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SUPREME COURT  
STATE OF WASHINGTON  
9/28/2018 2:56 PM  
BY SUSAN L. CARLSON  
CLERK

No. 96241-3

SUPREME COURT  
OF THE STATE OF WASHINGTON

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In re the Estate of:  
TAYLOR GRIFFITH

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KENNETH GRIFFITH and JACKIE GRIFFITH,  
Petitioners,

v.

BRADLEY J. MOORE,  
in his capacity as Personal Representative,  
Respondent.

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RESPONDENT HARRIS CREDITORS'  
ANSWER TO PETITION FOR REVIEW

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LUVERA LAW FIRM  
By: David M. Beninger  
WSBA No. 18432

701 5<sup>th</sup> Avenue, Suite 6700  
Seattle, WA 98104  
(206) 467-6090

SMITH GOODFRIEND, P.S.  
By: Howard M. Goodfriend  
WSBA No. 14355  
Catherine W. Smith  
WSBA No. 9542

1619 8<sup>th</sup> Avenue North  
Seattle, WA 98109  
(206) 624-0974

Attorneys for Respondents Stefanie Harris, as Personal  
Representative of the Estate of Steven Harris, and Margaret Harris

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**A. Introduction.**

The Court of Appeals held in an unpublished opinion that the trial court did not abuse its discretion in refusing to remove a personal representative appointed to administer the estate of a minor who was killed in an auto collision that also caused the death of respondent Stefanie Harris' father, and serious injuries to her mother, respondent Margaret Harris. The courts below correctly recognized that petitioners were required to (and did not) prove a breach of fiduciary duty, misconduct, or other grounds for removal of the personal representative in petitioners' TEDRA action; the only expert testimony unequivocally supported all of the personal representative's actions. And because respondents sued both the minor's estate and his parents, alleging their joint and several liability for negligent entrustment and under the family car doctrine, the Court of Appeals' unpublished opinion does not raise any issue concerning the scope of the parental immunity doctrine - an issue that, in any event, was not raised in petitioners' TEDRA action or addressed by the trial court.

The Court of Appeals thoroughly reviewed the trial court's discretionary decision declining to remove the personal representative based on the objections petitioners raised in the trial

court and properly rejected arguments raised for the first time on appeal. The petition continues to assert arguments that were not before the trial court and that provide no basis for review in this Court, on grounds tangential to Mr. Moore's authority and obligations as personal representative of the Estate. This Court should deny review.

**B. Restatement of Facts.**

The Court of Appeals' unpublished opinion fairly sets out the facts and procedural history relevant to the efforts of petitioners' insurer to remove Brad Moore as personal representative of the Estate of Taylor Griffith ("the Estate"). Taylor Griffith died when he crossed the center line on State Route 202 at a high rate of speed and collided head-on with an SUV driven by Steven Harris and his wife of 50 years, Margaret, in August 2014. (Op. 2; CP 34, 40, 390-93) Mr. Harris was also killed and his wife was seriously injured in the accident. (Op. 2) Taylor, age 16, was driving a truck registered to his father and insured through his parents' insurance with Travelers Home and Marine Insurance ("Travelers"), traveling from his father's landscaping business, where Taylor was employed and had been washing a company vehicle. (Op. 2; CP 40)

Respondents Stefanie Harris, as Personal Representative of the Estate of Steven Harris, and Margaret Harris (“the Harris creditors”) filed this lawsuit against the Estate and the Griffith parents after the Griffiths’ liability insurer Travelers failed to respond to their demands and disclose liability insurance coverage and limits, cutting off negotiations and foreclosing a settlement within policy limits. (Op. 2; CP 32-37, 532-33, 1017) After the Griffith parents, represented by Travelers-assigned defense counsel, failed to timely exercise their priority to be appointed to administer their son’s intestate Estate pursuant to RCW 11.28.120(2)(b) (Op. 3), the Harris creditors sought the appointment of respondent Mr. Moore, an attorney, as personal representative of Taylor’s Estate under RCW 11.28.120(7). (CP 44-49)

Over the objection of the Griffith parents, represented by Travelers-assigned defense counsel (CP 65-68, 78-81), a superior court commissioner granted the Harris creditors’ motion, expressly finding that Mr. Moore had the expertise and ability to both limit the Estate’s liability to the Harris creditors, by preserving the Griffith parents’ potential liability under theories of negligent entrustment and the family car doctrine, and to maximize the Estate’s assets, by investigating and pursuing potential bad faith claims against

Travelers. (Op. 4-5; CP 85, 230, 1177-78) Through Travelers' attorneys, the Griffiths unsuccessfully moved to revise the commissioner's ruling. (Op. 12; CP 233, 923-24) They did not appeal the trial court's denial of that motion, confirming Mr. Moore as personal representative. (CP 923-24; *see* App. A (Sub. No. 127), attaching only CP 921-22)

This appeal arose from the subsequent unsuccessful TEDRA petition brought by the Griffith parents – or, more accurately, their insurer Travelers – to have Mr. Moore removed as personal representative of the Estate because he was doing the job he was appointed to do. (Op. 5-9; CP 1-23)<sup>1</sup> The trial court rejected each of the grounds asserted by Travelers as grounds for removal of Mr. Moore as personal representative in that TEDRA action:

I need to find a breach of fiduciary duty or mismanagement or waste of assets or something of the like. I don't find that here . . . . The fact that Mr. Moore is also a **plaintiff's lawyer**, I don't find that to even be particularly relevant.

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<sup>1</sup> Because Travelers-assigned defense counsel had jointly represented Mr. Moore, as personal representative of the Estate, and the Griffith parents, they were disqualified from continuing as defense counsel after they filed, at Travelers' behest, the instant TEDRA action seeking Mr. Moore's removal as personal representative. *Harris v. Griffith*, 2 Wn. App. 2d 638, 413 P.3d 51 (2018), *pet. for rev. pending* in Cause No. 95861-1. As is apparent by the recital of facts in this Answer and in the Court of Appeals' unpublished opinion, the attorneys' disqualification is irrelevant to the issues raised in this TEDRA action for removal of Mr. Moore as the Estate's personal representative.



The evidence before the commissioner, although . . . I've already decided on the motion for revision, that was about a **very old case**.

There are allegations that there's a **good bad faith claim**, that it's of merit. So it is relevant that Mr. Moore has experience with bad faith claims and some understanding of insurance . . . .

The **failure to promptly get appointed** as PR, I don't think that that was Mr. Moore's responsibility.

The **decision to arbitrate**. A PR has a duty to settle a case.

The choice of former Justice Ireland [to arbitrate], I don't understand how that would have been a bad choice . . . .

Now it sounds like there are **additional potential bad faith claims** . . . . [I]t's clear . . . that the PR has the duty to pursue that.

About the **assignment of a bad faith claim**, there's no evidence of that. There's reference to it over and over again; that seems to be of great concern. I don't have any evidence of that before the Court, so I can't make a decision based on that allegation . . . .

If there's a complaint about the **fees**, then the parents could certainly file an objection.

(RP 47-49, emphasis added, incorporated at CP 921) The Court of Appeals' unpublished opinion affirmed the trial court's exercise of its discretion in refusing to remove Mr. Moore, after rejecting on the facts the allegation that the personal representative had breached any fiduciary duty to the Griffith parents, carefully addressing each

of these grounds for removal and rejecting arguments raised for the first time on appeal. (Op. 21)

**C. Restatement of Issues Presented For Review.**

Petitioners have now abandoned virtually all the grounds they raised in their TEDRA petition as a basis for removal of Mr. Moore as personal representative in the lower courts, arguing now (for the first time) that different standards govern removal of nonintervention and court-supervised personal representatives (Pet. 11) and that Mr. Moore should have been removed as personal representative because under Washington law “a parent cannot be liable to a child for negligent supervision or entrustment.” (Pet. 9) The issues presented by petitioners as grounds for further review are more accurately restated as:

1. The statute governing the removal of nonintervention personal representatives, RCW 11.68.070, expressly incorporates the statute governing the standards for removal of court-supervised personal representatives, RCW 11.28.250. Did the Court of Appeals correctly affirm the trial court’s exercise of its discretion in refusing to remove a personal representative under court supervision, citing to both RCW 11.28.250 and RCW 11.68.070?

2. Does a personal representative defending against a wrongful death claim breach his fiduciary duty to the Estate in acknowledging that the Estate's liability to the third party claimants harmed by the minor's negligence while driving a family car may be reduced if the claimants prove their allegation of joint and several liability of the decedent's parents under the family car doctrine and for negligent entrustment?

**D. Argument Why Review Should Be Denied.**

- 1. The statutory standards governing removal of nonintervention and court-supervised personal representatives are identical, and raise no ground for RAP 13.4(b)(4) review.**

The Court of Appeals properly held that the Griffiths lacked cause to remove the personal representative, using the proper legal standard. Petitioners seize on the unpublished opinion's citation to RCW 11.68.070, the statute governing removal of personal representatives with nonintervention powers (Op. 16), to challenge the Court of Appeals' holding that the trial court did not abuse its discretion in denying their motion to remove Mr. Moore, who did not have nonintervention powers. (Pet. 11) Petitioners mischaracterize the unpublished opinion, which raises no grounds for further review under RAP 13.4(b)(4).

As the Court of Appeals recognized, quoting RCW 11.28.250 (Op. 16-17), the standards for removal of court-supervised and nonintervention personal representatives are identical; the statute authorizing removal of a personal representative with nonintervention powers, RCW 11.68.070, expressly incorporates the statute governing removal of a personal representative whose actions are subject to court oversight, RCW 11.28.250. In either case, the party seeking removal must establish that the “personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate . . . or has committed, or is about to commit a fraud upon the estate, or is incompetent to act . . . or has wrongfully neglected the estate, or has neglected to perform any acts . . .” RCW 11.28.250; RCW 11.68.70 (authorizing removal of a personal representative with nonintervention powers “for any reason specified in RCW 11.28.250”).

Petitioners have never before relied upon claimed (and nonexistent) differences between the standards governing removal of personal representatives with or without nonintervention powers to distinguish, among other cases, *Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) (discussed Op. 15-16; App. Br. 24-26; Harris Br. 20; Moore Br. 16, 31-32; Rep. Br. 10; Pet. 11). The parties below

addressed RCW 11.28.250 as the statute governing the trial court's authority to remove Mr. Moore as personal representative. (App. Br. 18-19 (quoting same provisions of RCW 11.28.250 also quoted in unpublished opinion); Harris Br. 20) If petitioners believed the Court of Appeals' citation to RCW 11.68.070, or its reliance on *Jones* on that basis, was improper, they should have asked Division One to correct any "misapprehension" of the relevant law pursuant to RAP 12.4(c).

Nor does *Estate of Rathbone*, 190 Wn.2d 332, 412 P.3d 1283 (2018) (Pet. 2, 11), suggest any differences in the standards governing removal of a nonintervention or a court-supervised personal representative. In *Rathbone*, this Court concluded that RCW 11.68.070 did not give the trial court the power to interpret a will to limit the powers of a personal representative who the testator clearly and unambiguously intended to have nonintervention powers. *Rathbone* has nothing to do with the standards for removal of personal representatives, which are identical for both intervention and nonintervention personal representatives, as RCW 11.68.070 makes clear by incorporating RCW 11.28.250. The Court of Appeals' unpublished opinion discussing the standards for removal of a

personal representative does not conflict with any cases and presents no issue of substantial public interest under RAP 13.4(b)(4).<sup>2</sup>

**2. The Court of Appeals' affirmance of denial of a petition to remove a personal representative as within the trial court's broad discretion based on the grounds raised below does not conflict with any decision of this or any Court.**

The Court of Appeals' affirmance in an unpublished opinion of the trial court's finding that there was no good cause to remove Mr. Moore adhered to established law, acknowledged that the only expert testimony supported not just the bases for rejecting petitioners' TEDRA petition, but supported all of Mr. Moore's decisions and actions, and presents no ground for further review. Petitioners conceded below that, as the Court of Appeals held, the trial court's denial of a petition to remove a personal representative is reviewed for abuse of discretion, and that the trial court's assessment of the facts is reviewed for substantial evidence. (Op. 15-16; App. Br. 17-18) Removal of a personal representative without proper grounds – evidence of waste, embezzlement, fraud, or similar

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<sup>2</sup> If this Court accepts review, however, respondents reserve the right to argue as an alternative ground for affirmance that, having failed to exercise their statutory right to priority as personal representative within 40 days of their son's death, the Griffith parents had no standing to seek removal of the personal representative. *Yarbrough's Estate*, 126 Wash. 85, 86, 222 Pac. 902 (1924); *Snyder v. Tompkins*, 20 Wn. App. 167, 171-72, 579 P.2d 994, *rev. denied*, 91 Wn.2d 1001 (1978). (See Op. 14; Harris Br. 28-29)

breach of fiduciary duties – is “arbitrary and improper.” *Jones*, 152 Wn.2d at 8, 10 (citing *Estate of Coates*, 55 Wn.2d 250, 259-60, 347 P.2d 875 (1959) and RCW 11.28.250).

Petitioners now complain that the courts below “based their decision not to remove Mr. Moore . . . on the erroneous theory that there is a conflict of interest between Taylor’s Estate and the Griffiths and that Mr. Moore had a duty to pursue claims against the Griffiths.” (Pet. 9) But that characterization is false. Those purported justifications find no basis in the trial court’s decision, and are mentioned only in passing by the Court of Appeals because they were addressed by Mr. Moore’s expert Leland Ripley, whose un rebutted April 17, 2016 declaration in support of all of Mr. Moore’s actions responded to the arguments made in both the Griffith’s motion to modify Mr. Moore’s appointment as personal representative and the subsequent TEDRA petition seeking his removal. (Op. 19-20; CP 1170-78) It is in fact undisputed that Mr. Moore has not pursued any claims against the Griffith parents, and the Griffiths did not appeal the order denying their motion to revise Mr. Moore’s initial appointment after the Griffiths waived any right to statutory priority as personal representative. (CP 923-24; see App. A)

The trial court refused to remove the personal representative because it could not “find a breach of fiduciary duty or mismanagement or waste of assets or something of the like.” (RP 47-49) It rightly rejected as irrelevant the contention that “Mr. Moore is also a plaintiff’s lawyer,” and found that neither his decision to arbitrate nor his experience in handling bad faith claims constituted grounds for removal. (RP 47-49) The Court of Appeals addressed each of the stated bases offered for Mr. Moore’s removal and found they lacked merit. (Op. 17-21) Its unpublished decision properly applied established law, adhered to the proper standard of review, and presents no grounds for this Court’s further review – nor do petitioners suggest it does under any of the RAP 13.4(b) criteria.

**3. Preservation of potential claims against a minor decedent’s parents for liability does not conflict with cases holding that a child does not have a tort claim against a parent for negligent supervision.**

Petitioners further misrepresent the Court of Appeals’ unpublished opinion in arguing that the Court of Appeals erroneously held that the Taylor Griffith Estate had “tenable claims” against Taylor’s parents. (Pet. 10) To the contrary, the Estate has not sued the Griffith parents; the claims at issue here were the Harris creditors’ claims against both the Griffith parents and the Estate.



A minor's parents can be liable to a third party for injury caused by the minor based on the family car doctrine and under the theory of negligent entrustment. *Jerdal v. Sinclair*, 54 Wn.2d 565, 568-69, 342 P.2d 585 (1959) (family car doctrine); *Atkins v. Churchill*, 30 Wn.2d 859, 865-66, 194 P.2d 364 (1948) (negligent entrustment of vehicle); *Cameron v. Downs*, 32 Wn. App. 875, 879-81, 650 P.2d 260 (1982) (parent can be liable under family car doctrine and negligent entrustment for injuries to third parties in auto accident caused by minor child). The Harris creditors alleged that the Griffith parents were liable for the death of Mr. Harris and the serious injuries to Mrs. Harris under the family car doctrine and the theory of negligent entrustment (CP 32-37), in accordance with this settled law.

Contrary to petitioners' claims (Pet. 1, 9-10), the Harris creditors' claims, and the personal representative's desire to keep the Griffith parents in the case as a potential source of payment of any joint and several judgment recovered by the Harris family, have nothing to do with the parental immunity doctrine. The doctrine of parental immunity "has never been extended to cases where the minor child injures another." *Carey v. Reeve*, 56 Wn. App. 18, 22-23 & n.2, 781 P.2d 904 (1989) (trial court erred in applying doctrine of

parental immunity in case that “deals with the liability of a parent (or grandparent) because of a child’s alleged action towards a third person, and not toward her child (or their grandchild)”); *see Eldredge v. Kamp Kachess Youth Services, Inc.*, 90 Wn.2d 402, 408, 583 P.2d 626 (1978). In *Barton v. Dep’t. of Transp.*, 178 Wn.2d 193, 308 P.3d 597 (2013) (Op. 19), for instance, this Court considered the right of contribution between a parent and child, who were joint tortfeasors, under RCW 4.22.070; the dispute was premised on the fact that parents can be liable under the family car doctrine to a motorist injured by their child.

The petition for review cites for the first time *Smelser v. Paul*, 188 Wn.2d 648, 398 P.3d 1086 (2017) (Pet. 1, 9), asserting that the Court of Appeals’ unpublished decision here is in conflict with its holding that “no actionable tort duty exists between a child and parent based on negligence.” (Pet. 1) But *Smelser* addressed a parent’s potential liability in an action against a third party who had run over his child; this Court held that fault could not be apportioned to the father because a child cannot recover against a parent for negligent supervision. *See also Zellmer v. Zellmer*, 164 Wn.2d 147, 188 P.3d 497 (2008) (Pet. 1-2, 9-10) (remanding for factual determination whether stepparent was acting in loco parentis when

child drowned; if so, parental immunity would foreclose liability for child's death). Neither *Smelser* nor *Zellmer* had anything to do with joint and several liability and contribution rights.

Petitioners' argument that "there are and never were any tenable claims to be made by the Estate of Taylor Griffith against Kenneth and Jackie Griffith" (Pet. 10) ignores that the Harris creditors, not the Estate, were the ones asserting the claims here. The claims in *Smelser* and *Zellmer* for injury to a child are the opposite of the claim here, where the issue is whether fault may be apportioned to both the parent and child for causing injuries to a third party – the Harris creditors.

As the Court of Appeals correctly recognized (Op. 20), Mr. "Moore did not assert a potential claim on behalf of the Estate against the Griffiths for negligent parenting." In fact, he has not asserted any claims against the Griffith parents under any theory. In any event, as the Court of Appeals also correctly noted (Op. 20), the Griffith parents never asserted parental immunity as an affirmative defense to the Harris creditors' claims, but instead admitted in their answer to the Harris creditors' initial complaint that the vehicle Taylor had been driving was registered to his father and that Taylor was a

permissive user (CP 39-41) – the bases for family car and negligent entrustment liability. *Cameron*, 32 Wn. App. at 878-81.

Moreover, the Griffith parents themselves recognized in their answer to the Harris creditors' initial complaint that “[p]ursuant to RCW 4.22.070 . . . the trier of fact [should] apportion the fault of all persons, parties, or entities involved herein, with the resultant reduction in defendant’s alleged liability.” (CP 40) Although it does not appear that the defense counsel Travelers retained to jointly defend the Griffith parents and the Estate ever explored or discussed this potential conflict between their clients, the potential of such a conflict was readily apparent to both the trial court (CP 914: interests of the Estate and the Griffith parents “could not get any more adverse”), to expert Ripley (CP 1177), and to the Court of Appeals. (Op. 19-20)

No authority from this or any other Court suggests that Mr. Moore was not justified in recognizing that the Griffith parents may be potential sources of payment to the Harris creditors for their substantial damages. Mr. Moore’s acknowledgement as personal representative that any recovery by the Harris creditors from the Griffith parents on a joint and several judgment would limit the Estate’s liability satisfied his fiduciary duty to the Estate and was not

grounds for removal. The Estate clearly had an interest in preserving the Griffith parents' potential joint liability to the Harris creditors – just as Taylor would have had had he survived. For that reason, *White v. Johns-Manville Corp.*, 103 Wn.2d 344, 693 P.2d 687 (1985), *Olver v. Fowler*, 161 Wn.2d 655, 168 P.3d 348 (2007), and *Estate of Brenchley*, 96 Wash. 223, 164 Pac. 913 (1917) (also all cited for the first time at Pet. 10), are inapposite, and do not conflict with the principle that Mr. Moore as personal representative “stepped into the shoes” of the decedent.

Mr. Moore did not breach any fiduciary duties by recognizing the Griffith parents' potential joint liability to the Harris creditors. Even had it been raised in the trial court, his duty to explore the potential for contribution by the Griffith parents in the event of a future determination of joint and several liability under RCW 4.22.070 was not a ground for removal, and does not conflict with cases holding that a child does not have a tort claim against his parent for negligent supervision. Petitioners' attempt to have this Court review this “parental immunity” issue now seeks an advisory opinion that is unwarranted by any issue raised by the Court of Appeals' unpublished opinion affirming the trial court's refusal to remove Mr. Moore as personal representative.

**E. Conclusion.**

This Court should deny review of the Court of Appeals' unpublished opinion affirming the trial court's discretionary decision not to remove Mr. Moore as personal representative.

Dated this 28<sup>th</sup> day of September, 2018.

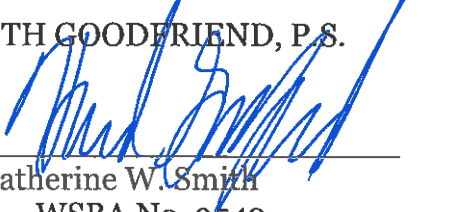
LUVERA LAW FIRM

By: \_\_\_\_\_

  
David M. Beninger  
WSBA No. 18432

SMITH GOODFRIEND, P.S.

By: \_\_\_\_\_

  
Catherine W. Smith  
WSBA No. 9542  
Howard M. Goodfriend  
WSBA No. 14355

Attorneys for Respondents Stefanie Harris, as Personal Representative of the Estate of Steven Harris, and Margaret Harris (Harris Creditors)

**DECLARATION OF SERVICE**

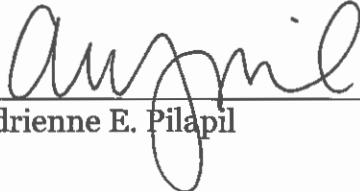
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on September 28, 2018, I arranged for service of the foregoing Respondent Harris Creditors' Answer to Petition for Review, to the Court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
David M. Beninger Patricia E. Anderson Luvera Barnett Brindley Beninger et al 701 5th Avenue, Suite 6700 Seattle, WA 98104-7016 <a href="mailto:david@luveralawfirm.com">david@luveralawfirm.com</a> <a href="mailto:patricia@luveralawfirm.com">patricia@luveralawfirm.com</a> <a href="mailto:Cathy@LuveraLawFirm.com">Cathy@LuveraLawFirm.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Ann T. Wilson Law Offices of Ann T. Wilson 1420 5th Ave Ste 3000 Seattle, WA 98101-2393 <a href="mailto:ann@atwlegal.com">ann@atwlegal.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Peter R. Jarvis Holland & Knight 111 SW 5th Avenue, Suite 2300 Portland, OR 97204-3626 <a href="mailto:peter.jarvis@hkclaw.com">peter.jarvis@hkclaw.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

<p>William W. Spencer  Murray Dunham &amp; Murray  200 West Thomas Street, Suite 350  Seattle, WA 98109  <a href="mailto:william@murraydunham.com">william@murraydunham.com</a>  <a href="mailto:tammy@murraydunham.com">tammy@murraydunham.com</a></p>	<p><input type="checkbox"/> Facsimile  <input type="checkbox"/> Messenger  <input checked="" type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> E-Mail</p>
<p>Keith D. Petrak  Byrnes Keller Cromwell LLP  1000 2nd Ave Fl 38  Seattle WA 98104-1094  <a href="mailto:kpetrak@byrneskeller.com">kpetrak@byrneskeller.com</a>  <a href="mailto:kwolf@byrneskeller.com">kwolf@byrneskeller.com</a></p>	<p><input type="checkbox"/> Facsimile  <input type="checkbox"/> Messenger  <input checked="" type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> E-Mail</p>
<p>Kenneth S. Kagan  Law Office of Kenneth S. Kagan, PLLC  600 1st Ave Ste 512  Seattle WA 98104-2253  <a href="mailto:ken@kenkaganlaw.com">ken@kenkaganlaw.com</a></p>	<p><input type="checkbox"/> Facsimile  <input type="checkbox"/> Messenger  <input checked="" type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> E-Mail</p>
<p>Michael A. Jaeger  Lewis Brisbois Bisgaard &amp; Smith LLP  1111 Third Avenue, Suite 2700  Seattle, WA 98101  <a href="mailto:Michael.Jaeger@LewisBrisbois.com">Michael.Jaeger@LewisBrisbois.com</a></p>	<p><input type="checkbox"/> Facsimile  <input type="checkbox"/> Messenger  <input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> E-Mail</p>

**DATED** at Seattle, Washington this 28<sup>th</sup> day of September, 2018.

  
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Andrienne E. Pilapil



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**IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

In re the Estate of	)	No. 15-4-06640-1 SEA
	)	
TAYLOR GRIFFITH,	)	(Consolidated with No. 16-4-00622-9
	)	SEA)
DECEASED.	)	
	)	NOTICE OF APPEAL BY PETITIONERS
	)	TO WASHINGTON COURT OF
	)	APPEALS DIVISION ONE

Petitioners, KENNETH GRIFFITH and JACKIE GRIFFITH, hereby seek review by the designated appellate court of the Order re Petition to Cancel Letters of Administration and to Remove and Replace Personal Representative. A true and correct copy of that Order is attached hereto as Exhibit A.

DATED this 21st day of June, 2016.

THE LAW OFFICES OF ANN T. WILSON

By: *Ann T. Wilson*  
ANN T. WILSON, WSBA No. 18213  
Attorney for Kenneth Griffith and Jackie Griffith

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**Declaration of Service**

The undersigned declares under penalty of perjury under the laws of the State of Washington that on June 21, 2016, he mailed via USPS first-class postage prepaid a copy of the document to which this Declaration is appended to the parties listed below.

Signed at Seattle, Washington on June 21, 2016.



Richard M. Stewart

Michael A. Jaeger  
Lewis Brisbois Bisgaard & Smith LLP  
1111 Third Avenue, Suite 2700  
Seattle, WA 98101

David Benninger  
Patricia Anderson  
The Luvera Law Firm  
701 Fifth Avenue, Suite 6700  
Seattle, WA 98104

Keith D. Petrak  
Byrnes Keller Cromwell LLP  
1000 Second Avenue, 38<sup>th</sup> Floor  
Seattle, WA 98104

William Spencer  
Murray Dunham & Murray  
200 West Thomas Street, #350  
Seattle, WA 98119

## EXHIBIT A

Honorable Theresa Doyle

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

In re the Estate of:

TAYLOR GRIFFITH,  
Deceased.

NO. 16-4-00622-9 SEA

(Consolidated with Cause  
No. 15-4-06640-1 SEA)

KENNETH GRIFFITH and JACKIE  
GRIFFITH,

Petitioners,

ORDER RE PETITION TO CANCEL  
LETTERS OF ADMINISTRATION AND  
TO REMOVE AND REPLACE  
PERSONAL REPRESENTATIVE

v.


BRADLEY J. MOORE,

Respondent.

This matter having come before the undersigned judge of the above entitled Court upon the Griffiths' Petition to Cancel Letters of Administration and Replace Personal Representative Brad Moore as Personal Representative of the Estate Of Taylor Griffith and the Court having considered the records and files, IT IS ORDERED THAT:

1. Petition is denied for all the reasons.
- X The Court stated (which are incorporated herein).
- X \_\_\_\_\_

DATED: 5/26/16

  
\_\_\_\_\_  
JUDGE THERESA DOYLE

ORDER - 1

LUVERA LAW FIRM  
ATTORNEYS AT LAW  
6700 COLUMBIA CENTER • 701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 467-6090

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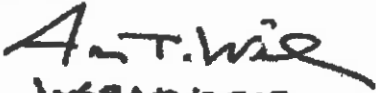
LUVERA LAW FIRM



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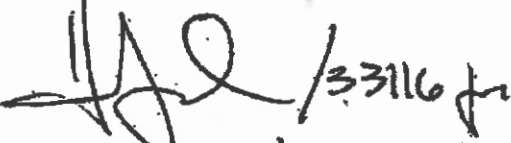
David M. Beninger, WSBA 18432  
Attorney for Plaintiffs  
6700 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104  
Telephone: (206) 467-6090  
Facsimile: (206) 467-6961  
David@LuveraLawFirm.com

Copy Received:



WSBA # 19215

Attorney for Ken & Jackie Griffith



KEN & JACKIE GRIFFITH

ORDER - 2

**LUVERA LAW FIRM**  
ATTORNEYS AT LAW

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6700 COLUMBIA CENTER • 701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 467-6090

**SMITH GOODFRIEND, PS**

**September 28, 2018 - 2:56 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96241-3  
**Appellate Court Case Title:** In the Matter of the Estate of: Taylor Griffith  
**Superior Court Case Number:** 15-4-06640-1

**The following documents have been uploaded:**

- 962413\_Answer\_Reply\_20180928145233SC842083\_2549.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
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- ann@atwlegal.com
- cate@washingtonappeals.com
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- ken@kenkaganlaw.com
- kpetrak@byrneskeller.com
- kwolf@byrneskeller.com
- patricia@luveralawfirm.com
- peter.jarvis@hklaw.com
- rick@atwlegal.com
- silvia.webb@lewisbrisbois.com
- william@murraydunham.com

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**Filing on Behalf of:** Howard Mark Goodfriend - Email: howard@washingtonappeals.com (Alternate Email: andrienne@washingtonappeals.com)

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Seattle, WA, 98109  
Phone: (206) 624-0974

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