

FILED
AUG 11 2017
WASHINGTON STATE
SUPREME COURT

WSSC CASE NO. 94632-9

WASHINGTON STATE SUPREME COURT

RALPH HOWARD BLAKELY,
Petitioner,

vs.

MICHAEL CHARLES KAHRs, et.al.,
Respondents.

PETITION FOR DISCRETIONARY REVIEW

FROM COURT OF APPEALS DIVISION One

Case No. 74765-7-I

KING COUNTY SUPERIOR COURT

Case No. 15-2-12980-5 SEA

PURSUANT TO RAP 13.4(d)

CR 59

August 8 2017

Ralph Blakely
Ralph Howard Blakely, 817995
SCCC H 1 A 19
191 Constantine Way
Aberdeen, WA 98520-9504

TABLE OF CONTENTS

	page
A. IDENTITY AND BASIS FOR REVIEW	1-13
1. ASSIGNMENTS OF ERROR	I
2. DISPUTED MATERIAL FACTS AT ISSUE	ii-iii
3. TABLE OF AUTHORITIES	iv
4. STATEMENT OF CASE AND DISCUSSION OF COURT ERRORS	v,vi,vii,viii
B. THE COURT ERRED BY NOT VACATING JUDGMENT BASED ON DENIAL OF JURY TRIAL AND JURISDICTIONAL/STRUCTURAL DEFECTS UNDER PROVISIONS OF CIVIL RULE 59. (See Ex # 41)	1,
C. DISPUTED MATERIAL FACTS AT ISSUE EXISTS FOR JURY TRIAL UNDER CR 59(f-g) FRAUD, MISREPRESENTATION, OR OTHER MISCONDUCT OF ADVERSE LAWYER UNDER RPC 8.4(c)(g)(h). . . .	2,3,
D. THE KING COUNTY TRIAL COURT ERRED BY STRIKING ALL OF BLAKELY'S SUPPORTING DECLARATIONS, AFFIDAVITS AND EVIDENCE ER 401; Open Door Doctrine ER 405	3,2
E. PETITIONER BLAKELY HEREBY ADOPTS BY REFERENCE, PETITIONER'S DECLARATION OF PLAINTIFF Ralph Blakely identification of GENUINE MATERIAL AND LEGAL FACTS AT ISSUE, 13 pages, along with attached appendix (a)through (H) CR rule 10(g). . . .	4
F. REPRESENTATION AGREEMENT	5,1,2,3,6
G. THE COURT SHOULD VACATE JUDGMENT BASED ON DENIAL OF JURY TRIAL AND JURISDICTIONAL DEFECTS UNDER PROVISIONS OF CIVIL RULE 59. (Fact and Argument Exhibit #41, 19ps 7,8	
H. A DECREE OF A COURT OF COMPETENT JURISDICTION MAY NOT BE SET ASIDE BY A COURT OF COORDINATE JURISDICTION	8,9,10-13
I. CONCLUSION FOR RELIEF PURSUANT TO RPC 8.4.(c)(g) and highly DISPUTED MATERIAL FACTS AT ISSUE	13
5. APPENDIX EXHIBITS	

MOTION TO VACATE JUDGMENT BASED ON DENIAL OF JURY TRIAL AND JURISDICTIONAL/STRUCTURAL DEFECTS UNDER PROVISIONS OF CIVIL RULE 39

Four page direct personal knowledge affidavit of Ignacia Cobos and many other supporting Declarations showing financial exploitation of a blind vulnerable adult RCW 74.34

TABLE OF CONTENTS

I. Introduction	i
II. ASSIGNMENTS OF ERROR	
(1) Did Plaintiff Blakely establish an attorney-client agency relationship when securing an agreement from Defendant Attorney Kahrs to represent him ?	
(2) Did Defendant Kahrs commit legal malpractice and/or attorney Misconduct when securing through invalid agreement with Attorney Spurgetis to limit the representation of Attorney Kahrs, contrary to Plaintiff Blakely's best interest ?	
(3) Was Defendant Kahrs agreement with Attorney Spurgetis to not represent Plaintiff Blakely in the three Thurston County lawsuits an implicit and/or explicit agreement to join an ongoing larger conspiracy to prevent Plaintiff Blakely from obtaining legal assistance that would allow Plaintiff Blakely to regain control of his finances.?	
(4) Did Defendant Kahrs intentionally commit legal malpractice by ignoring the mandates of RCW 4.08.060 requiring representation by counsel in the three Thurston County lawsuits ?	
(5) Did Defendant Kahrs intentionally ignore the legal fact that the Court's order limiting his representation that he relies on, necessarily requires an incapacitated person finding, thereby raising the jurisdictional fact at issue as to whether or not the dictates of RCW 11.88 had been followed ?	
(6) It is a material fact at issue as to whether or not Defendant Kahrs is fraudulently attempting to deceive this Court into believing that he was unaware of the legal fact that a court order limiting attorney representation and requiring authorization of a court appointed trustee, inherently creates an unethical and unconstitutional conflict of interest, by vehicle of ethical and fiduciary duty to make sure Plaintiff Blakely was represented by counsel during the three Thurston County lawsuits ?	
(7) As clearly and conclusively evidenced by the transcripts of the Thurston County Superior Court lawsuits proceedings that the trial court determined that Plaintiff Blakely was competent and that he had a right to be represented by counsel ?	

DISPUTED MATERIAL FACTS AT ISSUE

(1) A material fact at issue exists as to why Defendant Kahrs is refusing to provide a copy of the attorney-client contract signed by both Ralph Blakely and Attorney Kahrs; further creating a material fact at issue as to whether or not said attorney-client creates an attorney-client relationship as matter of law; which is relevant and material to the material fact at issue as to whether Defendant Kahrs defense of "the court made me do it," is an invalid defense and/or a fraud upon the Court.

(2) A material fact at issue exists as to whether or not Defendant Kahrs knew his defense of "the court made me do it," actually existed under the law, when he billed, inter alia, \$560 to visit Ralph Blakely in prison without first obtaining permission from the court. *Eyk66*

*Decl
10-23-15*

(4) Material facts at issue exist concerning Defendant Attorney Kahrs consumer advertisement and his letter which states "practicing in federal courts, habeas corpus, Ninth Circuit Court of Appeals, civil rights litigation," (Exhibit No. 11) violates the Washington Consumer Protection Act under the facts and circumstances present in this case.

3-10-13

(5) Material facts at issue exist as to whether Defendant Kahrs intended to fraudulently manipulate the Spokane Superior Court by claiming said Superior Court Order limited his representation, contrary to the clear terms of said Court Order, stating that the \$35,000 retainer fee was to be used "solely for the benefit of Mr. Blakely."

*Term
Mar, 2013*

(6) Material facts at issue exist concerning Defendant Attorney Kahrs' multiple billing for the same alleged services; and material facts at issue exist as to whether or not Defendant Kahrs committed theft by fraud of a portion of the money charged Ralph Blakely, inter alia, as alleged in the State Bar Association Complaint filed by Ralph Blakely against Defendant Attorney Kahrs, which prompted Defendant Kahrs to withdraw from the case.

(7) Numerous material facts at issue exist regarding whether or not Defendant Kahrs intentionally accepted \$35,000.00 of Ralph Blakely's money to protect and advance his constitutional rights in challenging Ralph Blakely's conviction and to protect Ralph Blakely's medical care rights under Washington Law, the Federal Constitution, and the American Disabilities Act; whereas Defendant Kahrs charged Ralph Blakely over \$25,000.00 and did not protect or advance medical care and did not prepare and/or file for any post conviction relief challenging Ralph Blakely's underlying unlawful conviction; when as here, Attorney Kato was paid over eight thousand dollars to file for post-conviction relief that Defendant Kahrs was paid to do, but refused to do, in violation of the attorney-client contract, attorney ethical requirements, attorney fiduciary duty to client, and in violation of Ralph Blakely's legal and constitutional rights, of which inherently constitutes, inter alia, attorney malpractice. *ST-21*

(8) Several material facts at issue exists as to why Defendant Attorney Kahrs spent substantial funds attempting to obtain a Declaration from

trial witness Robbie Juarez-Trevino that would recant the existing sworn to Declaration of Robbie Juarez-Trevino, offering sworn to testimony that he had falsely fabricated his trial testimony against Ralph Blakely at trial at behest of favor from prosecution, offered by the prosecutor to Robbie Juarez-Trevino.

(9) Numerous legal and material facts at issue exist as to whether or not Ralph Blakely is, and/or ever has been, (relevant to these proceedings) an "incapacitated person," as matter of fact and/or law; and whether or not Attorney Spurgetis and Judge Tompkin, in concert with Defendant Attorney Kahrs, deliberately exercised control of Ralph Blakely's financial assets with purpose to manipulate the scope and breadth of representation Ralph Blakely would receive from Defendant Attorney Kahrs; creating a plethora of interrelated, interdependent material facts at issue, a significant portion of which cannot be properly framed until the discovery process is completed, such as Ralph Blakely being provided a copy of the Attorney-Client Contract signed by Defendant Kahrs and Ralph Blakely; all of which will require the Court to obtain answers to the following questions from Defendant Kahrs, to wit:

408,060 (A) Was Defendant Kahrs aware that Ralph Blakely was never determined to be an "incapacitated person" pursuant to the mandates of Chapter 4.88 RCW and the Constitution of the United States ~~5x 6~~ ENCL

There can be no legitimate question as to whether Defendant Kahrs knew that Ralph Blakely had never been lawfully determined to be an incapacitated person because he would have had to know that the Grant County Superior Court jury trial and Eastern State Hospital had ruled that Ralph Blakely not an incapacitated person.

(B) Was Defendant Attorney Kahrs aware that because, as matter of law, that Chapter 4.88 RCW mandates are an essential condition precedent to the appointment of a guardian ad litem as applied to this case; and that therefore, no legitimate guardian ad litem had been appointed, thereby, rendering Attorney Spurgetis' purported appointment as trustee was and is invalid.

In other words, as conclusively evidenced by the existing record, Defendant Kahrs knew that Ralph Blakely had never lawfully been determined an incapacitated person, thereby rendering any purported "trustee" status by Judge Tompkin and Attorney Spurgetis clearly invalid, which would have been known by any competent attorney; notwithstanding that the trial judge in the three subject matter lawsuits had ruled Ralph Blakely unquestionably competent; requiring Defendant Kahrs to inform this court why he did not require this court, and the courts in the three subject matter lawsuits to appoint an attorney as required by RCW 4.08.060, whereas on the other hand, if Defendant Kahrs knew that Ralph Blakely was not an incapacitated person within the meaning of Chapter 4.88 RCW and Chapter 4.08 RCW, the any competent attorney would have known that no restrictions could be made on his representation; notwithstanding the ethical and constitutional violations encompassed in Defendant Kahrs conduct.

TABLE OF AUTHORITIES

	page
Alexander v. Sanford, 181 Wn. App.135,140,325P.3d341(2014)	1
Anderson v. Dussalt, 181 Wn. 2d 360,368,333 P.3d 395(2014)	1
Burnet v. Spokane Ambulance, 131 Wn.2d 484,933 P. 2d 1036(1997)	1
Davis v. Cox, 183 Wn. 2d 269,351 P.3d 862 (2015)	4
In re Welfare of Dill, 60 Wn. 2d 148,372 P.2d 541(1962)	13
Flaherty v. Flaherty, 50 Wn.2d 393,312 P.2d 205(1957)	13
Gonzalez v. Thaler, 565 U.S.____,132 S.Ct.641,181 L.Ed.2d619(2012)13	13
In re Detention of Hatfield, 191 Wn. App.378,362 P.3d 997(2015)	13
Hesthagen v. Harby, 78 Wn.2d 934,942,481 P.2d 438(1971)	9,12
Ex Parte Higdon 30 Wn.2d 546, 192 P.2d 744(1948)	8
(IMPDA) Jones, 182 Wn.2d 360,368,333 P.3d 395 (2014)	1,3
Keck v. Collins, 181 Wn. App. 67n5,19,21,24,35,40 (2014)	1
In re Estate of Little, 127 Wn.App.915,113 P.3d 505 (2005)	9,12
(IMDPA) Marshal, No. 200,302-8 (2007)	1
In re Guardianship of McGill, 33 Wn. App.265,654 P.2d 705 (1982)	9
In re Miller, 26 Wn. 2d 202, 173 P. 2d 538 (1946)	13
Pitzer, 141 Wn.2d 551,552, (1960)	9
Rupe v. Robinson, 139 Wash. 592, 247 P. 954 (1926)	13
Schmidt v. Coogan, 181 Wn.2d 666,287 P.3d 681 (2012)	1
Shoemake v. Ferrer, 168 Wn.2d 193, 225 P.3d 990 (2010)	1
Steel Co. V. Citizens For B E,523 U.S.83,118S.Ct.1003,140LEd210	11
In re Dependency PHVS, 186 Wn. App.167,339 P.3d 225 (2014)	13
United States v. Cotton, 535 U.S.625,630 (2002)	13
Windsor v. McVeigh, 95 U.S. 274, __S.Ct.____,23 L. Ed.914(1876)	9,12

STATUTES

42 USC 1396 p (d)(4)(A)	7
WAC 388-505	7
RCW 4.88 and 4.08.060	1,4,6,7
RCW 11.88	6

COURT RULES

CR 10	4
CR 59	1.2.4,7,13
CR 56 and CR 60	4,6,
RAP 2.5 and ER 401, 405- <u>RPC 8.4</u>	<u>6,3,1,2,13</u>

STATEMENT OF THE CASE

COURT OF APPEALS DECISION AND DISCUSSION OF ERRORS

Ralph Howard Blakely is the beneficiary of a 'special needs trust in Spokane County Superior Court. On December 3, 2009, the Court issued (granted Attorney Kahrs' devious proposed order) approving the disbursement of funds from Blakely's special needs trust. ((Deception becomes clear, when Defendant Kahrs intentionally commit legal malpractice by ignoring the 'mandates of RCW 4.08.060' requiring representation by counsel in this devious proposed order of 12/3/09)) The Court found that Blakely was in need of funds for the purposes of pursuing post-conviction relief and obtaining medical care. The court (improperly granted disbursement of \$35,000.00 to Kahrs ("solely for the benefit of Mr. Blakely")). THAT BEING THE CASE, constitutes an attorney-client relationship agreement confirmed by 1/9&5/6/2009 attorney-client agreements of "no restrictions" (Court of Appeals 4/24/17 Opinion)

Over 5 years pass, and Blakely being an "incapacitated person" RCW 4.08.060 is without representation, as Kahrs declines to file such complaints and explained that these complaints were outside his representation (as outlined by the Spokane County Superior Court order that he submitted and prepared for his 'self-interest' and self-enrichment). Denying incapacitated person Blakely without representation on the three Thurston County Superior Court lawsuits of severe injury. Almost Blind Blakely filed his civil rights complaints pro se. (Court of Appeals 4/24/17 Opinion)

November 2015, Trial Court hearing, Blakely presented (9) nine 'GENUINE ISSUES OF MATERIAL FACTS' and the burden should not have been shifted to the nonmoving party of incapacitated person Blakely, when the Court 'opens the door' with self-interest Kahrs devious Court Order for the disbursement of \$35,000.00 "FOR THE SOLE BENEFIT OF Mr. Blakely" attorney-client relationship agreement.

In May 2015, Blakely an incapacitated person, pro se, filed a complaint for legal malpractice and breach of fiduciary duty against Kahrs and his law firm. The trial court erred January 25, 2016, dismissing all claims against Kahrs by not considering Blakely's incapacitated person RCW 4.08.060 mandating legal representation. (Court of Appeals page 2)

Lawyer Kahrs 'December 3, 2017 self-interest drafted order for \$35,000. from Blakely's special person needs trust in Spokane County Superior Court' makes and fulfills an attorney-client agreement contract !(COA Opinion p 3) Blakely (5 years later) alleges that Kahrs breached his duty of care by refusing to represent him in pursuing ((medical negligence, malpractice and brutal battery and assault by medical staff complaints)) and that he suffered damages when he had to file these complaints pro se. (COA Opinion p3) The trial court and Court of Appeals erred with conflict and dispute over substantial evidence of Kahrs' letters (Ex.No.) clearly stating he would not handle the Ninth Circuit Court of Appeals issue of compelling medical medication for Blakely of cobalamin. Then latter refusing to represent 'incapacitated person' Blakely on his three Thurston County medical negligence, malpractice lawsuits. But latter puts in Notice of Appearance, and pays court fees without trustee permission. The COA Opinion opens this door)

The genuine issue of material fact must be considered by the courts "In moving for summary judgment, Kahrs argued that his scope of representation was limited to representing Blakely for the two purposes identified (by his self-interest drafted court order Ex.Nos. 93-94) by the Spokane County Superior Court order of December 3, 2009 - pursuing post-conviction relief and obtaining medical care." "Blakely claims Kahrs manipulated and 'misled' the trial court by his self-interest drafted court order that the Spokane Superior Court Judge altered with special notation ((SOLELY FOR THE BENEFIT OF Mr. Blakely)) (COA Apinion page 3)

Lawyer Kahrs manipulating and misleading the trial court to obtain \$35,000.00 from Blakely's special person needs trust fund constitutes and affirms the attorney-client contract. (COA Opinion p 3) Kahrs scheme is clearly shown by the January 9, and May 1, 2009 two general attorney-client relationship agreements that Blakely compelled the order to produce 5 years later with a fabricated self-interest bill. (Exhibit # K 66,65) shows that Kahrs has knowledge of the Special Person Care Trust needing a guardian ad litem and legal representative.

The Court of Appeals Opinion page 4 "these representation agreements were 'superseded by the Spokane County Superior Court order limiting his representation." This egregious error is conflict with the trial court's ruling that it does not obide by another Courts' ruling on an incapacitated person RCW 4.08.060, but the COA states "representation agreements were superseded by the Spokane Court, p 3 "The duty of care Kahrs owed to Blakely did not include an obligation to pursue the civil rights complaints or any other matters outside the scope of the court order. That Kahrs schemingly drafted to misled the Spokane Court, which noted "solely for the benefit of Mr. Blakely".

Kahrs 5 year late fee billing shows 'absolutely so' benefits to either post-conviction, or in obtaining medical care. Kahrs was in conflict with timely obtaining expert neurologist Raymond Singer and refused to obtain a local neurologist.

The Court of Appeals and trial court have erred by not considering the genuine issue of material fact that Kahrs (shown conflict) Exhibit No. K38, vs. No. 8 of hiring an unlicensed investigator Kindred to have Robbie Jaarez-Trevino to withdraw his recantation Declaration that was witnessed by Ignacio Cobos, Stephan Espinosa Affidavits and licensed

The Court of Appeals Erred page 4, "Blakely alleged in his complaint that he was billed \$35,000 for services that were never received, that Kahrs took advantage of the fact that he was partially blind and vulnerable, and that Kahrs failed to return certain legal documents." "In support of the motion for summary judgment on this claim, Kahrs submitted a declaration asserting that he submitted his billings for legal services on Blakely's behalf to the trustee for approval and transferred the money from the trust account only after he received permission from the trustee." "He stated that he always obtained the trustee's approval before making payments for medical (what medical?) and court records and for an investigator, medical experts, and other professionals." "Blakely's request for discovery; Kahrs failed to produce evidence of "e-mails" permission from trustee) (Kahrs violated the mandates of RCW 4.08.060 and RCW 11.88.040 and loyal counsel of no self-interest) (Kahrs' fee billing was (5) five years after he drafted the 12/3/09 order that the Spokane Court Judge specifically noted "solely for the benefit of Mr. Blakely" and has absolutely received NO BENEFIT from the \$35,000. Kahrs' refused to contact Neurologist Carlo Bellabarda, and or Dr. William Landau and procrastinated about timely hiring Neurologist Raymond Singer after summary judgment was entered on the three Thurston County Superior Court medical negligence and malpractice complaints. (Court of Appeals page 4)

The Court of Appeals Erred page 5, Kahrs failed to show that Blakely produced (9) essential genuine issue of material fact in addition to 12 highly disputed issues of material fact, supporting attorney self-interest, breach of fiduciary duty, duty of care, fraud, attorney conflict, resulting injuries, that the claimed breach proximately caused those severe injuries. (Court of Appeals page 5)

A. IDENTITY AND BASIS FOR REVIEW

Petitioner Ralph Howard Blakely is 81, blind left eye, distorted right vision, and is the beneficiary of a 'Special Person Care Needs Trust' in Spokane County Superior Court. On December 5, 2009, the Court improperly granted Attorney Kahrs (proposed Order) that Judge Tompkins made a special notation of 'solely for the benefit of Mr. Blakely'. This was for the disbursement of \$35,000 from Blakely's Special Person Care needs Trust. ((Deception becomes clear, when Defendant Kahrs intentionally commits fraud upon the Court by ignoring the "mandates of RCW 4.08.060" requiring representation by counsel for this December 3, 2009 Order.))

B. THE COURT ERRED BY NOT VACATING JUDGMENT BASED ON DENIAL OF JURY TRIAL AND JURISDICTIONAL/STRUCTURAL DEFECTS UNDER PROVISIONS OF CIVIL RULE 20. (See exhibit No. 41

The above being the Case, constitutes and 'unrestricted attorney-client relationship agreement. (Which January 9, and May 1, 2009 agreements were concealed, until compelled production by the court) Burnet v. Spokane Ambulance, 131 Wn.2d 484, 933 P.2d 1036(1997) Kahrs breached his duty of care by refusing to represent Blakely in pursuing 'medical negligence, malpractice, and severe injury assault complaints in Thurston County Superior Court before statute of limitations. Keck v. Collins, 181 Wn.App.67m5,19,21,24,35,40(2014); Anderson v. D Dussalt, 181 Wn.2d 360,368,333 P.3d 395(2014); In Matter of Disciplinary Proceedings Against Jones, 182 Wn. 2d 17,34,35,40-45(2014) (IMDPA) Marshal, No. 200,302-8(2007) n 50 concealment of the fee arrangement, failure to maintain personal integrity in a situation where the Attorney seeks to "deceive" the client. Kahrs' attorney-client fee billing (5) years later on June 23, 2014 is a substantial proffered evidence to support Blakely's Complaint of legal malpractice, breach of fiduciary and care for the "sole benefit of Mr. Blakely". (IMPDA) Jones,182 Wn. 2d 17,34,35,40-45, 338 P.3d 842 (2014); Schmidt v. Coogan, 181 Wn 2d 666,287 P.3d681(2012); Shoemaker v. Ferrer, 168 Wn.2d 193,225P.3d990(10) Alexander v. Sanford, 181 Wn. App.135,140, 325 P. 3d 341,251,n2,58,89 (2014)

C. DISPUTED MATERIAL FACTS AT ISSUE EXISTS FOR JURY TRIAL,
UNDER CR 59 (f-g); CR 60 (b)(4) FRAUD, MISREPRESENTATION,
OR OTHER MISCONDUCT OF AND ADVERSE LAWYER UNDER RPC 8.4(c)(g)(h)

Whether or not Defendant Kahrs obtained permission from the Court when he billed, inter alia, \$560. to visit Ralph Blakely ? Ex.#66?
Whether Defendant Kahrs self-interest in his 5 year later fee billing of about \$17,000.00 for post-conviction relief for Mr. Blakely was for Kahrs' self-interest-enrichment ? Based on this billing and clear reference to the \$ 2,317. payments to 'unlicensed' investigator Taylor Kindred to have Robbie-Juarez-Trevino withdraw his "recantation declaration" when licensed Detective Mario Torres, Ignacio Cobos, Stephan Espinosa, worked diligently to obtain that 'second recantation declaration' from Juarez-Trevino. Kahrs refused to pay and refused to communicate with Torres and Cobos.(Exhibits Nos. 4,5, Kahrs # 38)

Kahrs refused to pay Detective Mario Torres for his work of 2009 for the affirmation of the Juarez-Trevino notorized recantation affidavit. (Which was seized by C/O s Getchel, Newberry, Whaley September 10, 2009 Exhibit Nos. 12 (a-d) Quoting Cobos Affidavit:

8. That I, further viewed a search report dated 9/10/09, from the Stafford Creek Correction Center, and C/O Whaley Declaration had seized (7) of Mr. Blakely's legal document boxes.
9. That Mr. Juarez-Trevino's affidavit was among those (7) boxes.
10. That correctional officers seized from my possession 'numerous legal documents with Mr. Blakely's name and a copy of the affidavit of Mr. Juarez-Trevino.'
11. That I again, on June 2010, were instrumental in obtaining a second declaration from Mr. Juarez-Trevino, with the condition that said declaration
12. That when I found out that Mr. Kahrs was taking advantage of Mr. Blakely by financially exploiting him because Mr. Kindred was also working for Grant County Prosecutor's Office, and Mr. Juarez-Trevino's affidavit made it crystal clear that he was instructed on his fabricated testimony by the Grant County Prosecutor's office.
13. That Mario Torres a licensed investigator had already performed an investigation on behalf of Mr. Blakely for which Mr. Kahrs collected about \$ 17,000. and Mr. Kahrs refused to communicate with Mr. Torres.

D. THE KING COUNTY TRIAL COURT ERRED BY STRIKING ALL OF Blakely's SUPPORTING DECLARATIONS, AFFIDAVITS AND EVIDENCE, ER 401; OPEN DOOR DOCTRINE ER 405.

Whether or not the Court of Appeals erred by not considering the evidence, declarations, affidavits supporting fraud, misrepresentation by an adverse lawyer under RPC 1.8 ? In Matter of Disciplinary Proceedings Against (IMDPA) Jones, 182 W. 2d 360,368, 333 P. 3d 395 (2014)?

King County Superior Court Judge Inveen abused discretion by striking all of Plaintiff's affidavits, declarations, exhibits of direct personal knowledge supporting Lawyer Kahrs' character misconduct under ER 405. This opens the door doctrine to those personal knowledge letters, affidavits, declarations and supporting exhibits showing misrepresentation. The Striking of Ignacio Cobos December 4, 2015, four page Affidavit, whose many letters of correspondence with Lawyer Kahrs about his and licensed detective Torres efforts to obtain 'recantation affidavit from Juarez-Trevino follows:

14. That when I attempted to communicate with Mr. Khars and Mr. Spurgetis, they were rude and cut the communication short, despite the fact that I had a written release of information and authorization from Mr. Blakely, which had previously been served to them by mail.

15. That I wanted to explain to Mr. Kahrs and Mr. Spurgetis about the fact that I was instrumental in the investigation and recantation of Mr. Jaurez-Trevino.

16. That Mr. Khars refused to use Mr. Juarez-Trevino's recantation on behalf of Mr. Blakely.

17. That I prepared several legal documents for Mr. Blakely that clearly demonstrated that Mr. Juarez-Trevino lied about being at a Unit at Airway Heights Correction Center, when he was at a different Unit.

18. That it is my belief that Mr. Kahrs hired Mr. Kindred to interview Mr. Juarez-Trevino for the "SOLE" purpose to "coerce" Mr. Juarez-Trevino to withdraw his delcaration on the recantation of his fabricated testimony.
Scribed and Sworn Affidavit of Ignacio Cobos, 12/4/15/

The Afore-mentioned Cobos Affidavit is one of many personal knowledge Declarations, exhibits showing fraud upon the Court (Exhibit No.5)

Based on denial of jury trial and jurisdictional / structural defects under provisions of civil rule 59, challenging judgment rendered by Honorable Laura Inveen dated January 25, 2016, to wit: Order Granting Defendants' Motion for Summary Judgment Dismissal, which was rendered by Judge Inveen without competent jurisdiction.

E. Petitioner Blakely hereby adopts by reference, Petitioner's Declaration of Plaintiff Ralph Blakely identification of GENUINE MATERIAL AND LEGAL FACTS AT ISSUE, THIRTEEN PAGES, along with attached thereto Appendix (A) through (H), see CR rule 10 (g):

(g) Adoption by Reference ; Exhibits, Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Petitioner Blakely hereby files this Motion to Vacate Judgment premised primarily on this Court's ruling to strike the material and jurisdictional legal facts at issue encompassed in said "DECLARATION of Plaintiff Ralph Blakely IDENTIFICATION OF GENUINE MATERIAL & LEGAL FACTS AT ISSUE," thereby unlawfully and unconstitutionally depriving Plaintiff Blakely of a jury trial in violation of the State of Washington and the United States Constitutions, cf., . Davis v. Cox, 183 Wn. 2d 269, 351 P. 3d 862 (2015).

This Court's Order granting Summary Judgment states in the handwritten portions thereto, as follows:

In so ordering, the court finds the legal position of defendant's motion to strike as well taken, and has not considered materials submitted in violation of CR 56 (e).

As substantial portion of the materials submitted by Plaintiff were not made on personal knowledge, did not set forth facts that would be admissible in evidence, and/or did not affirmatively show the affiant was competent to testify to the matters stated there in. The Court further notes that lay testimony is not competent to opine on the legal standard of care.

Further, there is no legal authority for this court to review another superior court's order whether it be proceedings related to Plaintiff's dissolution, his competency or the special person needs trust.

Footnote 1: In the future such position should be taken in the form of an objection rather than separate pleading, LCR 56 (e).

This Court's conclusion that "there is no legal authority for this

for this Court to review another superior Court's Order," has the legal force and effect, under the full faith and credit clause, of binding this Court with the fact that Plaintiff Blakely is an incapacitated person as matter of law, rendering said Order Granting Summary Judgment null and void because this Court cannot lawfully proceed against an incapacitated person who has a guardian ad litem appointed as a trustee.

In addition, Defendant Kahrs has now provided this Court a copy of the "Representation agreement" between Defendant Kahrs and Plaintiff Blakely which unquestionable creates an attorney-client relationship between Attorney Kahrs and Ralph Blakely, nullifying Defendant Kahrs "the court made me do it by limiting my representation" defense, which states in pertinent part:

F.

REPRESENTATION AGREEMENT

1. In consideration of Kahrs Law Firm, P.S.(Attorney), agreeing to represent RALPH Blakely (Client) in the matter of general legal representation, Client agrees to the following conditions regarding Attorney's representation.

4. A retainer of \$5,000 must be paid by Client to Attorney prior to the time any work (other than the initial interview) will be done or as arranged between Client and Attorney. Cost incurred by Attorney will be deducted from the retainer at the time monthly bills are prepared. Invoices will be sent out for work done on the account and fees will subsequently be deducted from the retainer. When the retainer is completely expended, the Client will be asked for subsequent retainer based on the amount and type of work anticipated.

7. This agreement shall be deemed executed in the State of Washington and shall be interpreted and construed in accordance with the laws of the State of Washington relating to contracts made and performed therein. Venue shall be proper only in the County of King, State of Washington.

There are no restrictions of representation encompassed in the above "Representation Agreements" because it is for "general legal representation", nor could there be, creating the following material facts at issue.

MATERIAL FACTS AT ISSUE

G.

BASIS FOR PETITION FOR DISCRETIONARY REVIEW

Petitioner Ralph H. Blakely, age 81, is almost blind, asking this Supreme Court to review the errors of the Court of Appeals I No. 74765-7-1 April 24, 2017 Opinion. This arises from Appeal from King County Superior Court Case No. 15-12980-5, Honorable Laura C. Inveen granting Defendant's Order for Summary Judgment dismissal as a manifest error RAP 2.5.(a)(3); CR 60 (b) (2)(4), dated 6/14/16, stating in pertinent part, germane to this Petition for Discretionary Review:

Page 23:

C. This Court's conclusion that "there is no legal authority for this court to review another superior court's order," had the legal force and effect, under the Full Faith and Credit Clause, of binding this Court with the fact that Plaintiff (Petitioner) Ralph Blakely is an incapacitated person as a matter of law, rendering said Order Granting Defendant Michael C. Kahrs' Summary Judgment null and void.

Page 24:

2. The Genuine Issue of Material Fact exists (10-22-15) Ex.#29 Declaration of Defendant Kahrs) misrepresenting, misleading the court, direct conflict with Attorney-client agreements of 1/9/09 and 5/1/09 Ex.# 17(which were prepared by Kahrs) showing concealment, fraud as directly indicated on pages 3-4 of Ex.# 29, quoting:

Page 3:

"I did not represent him (Blakely) on civil matters, including his civil rights and medical malpractice claims, Ex.# 11."

Page 4:

"I cannot help you on your Ninth Circuit Case"1/26/10letter."

Page 5:

"In February, 2011, I again declined to take on Mr. Blakely's medical malpractice and brutal assault injury cases before the statute of limitations in April and May of 2010." Ex.#

Page 25:
X
Plaintiff Blakely was forced to prepare and serve and file his two medical Plaintiff's Exhibit #42, page 4, paragraph number:

(4) Did Defendant Kahrs intentionally commit legal malpractice by IGNORING the mandates of RCW 4.08.060 requiring the representation by counsel in the Three Thurston County Superior Court lawsuits.

(5) Did Defendant Attorney Kahrs intentionally IGNORE the legal fact that the Court's Order limiting his representation that he relies on, (Ex. # 16) necessarily requires an incapacitated person finding, thereby raising the jurisdictional fact at issue as to whether or not the dictates of RCW 11.88 had been followed.

Page 26:

H. THE COURT SHOULD VACATE JUDGMENT BASED ON DENIAL OF JURY TRIAL AND JURISDICTIONAL DEFECTS UNDER PROVISIONS OF CIVIL RULE 50, (Fact and Argument Exhibit # 41, 19 pages)

(1) Was Defendant Kahrs aware that Blakely was never determined to be an "incapacitated person" pursuant to the mandates of Chapter 4.88 RCW and the Constitution of the United States.

There can be no legitimate question as to whether Defendant Kahrs knew that Ralph Blakely had never been lawfully determined to be an incapacitated person because he would have had to know that the Grant County Superior Court Jury Trial and Eastern State Hospital had ruled that Ralph Blakely was not an incapacitated person, when reviewing the criminal record.

(2) Was Defendant Attorney Kahrs aware that because, as matter of law, RCW 4.88 "mandates" are an essential condition precedent to the appointment of a guardian ad litem as applied to this case; and that therefore, no legitimate guardian ad litem had been appointed, thereby, rendering Attorney Spurgetis' purported appointment as trustee invalid and void.

In other words, as conclusively evidenced by the existing record, Defendant Kahrs knew that Ralph Blakely had never lawfully been determined an incapacitated person, thereby rendering any purported "trustee" status by Judge Tompkins and Attorney Spurgetis clearly invalid, which would have been known by any competent attorney; notwithstanding that the trial judge in the three subject matter lawsuits has ruled Ralph Blakely unquestionably competent; requiring Defendant Kahrs to inform this Court why he did not require this Court and the Courts in the three subject matter lawsuits to appoint an attorney as required by RCW 4.08.060; whereas on the other hand, if Defendant Kahrs knew that Ralph Blakely was not an incapacitated person within the meaning of Chapter 4.88 RCW, then any competent attorney would have known that no restrictions could be lawfully made on Defendant Attorney Kahrs representation.

There can be no question that Spokane Superior Court Judge Tompkins rendered Ralph Blakely an incapacitated person, as a matter of law, by Order dated 2/27/01, which states in pertinent part:

At the time of resolution of the pending cases, the Court created a single transaction discretionary support trust under the provisions of WAC Chapter 388-505 and 42 U.S.D.C. 1396p(d)(4)(A). This trust protected ongoing benefits as well as dissolution and other proceeds for Ralph H. Blakely, Jr. None of the assets herein were made available to Ralph H. Blakely, Jr., his agent or Guardian, nor were either to have any ownership thereof whatsoever. All funds received pursuant to the funding order remained property of this Court, and were then funded into the trust directly by said Court, Bond was set at \$250,000.00, with the balance of trust blocked.

his agent or Guardian, nor were either to have any ownership thereof whatsoever. All funds received pursuant to the funding order remained property of this Court, and were then funded into the Trust directly by said Court. Bond was set at \$250,000.00, with the balance of the trust blocked.

The legal force and effect of said 2/27/01 Order, which remains in force to date as matter of law, is that there can be no question that State and federal courts have competent jurisdiction over the "incapacitated" legal personage of Ralph Blakely Jr., and there can be no question that Respondent Spokane Superior Court Judge Tompkins has exercised, and is exercising, exclusive custody and control over the incapacitated legal personage of Ralph Blakely at all time material to the underlying lawsuit against Attorney Kahrs; who implicitly acknowledges the legal fact that his client Ralph Blakely Jr. is an "incapacitated person, under the sole jurisdiction of Spokane Superior Court Judge Tompkins by virtue of said 2/27/01 Order, Ex Parte Higdon, 30 Wn.2d 546, 192 P.2d 744 (1948):

I i A decree of a court of competent jurisdiction may not be set aside by a court of coordinate jurisdiction.

This simply means that the Superior Court below lacked competent jurisdiction to proceed in Ralph Blakely's lawsuit against Attorney Kahrs, without compliance with the appointment of counsel and guardian ad litem mandates, or in the alternative, a King County Superior Court determination that Ralph Blakely was not lawfully an "incapacitated person," and not under the exclusive jurisdiction of Spokane Superior Court Judge Tompkins; which would inherently remove

the claimed Judge Tompkins' restriction on the scope of representation by Attorney Kahrs, cf., In Windsor v. McVeigh, 93 U.S. 274, ___ S.Ct. ___, 23 L.Ed. 914 (1876):

The doctrine where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment however erroneous, cannot be collaterally assailed, is only correct when the court proceeds after acquiring jurisdiction of the cause, according to the established modes of character of its judgment, the law which is applicable to it.

In this case, Judge Tompkins' competent jurisdiction over Ralph Blakely Jr. and his assets is being challenged in the Ninth Circuit Court of Appeals, Appeal No. 17-25040, District Court No. 2-16-CV-0279-TOR, claiming that "Judge Tompkins' 'incapacitated person' finding is null and void for failure to comply with procedural due process mandates, see RCW 11.88.040; cf., In re Guardianship of McGill, 33 Wn.App. 265, 654 P.2d 705 (1982)," citing In re Estate of Little, ¹²⁷ Wn.App. 915, 113 P.3d 505 (2005):

The failure to give due notice to heirs of a probate as required is a denial of procedural due process that "amounts to a jurisdictional defect as to them, rendering the decree of distribution void." Hesthagen v. Harby, 78 Wn.2d 934, 942, 481 P.2d 438 (1971), cited in Pitzer, 141 Wn.2d at 552. Such a decree can be attacked at any time. Pitzer, 141 Wn.2d at 551 (citing Phillip A. Grautman, Vacation and Correction of Judgments in Washington, 35 Wash. L. Rev. 505, 530 (1960)("There is not time limit as a judgment entered without jurisdiction is void.")).

This Court of Appeals decision acknowledges that Attorney Kahrs was paid \$35,000.00 to provide legal assistance to Ralph Blakely in challenging his criminal conviction and pursuit of medical care, but claims Attorney Kahrs was

properly limited in his representation, stating in pertinent part:

According to Kahrs, Blakely wanted him to assist in pursuing post-conviction relief related to his conviction and in obtaining medical care. Kahrs said he agreed to assist him on these two matters. Blakely is the beneficiary of a special needs trust in Spokane County Superior Court. On December 3, 2009, the court issued an order approving the disbursement of funds from Blakely's special needs trust. The court found that Blakely was in need of funds for the purposes of pursuing post-conviction relief and obtaining medical care. The court found that Blakely consented to the disbursement of funds for these purposes in the amount of \$35,000 total.... Blakely requested that Kahrs file various torts and civil rights complaints on his behalf against the prison.... Kahrs declined to file such complaints and explained that these complaints were outside his representation as outlined by the Spokane County Superior Court's Order. Blakely filed his civil rights complaints pro se.... Blakely alleges that Kahrs breached his duty to of care by refusing to represent him in pursuing the civil rights complaints and that he suffered damages when he had to file these complaints pro se.... Blakely's claim of legal malpractice was properly dismissed because, given the limited scope of the attorney-client relationship, the duty of care Kahrs owed to Blakely did not include an obligation to pursue the civil rights complaints or any other matters outside the scope of the court order....

The foregoing creates several jurisdictional questions that were inherently before the trial court and this Court of Appeals, to wit:

(1) IF in fact this Court of Appeal determines that Judge Tompkins' order limiting the scope of Attorney Kahrs representation is not null and void for lack of competent jurisdiction over the "incapacitated legal personage" of Ralph Blakely then the Superior Courts below lacked competent jurisdiction to proceed, because of failure to appoint guardian ad litem and appointment of attorney.

(2) If Judge Tompkins' "incapacitated person" Order is valid maintaining exclusive jurisdiction over the "incapacitated legal personage" of Ralph Blakely, then Attorney Kahrs is guilty of both legal malpractice and breach of fiduciary duty for failure to challenge, under ground of jurisdictional defect, Ralph Blakely's Grant County criminal conviction underlying his current incarceration.

(3) If Judge Tompkins' ongoing exclusive jurisdiction over the "incapacitated person" legal personage of Ralph Blakely is void for failure to follow procedural due process mandates; then Attorney Kahrs is guilty of legal malpractice and fraud along with breach of fiduciary duty for failure to comply with his client, Ralph Blakely's representation requests; notwithstanding the legal fact that Attorney Kahrs accepted a \$35,000.00 fee to challenge Ralph Blakely's Grant County conviction, but did not do so.

The Court of Appeals concluded in its last paragraph of the 4/24/17 decision that these above identified jurisdictional question were not properly before the Court of Appeals, stating:

Blakely next claims that the trustee of his special needs trust was not lawfully appointed because he was never officially declared an "incapacitated person" under Washington law and a required guardian ad litem was not appointed. These issues are separate from Blakely's complaints against Kahrs for legal malpractice and breach of fiduciary duty and are not properly before the court in this appeal.

As clearly pointed out above, a determination of whether Ralph Blakely is an "incapacitated person" or not, is an inherent jurisdictional question either way, which a Court of Appeals is required to address as matter of law, cf., Steel Co. v. Citizens For a Better Environment, 523 U.S. 83, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998):

Every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it.... And if the record discloses that the lower court was without jurisdiction this Court will notice the defect, although the parties make no contention concerning it ... we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.

As clearly shown above, the scope and/or limitations

The involved Grant County, King County, and Thurston County Superior Courts below were all without competent jurisdiction over the subject matter for failure to appoint guardian ad litem and attorney for Ralph Blakely's "incapacitated person" legal personage, without a judicial restoration of Ralph Blakely's competent legal personage. In

subject matter jurisdiction over the non-existent incapacitated legal personage of Ralph Blakely. 505 (2005); rendering Spokane County Superior Court without (1971): In re Estate of Little, 915, 113 P.3d 438 hearing; Besthagen v. Haroy, 78 Wn.2d 934, 481 P.2d 438 127 Ralph Blakely the right to be present at the determination failure to provide Ralph Blakely notice and failure to allow Blakely was and is an incapacitated person is void for In this case, Judge Tompkins' determination that Ralph

entitled to respect in any other tribunal. judicial determination of his rights, and is not giving him an opportunity to be heard, is not a pronounced against a party without hearing him or and conscience of all nations. A sentence of a court justice, recognized as such by the common intelligence are inseparable. This is a principle of natural there he may defend; for the liability and the right, wherever one assailed in his person or his property,

S.Ct. _____, 23 L.Ed. 914 (1876):

questions presented, Windsor v. McVeigh, 93 U.S. 274, have this Court of Appeals resolve the jurisdictional County conviction, are inclusive of Ralph Blakely's right to challenge Ralph Blakely's jurisdictionally defective grant and whether or not Attorney Kahrs was duty bound to placed on Attorney Kahrs' representation of Ralph Blakely,

In re Welfare of Dill, 60 Wn. 2d 148, 372 P. 2d 541 (1962); which is well established law that any competent attorney would have been aware thereof, see Rupe v. Robinson, 139 Wash. 592, 247 P. 954 (1926); In re Miller, 26 Wn. 2d 202, 173 P. 2d 538 (1946); Flaherty v. Flaherty, 50 Wn. 2d 393, 312 P. 2d 205 (1957); In re Dependency of PHVS, 186 Wn. App. 167, 339 P. 3d 225 (2014); In re Detention of Hatfield, 191 Wn. App. 378, 362 P.3d 997 (2015).

The foregoing identified subject matter jurisdiction related issues can be raised at any time in the proceedings and once a court is made aware of such jurisdictional question, a court is required by law and Constitution to address said jurisdictional issues and question, cf., Gonzalez v. Thaler, 565 U.S. ___, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012):

When a requirement goes to subject-matter jurisdiction, Courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. See United States v. Cotton, 535 U.S.625,630 (2002). Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid objection may lead a Court midway through briefing to dismiss a complaint in its entirety.

J.

CONCLUSION FOR RELIEF

This Washington Supreme Court should accept review based on the trial court's denial of a jury trial and jurisdictional defects under provisions of civil rule 59. (Fact and Argument Exhibit # 41,19 p.)

This Court should vacate Defendant's Judgment based on fraud, misrepresentation, other misconduct, and adverse lawyer under RPC 8.4 (c)(g)(h). Also, this Court should vacate judgment based on Petitioner's nine highly disputed material facts at issue.

Dated this day of August 2017. Respectfully submitted,

Ralph H. Blakely
Ralph H. Blakely, 917995

EXHIBIT 4

Ex.4
10

STATE OF WASHINGTON)
)
COUNTY OF FRANKLIN)

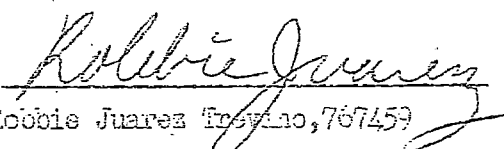
ss: RECANTATION AFFIDAVIT OF ROBBIE JUAREZ TREVINO

1. I am now a resident of Coyote Ridge Correction Center, P.O.Box 789; Connell, Washington, 99362-0769.
2. That I had met with Detective David Matney and Grant County Prosecutor John D. Knodell, prior to the middle of September 2003, to discuss the entrapment of Mr. Blakely.
3. About the last week of August 2003, I wrote a letter to Mr. Blakely, who was in Airway Heights Correction Center; as I was under the direction of Detective David Matney.
4. That during the March 9, 2005, trial of Mr. Blakely, I testified, "having a conversation with Mr. Blakely about killing his wife and daughter for \$40,000 and \$80,000"; between the specific dates of October and December 18, 2002. (Verbatim Report pages 629-652) This communication allegedly took place out front of "K" unit of Airway Heights Correction Center (MAIN).
5. I, now recant this testimony as being false, because the inmate placement records of Mr. Blakely places him in a separate prison of "CAMP" during this specific period of time between October 2002-December 2002.

I, Robbie Juarez Trevino, 767459, declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

SWORN TO ON OATH, this ___ day of _____, 2010.

Attested:


Robbie Juarez Trevino, 767459

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

NO. 15-2-12980-5 SEA

DECLARATION OF:
IGNACIO COBOS

STATE OF WASHINGTON

SS.

COUNTY OF WALLA WALLA

I, Ignacio Cobos, after being first duly sworn, under oath, deposes and says:

1. That I am over 18 years of age, and competent to be a witness herein.

2. That I am well acquainted with Mr. Ralph Howard Blakely's criminal case.

3. That before Mr. Michael Kahrs, Attorney at Law, accepted Mr. Blakely's criminal and civil actions, I, as a competent paralegal, went through Mr. Blakely's verbatim report of proceedings of his jury trial.

AFFIDAVIT OF IGNACIO COBOS

Page 1 of 4

4. That I made notes on the verbatim report of proceedings for March 5-9, 2005, showing clear-fabricated inconsistent testimony of Robbie Juarez-Treviño.

5. That those hand-written notes would be found in the verbatim report of proceedings for March 9, 2005, pages 608 through 705

6. That these pages of the verbatim report of proceedings have been filed with the King County Superior Court, under case number 15-2-12980-5 SEA.

7. That before Mr. Kahrs took Mr. Blakely's case, I was instrumental in obtaining a Notarized Affidavit from Mr. Juarez-Treviño, in which he, under penalty of perjury, recanted his fabricated testimony of March 9, 2005.

8. That I further viewed a Search Report dated September 10, 2009, from Stafford Creek Correctional Center, where Correctional Officers had seized seven (7) of Mr. Blakely's legal document boxes.

9. That Mr. Juarez-Treviño's affidavit was among those seven (7) boxes.

10. That Correctional Officers seized from my possession "numerous" legal documents with Mr. Blakely's name and a copy of the affidavit from Mr. Juarez-Treviño.

11. That I, again, on June 2010, were instrumental in obtaining a second declaration from Mr. Juarez-Treviño, with the condition that said decla-

AFFIDAVIT OF IGNACIO COBAS

Page 2 of 4

ration would not be used until Mr. Juarez-Treviño had a new identity and was relocated in Mexico.

12. That when I found out that Mr. Kahrs had hired an unlicensed investigator, Mr. Kindred, to perform work on behalf of Mr. Blakely, I believed that Mr. Kahrs was taking advantage of Mr. Blakely by financially exploiting him because Mr. Kindred was also working as an investigator for Grant County Prosecutor's Office, and Mr. Juarez-Treviño's affidavit made it crystal clear that he was instructed on his fabricated testimony by the Grant County Prosecutor's Office.

13. That Mario Torres, a licensed investigator had already performed an investigation on behalf of Mr. Blakely for which Mr. Kahrs collected \$ 35,000.00, and Mr. Kahrs refused to communicate with Mr. Torres.

14. That when I attempted to communicate with Mr. Kahrs and Mr. Spurgetis, they were rude and cut the communication short, despite the fact that I had a written Release of Information and Authorization from Mr. Blakely, which had previously been served to them by mail.

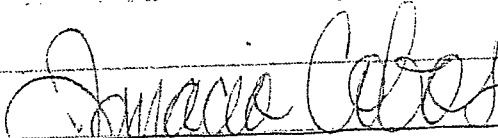
15. That I wanted to explain to Mr. Kahrs and Mr. Spurgetis about the fact that I was instrumental in the investigation and recantation of Mr. Juarez-Treviño.

16. That Mr. Kahrs refused to use Mr. Juarez-Treviño's recantation on behalf of Mr. Blakely.

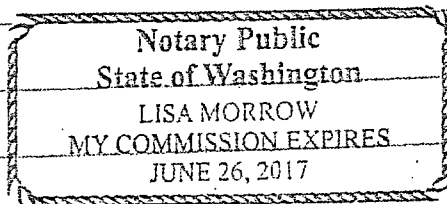
17. That I prepared several legal documents for Mr. Blakely, that clearly demonstrated that Mr. Juarez-Treviño lied about being of a Unit at Airway Heights Convention Center, when he was at a different Unit.

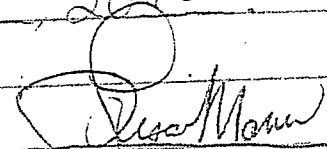
18. That it is my belief that Mr. Kahrs hired Mr. Kindred to interview Mr. Juarez-Treviño for the "sole" purpose to "coerce" Mr. Juarez-Treviño to withdraw his declaration on the recantation of his fabricated testimony.

Further affiant says naught.


Ignacio Cobos

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4
day of December, 2015




Notary Public in and for the State
of Washington.

Residing at: Walla Walla County
My Commission Expires on: 6/26/17

AFFIDAVIT OF IGNACIO COBOS

Page 4 of 4

EXHIBIT 41

Ex 41

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY.

RALPH HOWARD BLAKELY,

Plaintiff,

Cause No. 15-2-12980-5 SEA

vs.

MICHAEL CHARLES KAHRS, and
KAHRS LAW FIRM TRUST ACCOUNT,

DEFENDANT(S).

MOTION TO VACATE JUDGMENT BASED ON DENIAL OF
JURY TRIAL AND JURISDICTIONAL/STRUCTURAL DEFECTS
UNDER PROVISIONS OF CIVIL RULE 59

Comes Now, Plaintiff Ralph Howard Blakely, with this MOTION TO VACATE JUDGMENT BASED ON DENIAL OF JURY TRIAL AND JURISDICTIONAL/STRUCTURAL DEFECTS UNDER PROVISIONS OF CIVIL RULE 59, challenging judgment rendered by Honorable Laura Inveen dated 1/25/16, to wit: ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSAL, which was rendered by Judge Inveen without competent jurisdiction.

Plaintiff Blakely hereby adopts by reference, Plaintiff's "DECLARATION OF PLAINTIFF RALPH BLAKELY IDENTIFICATION OF GENUINE MATERIAL & LEGAL FACTS AT ISSUE," thirteen pages, along with attached thereto Appendix (A) through (H), see CR Rule 10(g):

(g) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(1)

BASIS

Plaintiff Blakely hereby files this Motion to Vacate Judgment premised primarily on this Court's ruling to strike the material and jurisdictional legal facts at issue encompassed in said "DECLARATION OF Plaintiff RALPH BLAKELY IDENTIFICATION OF GENUINE MATERIAL & LEGAL FACTS AT ISSUE," thereby unlawfully and unconstitutionally depriving Plaintiff Blakely of a jury trial in violation of the State of Washington and the United States Constitutions, cf., Davis v. Cox, 183 Wn.2d 269, 351 P.3d 862 (2015).

This Court's Order Granting Summary Judgment states in the handwritten portions thereto, as follows:

HANDWRITTEN GRANT OF SUMMARY JUDGMENT

1-25-16
In so ordering, the court finds the legal position of defendant's motion to strike as well taken, and has not considered materials submitted in violation of CR 56(e).

As substantial portion of the materials submitted by Plaintiff were not made on personal knowledge, did not set forth facts that would be admissible in evidence, and/or did not affirmatively show the affiant was competent to testify to the matters stated there in. The Court further notes that lay testimony is not competent to opine on the legal standard of care.

Further, there is no legal authority for this court to review another superior court's order whether it be proceedings related to plaintiff's dissolution, his competency or the special needs trust.

Footnote 1: In the future such position should taken in the form of an objection rather than separate pleading, LCR 56(e).

This court's conclusion that "there is no legal authority for this court to review another superior court's order," has the legal force and effect, under the full faith and

credit clause, of binding this Court with the fact that Plaintiff Blakely is an incapacitated person as matter of law, rendering said Order Granting Summary Judgment null and void because this court cannot lawfully proceed against an incapacitated person who has a guardian ad litem appointed and a trustee.

In addition, Defendant has now provided this Court a copy of the "REPRESENTATION AGREEMENT" between Defendant Attorney Kahrs and Plaintiff Ralph Blakely which unquestionably creates an attorney-client relationship between Attorney Kahrs and Ralph Blakely, nullifying Defendant Kahrs "the court made me do it by limiting my representation" defense, which states in pertinent part:

REPRESENTATION AGREEMENT

1. In consideration of Kahrs Law Firm, P.S. ("Attorney"), agreeing to represent Ralph Blakely ("Client") in the matter of general legal representation, Client agrees to the following conditions regarding Attorney's representation.

4. A retainer of \$5,000 must be paid by Client to Attorney prior to the time any work (other than the initial interview) will be done or as arranged between Client and Attorney. Costs incurred by Attorney will be deducted from the retainer at the time monthly bills are prepared. Invoices will be sent out for work done on the account and fees will subsequently be deducted from the retainer. When the retainer is completely expended, the Client will be asked for subsequent retainer based on the amount and type of work anticipated.

7. This Agreement shall be deemed executed in the State of Washington and shall be interpreted and construed in accordance with the laws of the State of Washington relating to contracts made and performed therein. Venue shall be proper only in the County of King, State of Washington.

By: Ralph Blakely

5/1/09

There are no restriction of representation encompassed in the above "Representation Agreement" because it is for "general legal representation," nor could there be, creating the following material facts at issue.

MATERIAL FACTS AT ISSUE

(1) Did Plaintiff Blakely establish an attorney-client agency relationship when securing an agreement from Defendant Attorney Kahrs to represent him.

(2) Did Defendant Kahrs commit legal malpractice and/or attorney misconduct when securing through invalid agreement with Attorney Spugetis to limit the representation of Attorney Kahrs, contrary to Plaintiff Blakely's best interest.

(3) Was Defendant Kahrs agreement with Attorney Spugetis to not represent Plaintiff Blakely in the three Thurston County lawsuits an implicit and/or explicit agreement to join an ongoing larger conspiracy to prevent Plaintiff Blakely from obtaining legal assistance that would allow Plaintiff Blakely to regain control of his finances.

(4) Did Defendant Kahrs intentionally commit legal malpractice by ignoring the mandates of RCW 4.08.060 requiring representation by counsel in the three Thurston County lawsuits.

(5) Did Defendant Attorney intentionally ignore the legal fact that the Court's order limiting his representation that he relies on, necessarily requires an incapacitated person finding, thereby raising the jurisdictional fact at issue as to whether or not the dictates of Chapter 11.88 RCW had been followed.

(6) It is a material fact at issue as to whether or not Defendant Kahrs is fraudulently attempting to deceive this Superior Court into believing that he was unaware of the legal fact that a court order limiting attorney representation and requiring authorization of a court appointed trustee, inherently creates an unethical and unconstitutional conflict of interest, by vehicle of ethical and fiduciary duty to make sure Plaintiff Blakely was represented by counsel during the three Thurston County lawsuits.

(7) As clearly and conclusively evidenced by the transcripts of the Thurston County lawsuit proceedings that the trial court determined that Plaintiff Blakely was competent and that he had a right to be represented by counsel, see:

7. This agreement shall be deemed executed in the State of Washington and shall be interpreted and construed in accordance with the laws of the State of Washington relating to contracts made and performed therein. Venue shall be proper only in the County of King, State of Washington.

By: Ralph Blakely 1/± /09 second 5/1/09

There are NO RESTRICTION OF REPRESENTATION encompassed in the above "Representation Agreement" because it is for "general legal representation," nor could there be, creating the following material facts at issue:

(1) Did Plaintiff Blakely establish an attorney-client agency relationship when securing an agreement from Defendant Attorney Kahrs to represent him.

(2) Did Defendant Kahrs commit legal malpractice^{he} and/or attorney misconduct when securing through ~~invalid~~ agreement^{ed} with Attorney Spugetis to limit the representation of Attorney Kahrs, contrary to Plaintiff Blakely's best interest.

(3) Was Defendant Kahrs agreement with Attorney Spugetis to not represent Plaintiff Blakely in the three Thurston County lawsuits an implicit and/or explicit agreement to join an ongoing larger conspiracy to prevent Plaintiff Blakely from obtaining legal assistance that would allow Plaintiff Blakely to regain control of his finances.

(4) Did Defendant Kahrs intentionally commit legal malpractice by ignoring the mandates of RCW 4.08.060 requiring representation by counsel in the three Thurston County lawsuits.

(5) Did Defendant Attorney intentionally ignore the legal fact that the Court's order limiting his representation that he relies on, necessarily requires an incapacitated person finding, thereby raising the jurisdictional fact at issue as to whether or not the dictates of Chapter 11.88 RCW had been followed.

(6) It is a material fact at issue as to whether or not Defendant Kahrs is fraudulently attempting to deceive this Superior Court into believing that he was unaware of the legal fact that a court order limiting attorney representation and requiring authorization of a court appointed trustee, inherently creates an unethical and unconstitutional conflict of interest, by vehicle of ethical and fiduciary duty to make sure Plaintiff Blakely was represented by counsel during the three Thurston County lawsuits.

(7) As clearly and conclusively evidenced by the transcripts of the Thurston County lawsuit proceedings that the trial court determined that Plaintiff Blakely was competent and that he had a right to be represented by counsel, see:

(March 18, 2011)(page 7) MR. JUDGE: Mr. Blakely is an able individual of 112 IQ who's capable of functioning, capable of thinking, capable of going to the law library, and even as we had seen up until this week, capable of submitting submissions to the court with respect to amendments of the complaint. (February 1, 2013)(page 4) MR. BLAKELY: And I would like to have attorney Michael Kahrs carry on with this, but I have encountered some kind of problem even though he has been paid to take it on and to get my new expert declarations to support my mental and physical handicap. (January 25, 2013)(page 15) THE COURT: So when I say, Mr. Blakely, that you have the right to have an attorney file, what I'm saying is you have the right within ten days, but an attorney has the right within 21 days.

(8) Material facts at issue are created by Defendant Attorney Kahrs accepting \$35,000.00 from a "Special Care Needs Trust" to represent an "incapacitated person" in three Thurston County lawsuits; then refusing to represent said "incapacitated person" of the "Special Care Needs Trust"; further agreeing that said three Thurston County lawsuits had merit by receiving authorization from the "Special Care Needs Court" and "Trustee Attorney Spurgetis" to represent Plaintiff Blakely on appeal from the dismissal of said three Thurston County lawsuits; adding substantial evidence of theft by fraud by Trustee Attorney Spurgetis and the "Special Care Needs Court" authorizing \$8,500.00 of the \$35,000.00 to Attorney Kato to provide the legal assistance to Plaintiff Blakely that Attorney Kahrs refused to provide.

(9) The foregoing inherently raises three genuine material jurisdictional facts at issue, to wit:

(A) Did the so-called "Special Care Needs Trust" Court ever lawfully obtain jurisdiction over Plaintiff Blakely's assets as an "incapacitated person," when as here, the mandates of Chapter 11.88 RCW were not complied with, and Plaintiff Blakely was not given notice of, nor allowed to participate in, any of the proceedings depriving him of control of his assets.

(B) Whether or not the Spokane Court had jurisdiction to create a "supplemental need trust" under provisions of 42 U.S.C. 1396p(d)(4)(A).

(C) Were the Thurston County Superior Courts required to assure that Plaintiff Blakely was represented by counsel in the three Thurston County lawsuits after being made aware that Plaintiff Blakely was being deprived of his right to be representation by counsel based on a "Special Care Needs Trust" Court restricting said representation, depriving the three Thurston County Courts of competent jurisdiction to proceed.

(10) The genuine legal material facts at issue identified above are overwhelmingly supported by genuine material facts at issue giving rise to said legal material facts at issue, for example, the 3/5/99 "ORDER RE: MOTION FOR ORDER APPOINTING LARRY WEISER AS GUARDIAN AD LITEM FOR RALPH H. BLAKELY JR.," under rubric of FINDINGS, which do not establish competent jurisdiction for the Superior Court over the finances or assets of Ralph Blakely in Cause Numbers 96-2-04155-1 and 95-3-01916-0, see Appendix (A), based on the following material facts at issue:

FINDINGS 2.1: "The court finds that Dr. Wert has reviewed medical and documents, interviewed Ralph H. Blakely, Jr. on November 17, 1998 and November 27, 1998, and recommend that a Guardian Ad Litem should be appointed for Ralph H. Blakely Jr."

When Dr. Wert interviewed Ralph H. Blakely, Jr. on November 17, 1998 and November 27, 1998, Ralph Blakely had just been falsely accused of kidnapping his wife after years of marital disputes in which Mr. Blakely had been recently poisoned by his wife just prior to falsely accusing him of kidnapping her; thereby said Doctor Wert interviews took place during a very traumatic time for Mr. Blakely, when interviewed on November 17 and 27, 1998; however, Ralph Blakely Jr.'s competency on 3/5/99, the date of the Court's findings, is well documented in the DSHS Eastern State Hospital report provided Honorable Evan E. Sperline, in a 4/30/99 report, see Appendix (B), as to Ralph Blakely's competency, whereas said report states:

Mr. Blakely's general mental ability was measured with the GAMA - a nonverbal test that required Mr. Blakely to answer reasoning and problem-solving questions using abstract geometric designs - and he earned a GAMA IQ score of 113. This score falls in the High Average range of mental ability. His GAMA IQ score is ranked at the 81st percentile, which means that his performance was equal to or greater than that of 81% of individuals his age.

Mr. Blakely's performance on the WMT was within normal limits, which means that he exhibited no memory problems (recall or recognition) as measured by this assessment.

On the Trails A portion, Mr. Blakely completed the task in 45 seconds with no errors. This score placed Mr. Blakely in the 50 - 75th percentile range for individuals of similar age. On the Trails B portion, Mr. Blakely completed the task in 106 seconds with no errors. This score also placed him in the 50 - 75th percentile range for individuals of similar age.

The results from the above assessments suggest that Mr. Blakely is of normal intelligence with no significant memory problems or significant neuropsychological deficits. These results are consistent with earlier assessment results.

It is a genuine material fact at issue as to whether or not Ralph Blakely Jr. was an "incapacitated person" as required by RCW 4.08.060 on 3/5/99 when the order appointing a Guardian Ad Litem was signed by Judge Tompkin; or on the other hand, whether or not the judicial participants referred to in said order, had formed an unlawful agreement to defraud Mr. Blakely of his legal personage with purpose to commit theft by fraud of Ralph Blakely's financial and material assets.

FINDINGS 2.2: "Based upon the information provided by Dr. Wert after new visits and observations with Ralph H. Blakely Jr., coupled with the statements of Eric Shumaker and Matthew Dudley, the court is satisfied that a sufficient showing has been made to appoint a guardian ad litem for Ralph H. Blakely, Jr."

A material fact at issues as to whether or not Dr. Wert made any such "new visits and observations," because Ralph Blakely claims there was no contact with Dr. Wert after November, 27, 1998; and the truthfulness of any so-called "statements of Eric Shumaker and Matthew Dudley," who both knew that Ralph Blakely was at Eastern State Hospital for competency evaluation order by Grant County District Court Judge Sperline, for trial on the same kidnapping charges that Dr. Wert was involved in; evidencing a material fact at issue as to whether or not Ralph Blakely's attorneys, Eric Shumaker and Matthew Dudley, were perpetrating a fraud on the Spokane County Superior Court with purpose to deprive Ralph Blakely of control over his monetary and material assets, see "ORDER: 3.6. Larry Weiser, as Guardian ad Litem for Ralph H. Blakely, Jr., hereby becomes the client of Matthew Dudley in the instant action and the dissolution of marriage action."

FINDING 2.3: "In determining whether to appoint a guardian ad litem for Ralph H. Blakely Jr., the court is (relying on) the criteria set out in Vo v. Pham, 81 Wn.Ap. 781, 916 P.2d 462 (1996) and the court is reasonably convinced that Ralph H. Blakely, Jr. is not competent at this time to comprehend with understanding and intelligence the significance of the entire legal proceedings and their effect on and relationship to his best interests."

Judge Tompkin's "Finding 2.3" is substantively contrary to the Judge Sperline ordered competency evaluation

performed by Eastern State Hospital at the exact same time, 3/5/99, which is a combination of genuine legal and material facts at issue, for example see the criteria referred to in *Vo v. Pham*, 81 Wn.App. 781, 916 P.2d 462 (1996), which is premised on RCW 4.08.060 that mandates a Chapter 11.88 finding of "incapacitated person" procedural due process prior to application of RCW 4.08.060 "Guardian ad litem for incapacitated person," which states:

When an incapacitated person is a party to an action in the superior courts, he or she shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows: (1) When the incapacitated person is plaintiff, upon the application of a relative or friend of the incapacitated person.

In other words, an RCW 11.88.040 procedure and finding is an essential condition precedent to application of a RCW 4.08.060 appointment of guardian ad litem, see:

PROCEDURAL DUE PROCESS - INCAPACITATED PERSON

RCW 11.88.005. Legislative Intent.

To protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights to provide for their basic needs without help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.88.010. Authority to Appoint Guardians- Definitions -Venue- Nomination by Principal.

(1) The superior court of each county shall have power to appoint guardians for the person and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estates when the superior court determines the individual is a significant risk of financial harm based upon

a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(f) For purposes of the terms "incompetent," "disabled," or not legally competent," as those terms are used in the RCW to apply to person incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of the incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship except as to those rights and disabilities specifically set forth in the court order establishing such limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship of limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse or domestic partner of the alleged incapacitated person is domiciled.

RCW 11.88.040. Notice and Hearing, When Required- Service Procedure.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon

the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after served thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

- (1) The alleged incapacitated person, or minor, if under fourteen years of age;

The alleged incapacitated person shall be present in court at the final hearing on the petition: Provided, that this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the GAL pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090.

FINDINGS 2.4: "Good cause exists to appoint Larry Weiser as Guardian ad Litem for Ralph H. Blakely, Jr."

As clearly and conclusively evidenced by the foregoing, several genuine material facts at issue exist regarding whether or not Defendant Kahr's scope of representation of Ralph Blakely could be lawfully constrained by order of Judge Tompkin, who lacked competent jurisdiction over the control of Ralph Blakely's financial assets; notwithstanding the inherent violation of Rules of Professional conduct by Defendant Kahrs.

FINDINGS 2.5: "The court finds the filing of the motion for appointment of a Guardian ad Litem as Ralph H. Blakely Jr.'s response to participate in this trial."

It is difficult to imagine any of the involved attorneys or Judge Tompkin could believe their conduct was not illegal, where the motion was filed when everyone knew that Ralph Blakely was then currently under Grant County Judge Sperline Court Order at Eastern State Hospital for a competency evaluation, see Appendix (B), see BASIS: "This matter came before the court upon the motion of counsel for Ralph H. Blakely, Jr. The motion sought the appointment of a guardian ad litem for Ralph H. Blakely, Jr. A hearing was held before the honorable Linda G. Tompkins on Friday, February 26, 1999."

FINDINGS 2.6: "The court's findings and conclusions in this case shall have no precedential or preclusive effect

on any other civil or criminal proceeding involving Ralph H. Blakely Jr. and the matters at issue therein."

This Finding evidences that Judge Tompkin knew Ralph Blakely was then currently at Eastern State Hospital for a competency evaluation ordered by Grant County Judge Sperline; and this finding, 2.6, as matter of law, precludes any restrictions on the scope of representation by Defendant Kahrs in the three subject matter lawsuits filed by Ralph Blakely in King County.

ORDER 3.5: "Gary Gainer, counsel for Yolanda Blakely in the dissolution of marriage action, and Matthew Dudley, counsel for Ralph H. Blakely, Jr. in the dissolution of marriage action, hereby stipulate to Larry Weiser being appointed as Guardian ad Litem for Ralph H. Blakely, Jr. in the dissolution of marriage action as well."

This "ORDER RE: MOTION FOR ORDER APPOINTING LARRY WEISER AS GUARDIAN AD LITEM FOR RALPH H. BLAKELY JR." was conformed by Thomas R. Fallquist Spokane County Clerk on March 5, 1999; however, it is not signed by Gay J. Gainer, Attorney for Yolanda Blakely, was not signed by Dennis Hession, Attorney for Yolanda Blakely, Becky Barker and Lorene Blakely, and was not signed by Larry Weiser, Guardian ad litem for Ralph H. Blakely, Jr., and was not signed by Judge Tompkin; therefore, said ORDER has no legal force and effect whatsoever, and could not be used to allow Defendant Kahrs to claim that the scope of his representation of Ralph Blakely in the three subject matter lawsuits underlying this lawsuit.

(11) As clearly and conclusively evidenced by Appendix (C), "ORDER RE: APPROVAL OF SETTLEMENT OF PARTIES RCW 11.96," said Order is not conformed as being filed and Judge Tompkin did not sign said Order, thereby said Order has no legal force and effect whatsoever, and is void for lack of requisite procedural due process; thereby depriving Attorney Kahrs of any legitimate claim that Judge Tompkin's order restricted the scope of his representation.

(12) As clearly and conclusively evidenced by Appendix (D), "STIPULATED AGREEMENT RE: SETTLEMENT OF TRUST CLAIMS OF BECKY BLAKELY, LORENE BLAKELY, RALPH H. BLAKELY SR., RALPH H. BLAKELY III, PAUL F. BLAKELY AND STAN LONG AS TRUSTEE OF BLAKELY FARMS TRUST," said Settlement is not dated by Matthew Dudley and there is no legitimate legal basis that would confer "Trustee" status upon Stan Long; in part because Ralph Blakely was operating Blakely Farms Trust in his own legal personage in that name; thereby, a material fact at issue exists regarding whether or not Stan Long had lawful authority to dispose of any financial or material assets of Ralph Blakely; and said "Stipulated Agreement" was filed in the Superior Court but not signed by any Judge.

(13) As clearly and conclusively evidenced by Appendix (E), DSHS Medical Lake Hospital again performed a competency evaluation upon Ralph Blakely and confirmed that Ralph Blakely was unquestionably competent during the entire period of Judge Tompkin and involved attorneys acted in concert to illegally purport to appoint a guardian ad litem with purpose to unlawfully deprive Ralph Blakely of his lawful control over his financial and material assets; with further purpose to unlawfully and unconstitutionally prevent Ralph Blakely from adequately proving his innocence and challenging his convictions underlying his incarceration.

(14) By "DECREE OF DISSOLUTION" dated 8/1/15, see Appendix (F), in case #95-3-01916-0 and #96-2-04155-1, Judge Tompkin finalized both said cases and discharged Larry Weiser as guardian ad litem for both said cases; and awarded Ralph Blakely by vehicle of Exhibit (G): "All property acquired by the husband after May 23, 1995, the date upon which the marriage became defunct and the parties commenced residing separate and apart. All property currently in the husband's possession, custody and control and not provided for within the Decree of Dissolution," thereby leaving hundreds of thousands of dollars of Ralph Blakely's personal assets at peril for theft and/or misappropriation of which has not been accounted for to date.

(16) As evidenced by Appendix (G), Defendant Attorney Michael Kahrs filed a "MOTION TO DISBURSE FUNDS FROM SPECIAL NEEDS TRUST," in Case No. 95-3-010916-0 dated 11/06/09, claiming that "Mr. Blakely ... has various medical problems that he believes are not being properly taken care of.... Mr. Blakely also claims he is innocent of the crime charged. He would like to prove his innocence and wishes to hire an attorney, Michael C. Kahrs, to investigate this. Mr. Kahrs is experienced in post-conviction litigation and investigating claims of actual innocence."

(15) As evidenced by Appendix (H): "ORDER APPROVING DISBURSEMENT OF FUNDS FROM SPECIAL NEEDS TRUST," dated 11/9/09 and signed by Superior Court Judge Tomkin under Case No. 95-3-01916-0, stating in pertinent part:

1. Ralph H. Blakely Jr. is in need of funds for the purposes of pursuing post-conviction litigation in his criminal conviction and sentence in Grant County, State v. Blakely, No. 04-1-00369-8.

2. Mr. Blakely has consented to the disbursement of these funds in the amount of Ten Thousand Dollars and n/10 (\$10,000.00).

3. The court finds that the amount requested for investigation, \$10,000.00, is reasonable.

4. Ralph H. Blakely Jr. is in need of funds for the purposes of obtaining medical care for a multitude of serious medical conditions.

5. Mr. Blakely has consented to the disbursement of these funds in the amount of Twenty-Five Thousand Dollars and no/100 (\$25,000.00).

6. The Court finds that the amount requested to obtain medical care, \$25,000.00, is reasonable.

Said Order Approving Disbursement Of Funds does not in any way restrict the scope of Attorney Kahrs representation of Ralph Blakely; creating a genuine material fact at issue why Attorney Kahrs refused to represent Plaintiff Blakely in the three subject matter lawsuits filed in Thurston County Superior Court after agreeing by contract to do so, and being paid by Plaintiff Ralph Blakely to do so.

(17) On 3/15/13 Superior Court Judge Tompkins issued an "ORDER APPROVING REALLOCATION OF FUNDS FOR MEDICAL AND POST-CONVICTION RELIEF," in Case No. 95-3-01916-0, stating in pertinent part:

My. Blakely has not pursued the medical care to the degree he previously desired, but continues to pursue the post-conviction relief matter. Therefore, the funds spent have been more than allocated from the post-conviction relief category (\$10,000) than from the medical category (\$25,000).... ORDER: ...The \$35,000 previously ordered released from the Trust to attorney Michael Kahrs may be allocated either to the post-conviction relief matter or the medical treatment matter.

(18) On 12/24/14 Judge Tompkins issued an "ORDER ON MOTION BY ATTORNEY KENNETH H. KATO FOR PAYMENT OF ATTORNEY FEES FROM SPECIAL PERSON CARE TRUST," in Case No. 96-2-04155-1, stating in pertinent part:

THIS MOTION came on for hearing on Kenneth H. Kato's Motion for Payment of Attorney Fees from Special Person Care Trust supported by his declaration, asking the Court to authorize payment to him of \$8,500 under a flat fee agreement between Ralph H. Blakely, Jr. and Mr. Kato, who will file a personal restraint petition for Mr. Blakely to the Washington Court of Appeals, Division III, to secure his release from unlawful restraint... 1. The Court finds Mr. Kato's fee of \$8,500 is reasonable and, pursuant to the flat fee agreement between him and Mr. Blakely for the personal restraint petition, authorizes payment in that amount from the Ralph H. Blakely, Jr., Special Person Care Trust.

There are no scope of representation restrictions on the Court Order and the attorney-client agreement with Attorney Kato is no different than that between Ralph Blakely and Attorney Kahrs evidencing invalidity of any Defense by Attorney Kahrs in his attempt to hide behind his interpretation of a court order; and raising material facts at issue as to why Ralph Blakely is forced to pay Attorney Kato to do what Attorney Kahrs was already paid to do.

As evidenced above, several genuine legal and material facts at issue are present as to whether or not Ralph Blakely was ever lawfully determined to be an incapacitated person that would allow Defendant Kahrs to legitimately restrict his representation of Ralph Blakely premised on any purported court order; and whether or not there is now, or ever was, a legitimate "Special Person Care Trust" that was or is "authorized by 42 U.S.C. 1396p and 20 F.R. 416.1246(e), as claimed by Judge Tompkin and the other participants that have committed theft by fraud of Plaintiff Ralph Blakely's financial and material assets.

Also, as evidenced above, material facts at issue are present as to whether or not Defendant's Attorneys have a legal and ethical duty to report the illegal conduct described above, relevant and material to this lawsuit.

As further evidenced above, several genuine legal and material facts at issue are present as to whether or not Judge Tompkin could have lawfully restricted the scope of representation by Attorney Kahrs; and material facts at

issue are present as to whether or not Judge Tompkin did in fact or law, limit the representation of Attorney Kahrs; or on the other hand, as Plaintiff Blakely claims, Attorney Kahrs is attempting to perpetrate a defensive fraud on this Court, which are questions of fact that must be resolved by the jury at trial on the merits, as guaranteed by the Seventh Amendment of the United States Constitution.

DISPUTED GENUINE MATERIAL FACTS AT ISSUE

(1) Material facts at issue existed as to why Defendant Kahrs was refusing to provide a copy of the attorney-client contract that has now been provided; further creating material facts at issue as to whether or not said attorney-client agreement creates an attorney-client relationship; of which is both relevant and material to the material fact at issue as to whether Defendant Kahrs' defense of "the court made me do it by limiting my representation" is an invalid defense and/or a fraud upon the court.

(2) Material facts at issue exist as to whether or not Defendant Kahrs knew his defense of "the court made me do it," actually existed under the law, when he billed, inter alia, \$560 to visit Ralph Blakely in prison without first obtaining permission from the court.

(3) Material facts at issue exist concerning Defendant Attorney Kahrs' consumer advertisement and his letter which states "practicing in federal courts, habeas corpus, Ninth Circuit Court of appeals, civil right litigation," (Exhibit N. 11) violates the Washington Consumer Protection Act under the facts and circumstances present in this case.

(4) Material facts at issue exist as to whether Defendant Kahrs intended to fraudulently manipulate the Spokane Superior Court by claiming said Superior Court Order limited his representation, contrary to the clear terms of said Court Order, stating that the \$35,000 retainer fee was to be used "solely for the benefit of Mr. Blakely."

(5) Material facts at issue exist concerning Defendant Attorney Kahrs' multiple billing for the same alleged services; and material facts at issue exist as to whether or not Defendant Kahrs committed theft by fraud of a portion of the money charged Ralph Blakely, inter alia, as alleged in the State Bar Association Complaint filed by Ralph Blakely against Defendant Attorney Kahrs, which prompted Defendant Kahrs to withdraw from the case.

(6) Numerous material facts at issue exist regarding whether or not Defendant Kahrs intentionally accepted \$35,00.00 of Ralph Blakely's money to protect and advance his constitutional rights in challenging Ralph Blakely's conviction and to protect Ralph Blakely's medical care rights under Washington Law, the Federal Constitution, and the American Disabilities Act; whereas Defendant Kahrs charged Ralph Blakely over \$25,000.00 and did not protect or advance medical care and did not prepare and/or file for any post conviction relief challenging Ralph Blakely's underlying unlawful conviction; when as here, Attorney Kato was paid over eight thousand dollars to file for post-conviction relief that Defendant Kahrs was paid to do, but refused to do, in violation of the attorney-client contract, attorney ethical requirements, attorney fiduciary duty to client and in violation of Ralph Blakely's legal and constitutional rights, of which inherently constitutes, inter alia, attorney malpractice.

(7) Several material facts at issue exist as to why Defendant Attorney Kahrs spent substantial funds attempting to obtain a Declaration from trial witness Robbie Juarez-Trevino that would recant the existing sworn to Declaration of Robbie Juarez-Trevino, offering sworn to testimony that he had falsely fabricated his trial testimony against Ralph Blakely at trial at behest of favor from prosecution, offered by the prosecutor to Robbie Juarez-Trevino.

(8) Numerous legal and material facts at issue exist as to whether or not Ralph Blakely is, and/or ever has been, (relevant to these proceedings) an "incapacitated person," as matter of fact and/or law; and whether or not Attorney Spurgetis and Judge Tompkin, in concert with Defendant Attorney Kahrs, deliberately exercised control of Ralph Blakely's financial assets with purpose to manipulate the scope and breadth of representation Ralph Blakely would receive from Defendant Attorney Kahrs; creating a plethora of interrelated, interdependent material facts at issue, a significant portion of which cannot be properly framed until the discovery process is completed, such as Ralph Blakely recently being provided a copy of the Attorney-Client Contract dated 5/1/09 conclusively showing no restrictions on representation to be provided by Attorney Kahrs; creating numerous material facts at issue that must be presented to the jury at trial on the merits, for example:

(A) Was Defendant Kahrs aware that Ralph Blakely was never determined to be an "incapacitated person" pursuant to the mandates of Chapter 4.88 RCW and the Constitution of the United States.

There can be no legitimate question as to whether Defendant Kahrs knew that Ralph Blakely had never been lawfully determined to be an

incapacitated person because he would have had to know that the Grant County Superior court jury trial and Eastern State Hospital had ruled that Ralph Blakely was not an incapacitated person, when reviewing the criminal record.

(B) Was Defendant Attorney Kahrs aware that because, as matter of law, that Chapter 4.88 RCW mandates are an essential condition precedent to the appointment of a guardian ad litem as applied to this case; and that therefore, no legitimate guardian ad litem had been appointed, thereby, rendering Attorney Spurgetis' purported appointment as trustee invalid and ineffectual.

In other words, as conclusively evidenced by the existing record, Defendant Kahrs knew that Ralph Blakely had never lawfully been determined an incapacitated person, thereby rendering any purported "trustee" status by Judge Tompkin and Attorney Spurgetis clearly invalid, which would have been known by any competent attorney; notwithstanding that the trial judge in the three subject matter lawsuits had ruled Ralph Blakely unquestionably competent; requiring Defendant Kahrs to inform this court why he did not require this court, and the courts in the three subject matter lawsuit to appoint an attorney as required by RCW 4.08.060; whereas on the other hand, if Defendant Kahrs knew that Ralph Blakely was not an incapacitated person within the meaning of Chapter 4.88 RCW and Chapter 4.08 RCW, then any competent attorney would have known that no restrictions could be lawfully made on Defendant Attorney Kahrs representation.

COURTS HAVE DUTY TO ADDRESS JURISDICTIONAL QUESTIONS

As clearly shown above, Plaintiff Blakely has brought numerous jurisdictional question that must be resolved prior to any ruling on the merits because Courts are forbidden from exercising "hypothetical jurisdiction," Steel Co. v. Citizens For A Better Environment, 523 U.S. 83, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998); Davis v. Passman, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979):

The question whether a litigant has a 'cause of action' is analytically distinct and prior to the

question of what relief, if any, a litigant may be entitled to receive.

Haywood v. Drown, 556 U.S. ___, 129 S.Ct. 2108, 173 L.Ed.2d 920 (2009):

In our federal system of government, state as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1984, the statute that creates a remedy for violations of federal rights committed by persons acting under color of state law.

State v. Nelson, 53 Wn.App. 123, 766 P.2d 471 (1988):

When jurisdiction is, by the Constitution of this State, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws.

United States v. Morgan, 346 U.S. 502, 74 S.Ct. 247, 98 L.Ed. 248 (1954):

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Courts have a "virtually unflagging obligation to exercise" the full extent of the Court's jurisdiction, Deakins v. Monaghan, 484 U.S. 193, 108 S.Ct. 523, 98 L.Ed.2d 529 (1988); see also:

State v. Taggart, 159 Wash. 201, 202 P. 741 (1930):

When court has jurisdiction of cause, it cannot accept or reject jurisdiction at its pleasure.

Pratt v. Hurley, 79 F.3d 60 (7th Cir. 1996):

Courts have no more right to decline exercise of jurisdiction which is given, than to usurp that which is not given.

There is a presumption "against slamming the courthouse door in the face of holders of constitutional claims,"

Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996); Landmark Communications Inc. v. Virginia, 435 U.S. 829, 842, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978)("An enforced silence, however limited, solely in the name of preserving the dignity of the bench would probably engender resentment, suspicion, and contempt much more than it would engender respect"); cf., Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 203 (1992)("Where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done").

RELIEF SOUGHT

Plaintiff Blakely prays this Superior Court will vacate the judgment granting summary judgment and afford Plaintiff Blakely his right to jury trial on all material facts at issue, Davis v. Cox, 183 Wn.2d 269, 351 P.3d 862 (2015).

Dated this 3rd day of February, 2016.

Respectfully submitted,

By: Ralph H. Blakely
RALPH BLAKELY

The Court Erred. Defendant's presented no evidence to dispute this material fact. Thus, the Court lacked subject matter Jurisdiction to decide the disputed "controversy" in favor of the Defendants.

DECLARATION OF SERVICE BY MAIL

GR 3.1

I, Ralph Howard Blakely, declare and say:

That on the _____ day of August, 2017, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 94632-9 COA# 74765-7-1:

Petition for Discretionary Review 13p Exhibit #41 19 p Affidavits ;
Exhibits #4 ;

addressed to the following:

Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Forsberg & Umlauf
901 5th Ave. Suite 1400
Seattle, WA 98164-2047

They (counselor refused to make additional copies for COA

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

DATED THIS _____ day of August, 2017, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Ralph H. Blakely

Signature

Print Name
DOC 817995 UNIT H1B48
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520