards are reviewed on appeal for abuse of discretion. *In re Estate of Mower*, 193 Wn. App. 706, 727, 374 P.3d 180 (2016).

Ms. Kovalsky-Reugh and Mr. Gill committed knowing, blatant breaches of their fiduciary duties and those actions warranted an award of

attorney fees under the broad discretion of the court after consideration of any relevant factor, including the breach of fiduciary duties. *In re Estate of Jones,* 152 Wn.2d at 20-21. The Court of Appels did not award attorney fees as a "penalty" as contended here. The Court of Appeals properly awarded fees based on the clear breach of those duties by Ms. Kovalsky and Mr. Gill. Review of the court's broad discretion in this arena is not appropriate and, other than the blatant mis-characterization of the facts and law, Petitioners cite no authority warranting review under RAP 13.4(b).

This Court should award INWCF's attorney fees and costs pursuant to 11.96A.150 and RAP 18.1(b) and RAP 18.1(j) as Ms. Kovalsky and Mr. Gill's continued insistence that they breached no fiduciary duties and had no conflict of interest are without merit. The Court of Appeal's decision was correct and they should be required to pay attorney fees and costs incurred in answering the *Petition for Review.*

IV. CONCLUSION

The trial court's appropriate exercise of its broad discretion to remove Ms. Kovalsky and Mr. Gill from their appointments as co-personal representatives and co-trustees was consistent with Washington law and the Court of Appeals correctly upheld that decision. The Petition for Review should be denied and this Court should award attorney fees and costs.

RESPECTFULLY SUBMITTED this 14th day of October, 2019.

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By: _____

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DECLARATION OF SERVICE

On said day below, I served a true and accurate copy of *Respondent Inland Northwest Community Foundation's Answer to Reugh-Kovalsky/Gill Petition for Review* in the Supreme Court of the State of Washington Cause No. 97659-7 to the following by the method indicated below:

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

DATED: October 14, 2019, at Spokane, Washington.

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