No. 99752-7

SUPREME COURT

OF THE STATE OF WASHINGTON

In Re Sanctions Judgment against attorney Robert Critchlow,

Petitioner vs.

Dawn Vidoni, Dianna Evans and Levi Liljenquist,

Respondents.

Robert Critchlow Petition for Review

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I. IDENTITY OF PETITIONER

Petitioner Robert W. Critchlow asks this court to review the Div. III Opinion dated Feb. 25, 2021 and their order dated April 29, 2021.

II. PART B

Div. III opinion and order are attached to the appendix.

III. INTRODUCTION

This case involves a "pro tem" court commissioner who acted without jurisdiction and signed orders on this guardianship case in violation of the prohibition against pro tem commissioners signing such orders as set forth in LSPR 98.22 (a)[see appendix]. This pro tem commissioner also imposed CR 11 sanctions on attorney Robert Critchlow for asking the pro tem commissioner to follow the Washington supreme court opinion in *Graham v. Graham, infra* which mandates that incompetents be provided advance notice and opportunity to be heard before a guardian ad litem can be appointed. This case also involves a "pro tem" commissioner who misrepresented that he was a regular court commissioner rather than a pro tem court commissioner. Finally, this case involves a Div. III opinion which violated the Washington state supreme court rule set forth in *Sunderland Servs. v. Pasco,*127 Wn.2d 782 (en banc, 1995) that appellate courts cannot change the factual record of a case they are reviewing and then issue an opinion based on this incorrect record.

IV. STATEMENT OF THE CASE

On Feb. 22, 2019 attorney Robert Critchlow represented Jerome Green in a VAPO hearing (supreme court case #995672 filed on March 10, 2021) AAG Dawn Vidoni alleged in that case that DSHS was going to file a guardianship petition for Mary J. Green. In the VAPO order AAG Vidoni was ordered to file the guardianship petition on Feb. 25, 2019. [CP 148-204] Instead, Vidoni obtained an ex parte order without giving Jerome Green nor his attorney Mr. Critchlow, nor any of Mary Green's children an opportunity to appear at and contest the appointment of a guardian ad litem.[CP 148-204] Since this was "contested" Vidoni failed to follow written Spokane County GAL policies [appendix] requiring her to place a "contested appointment" on the Guardianship Calendar for a hearing. As such, attorney Critchlow filed a motion to strike this wrongfully obtained ex parte GAL appointment order. Critchlow also filed a motion for CR 11 sanctions against the attorneys (Dawn Vidoni and Dianna Evans) who signed and approved this wrongfully obtained GAL appointment order. [CP 38-39]

On March 15, 2019 Jerome also filed his own pro se motions 1) to intervene as a party and/or in the alternative to have the VAPO case joined with the guardianship case and 2) to appoint counsel for his mother [CP 27-35] These motions (along with attorney Critchlow's motion to revise Commissioner High-Edward ruling of Feb. 22, 2019 in the VAPO case) were all noted and called in

ready for the "civil motions judge room 303" to be heard on March 29, 2019. On that date Mr. Critchlow argued his motion for revision in front of Judge Moreno and it was granted. Judge Moreno remanded the VAPO case finding that there was "an unresolved issue regarding Mary Green's ability to consent as well as the burden of proof." Mr. Critchlow and Mr. Green were then told to go down to courtroom 303 where Mr. Green's pro se motions were to be heard in front of judicial officer Steve Grovdhal. At that hearing GAL Evans presented an order appointing her friend Levi Liljenquist as the attorney to represent Mary Green [CP 25]. Further Evans had Liljenquist appointed at his private pay rate of $175/hr even though this was a "county pay" case at the rate of $60/hr. [CP 70-71]

Steve Grovdahl had retired as a regular court commissioner on May 15, 2016 [CP 129-147 Critchlow declaration and public records]. Grovdahl was then hired back by Spokane County to perform temporary duties after the death of Judge James Triplett, first as a pro tem judge, then as a pro tem court commissioner. [CP 129-147] Although Mr. Critchlow and Mr. Green did not know it at the time Steve Grovdahl's pro tem judge status was revoked on March 15, 2019 by Spokane Co. Presiding Judge Harold Clarke. [CP 129-147, Critchlow declaration and public records] Grovdahl was then appointed on that same day (March 15, 2019) to act as a "pro tem" court commissioner. Yet on March 29, 2019 Grovdahl still had a very large colored sign posted outside his courtroom announcing that he was the "Honorable Steven Grovdahl, Pro Tem Judge."[CP 129-147] Grovdahl came out to the bench without even announcing his name nor

his judicial status and went straight into hearing the case. [RP 4 transcript of March 29, 2109 hearing] At that time Mr. Critchlow [March 29, 2019 transcript RP 13, line 12] believed that Grovdahl was acting as a pro tem judge and Critchlow referred to him as "judge" and Grovdahl made no correction on the record to deny this. Mr. Critchlow had to find out the true Grovdahl judicial status via a General Rule 31 request for administrative records sent to Court Administrator Ashley Callan on April 9, 2019. On April 19, 2019 [CP 129-147] Mr. Critchlow filed and served his declaration of Robert Critchlow in Support of Notice Striking Motion to Revise Commissioner Ruling which contained copies of these administrative records and the dates of "appointment" and "termination" and also pictures showing 1) "Grovdahl Pro Tem Judge" sign and 2) "Grovdahl Court Commissioner"sign. On Nov. 7, 2019, Jerome Green later discovered that Steve Grovdahl is now finally representing his correct judicial status as a "pro tem" court commissioner. [CP 326-28]

At the March 29, 2019 hearing Grovdhal denied Mr. Green's pro se motions to intervene as party and/or consolidate the two cases. Mr. Critchlow and Mr. Green only realized after the hearing was over that Grovdahl was acting and signing these orders as a regular **"ct commissioner"** rather than a "pro tem judge" nor even as a "pro tem court commissioner" [CP 73-74]

Mr. Critchlow had filed motions on behalf of Jerome Green to strike the GAL appointment order as unconstitutional and for CR 11 sanctions to be assessed against the attorneys (Evans and Vidoni) who had each signed off on and presented this ex parte order. This motion to strike was also held in front of Grovdahl the following Friday, April 5, 2019 and Grovdahl did the same thing. He still had his big colored sign that he was an honorable "pro tem judge" [CP129-147] He once again came out to the bench and went straight into hearing the case without announcing his true judicial status. [RP 18, April 5, 2019 hearing] Indeed Grovdahl was unprepared for this sanctions hearing and even admitted that **"this is the time and place for, well I don't know what it's set for."**[April 5, 2019 hearing, RP 18, lines 17-18] Grovdahl believed that Mr. Critchlow had brought a motion to remove GAL Evans and Mr. Critchlow had to correct him:

> MR CRITCHLOW: Your honor it's not a motion to remove the guardian ad litem. It's a motion to strike the guardian ad litem order.

[April 5, 2019 hearing, RP 35, lines 1-3] Mr. Critchlow confronted Grovdahl about the irregularities of this hearing [April 5, 2019 transcript RP 18-38] specifically his actions representing that he was a "pro tem judge." Grovdahl never mentioned the administrative order signed by Judge Harold Clarke appointing Grovdahl on March 15, 2019 as a **"pro tem court commissioner"**

[CP 129-147, Critchlow declaration, exhibit 7] Grovdahl denied Mr. Critchlow's motion to strike the GAL order and to sanction attorneys Vidoni and Evans. Instead, Grovdahl ordered sanctions imposed against Mr. Critchlow for raising constitutional issues of due process, notice and advance opportunity to be heard. [RP 18-38, April 5, 2019 hearing transcript] For this sanctions order/judgment Dianna Evans submitted her private rate for attorney fees at $185/hour and Levi Liljenquist submitted his private pay rate of $175/hr for attorney fees even though this was a **"public pay"** case with a set (court ordered) rate of $60/hr.

V. ARGUMENTS OF WHY REVIEW SHOULD BE ACCEPTED

1.The Div. III finding that Grovdahl was not misrepresenting his judicial status cannot be made by a reviewing court and this is a matter of substantial public interest that should be reviewed by the supreme court per RAP 13.4(b)(4)

The Div. III opinion makes a finding that "Mr. Critchlow's scurrilous charge that Commissioner Grovdahl held himself out as a judge lacks any credible support."(Op. 17) Credibility determinations are for the fact finder and are not reviewed on appeal. *J.L. Storedahl & Sons v. Cowlitz County*, 125 Wn. App. 1, 11 (2004). These misrepresentation issues are well supported by the official trial court records in this case, viz.:1) Judge Price order dated Nov. 5, 2018 appointing Grovdahl a pro tem judge; 2) Judge Clark's order dated March 15, 2019 terminating Grovdahl as pro tem judge and 3) Judge Clark's order dated March 15,

2019 appointing Grovdahl as a "pro tem" court commissioner. All of this is credible and competent evidence. Finally, the entire verbatim transcripts of both the March 29, 2019 and April 5, 2019 hearings prove that Steve Grovdahl did not announce his current judicial status.

1b. Div. III violated the Washington state supreme court ruling of *Sunderland Servs. v. Pasco,* 127 Wn.2d 782 (en banc, 1995) when they changed the factual record of this case and based their opinion on that incorrect factual record. RAP 13.4(b)(1)

Div. III offers as proof that there was no misrepresentation of judicial status a copy of the Grovdahl signature on the bottom of the March 29, 2019 order (Opin.17) wherein Grovdahl is listed and signed his name as a "court commissioner." But in fact Grovdahl was not a "court commissioner" at that time but was a **"pro tem court commissioner"** A court of appeals cannot change the factual record to support its opinion. *Sunderland Servs. v. Pasco*, 127 Wn.2d 782 (en banc, 1995) The issuance of sanctions by "pro tem" commissioner Grovdahl under these circumstances is a gross miscarriage of justice in addition to lacking any jurisdiction to issue such an order per LSPR 98.22 (a) which clearly prohibits "pro tem" commissioners from signing any orders on guardianship cases.

2. Mr. Critchlow's due process rights under the 5th and 14th amendments of our federal constitution were violated when presentment was made ex parte by Dianna Evans on May 10,

2019 without notifying Mr. Critchlow. This is a significant question under our federal constitution per RAP 13.4(b)(3)

Div. III states that "nothing in the record indicates Mr. Critchlow responded or objected to the amount or calculation of the attorney fee requests." (Opin. 24) This is because Dianna Evans obtained these orders/judgments ex parte without giving Mr. Critchlow formal notice of the time and place for presentment [see appendix-docket summary for May 10, 2019] Ex parte contacts with the court by a GAL are strictly prohibited by statute and court rule. See RCW 11.88.093 and GALR 2(m). For a party that has a liberty or property interest, due process requires, at a minimum notice and an opportunity to be heard. *Soundgarten v. Eikenberry,* 123 Wn.2d 750, 768 (1994). Notice must be reasonably calculated to inform the pending action and of the opportunity to object. *State v. Dolson,* 138 Wn.2d 773, 777 (1999). Finally, Civil Rule 54 (f)(2) requires that Mr. Critchlow be given five days "notice of presentation" before a judgment is entered but none of these rules were followed by the respondents.

2a. Mr. Critchlow never argued that a hearing had to be held before a guardianship petition could be filed. Critchlow's argument was that a hearing for Mary Green had to be held before a Guardian Ad Litem could be appointed. This is a matter of substantial public interest that should be determined by the supreme court per RAP 13.4(b)(4).

2b. Div. III violated the Washington state supreme court rule set forth in*Sunderland Servs. v. Pasco,* 127 Wn.2d 782 (en banc, 1995) when they changed the factual record and then issued an opinion based on that incorrect factual record.

Div. III wrote "central to Mr. Critchlow's motions was his belief that there should have been a hearing with notice to Mary Green before the guardianship petition could be filed and the order appointing a GAL could be entered." (Op.5) This is not and never has been the argument Mr. Critchlow made in the official court records. In Mr. Critchlow's opening brief to Div. III he explained:

In her response memorandum [CP 58-62] AAG Vidoni wrote that (page 3,par 2) **"Mr Green seems to confuse appointment of a guardian ad litem with appointment of a guardian."** This is not true. Mr. Critchlow's memo clearly addresses the right for a hearing on the issue of appointing a "guardian ad litem" and not the issue of appointing a "guardian .Indeed, his motion was to **"strike the GAL appointment order"** and it is abundantly clear that these issues were the ones submitted by Critchlow to the court for consideration. GAL Evans response memorandum [CP 63-69] is equally elusive in failing to address the fact that no contested hearing was held before her appointment as GAL for Mary J. Green. The Evans response simply rambles on about the requirements of CR 11 and, like Vidoni, Evans goes on to discuss the notice requirements for **appointing a "guardian",** not the requirements for appointing a **""guardian ad litem"** which was the specific issue that attorney Critchlow had put before the court.

[Critchlow opening brief, pg 30-31] Even so Div. III adopted these adversarial arguments set forth by respondents as though they were the facts of this case when these statements are patently false.

3. Mr. Critchlow's motion to strike was not "baseless" but was in fact based on longstanding case law. The Div. III opinion is in conflict with *Graham v. Graham* and needs to be reviewed by this court per RAP 13.4(b)(1)

Div. III states that Mr. Critchlow was "advancing his baseless arguments" (Op. 1) while at the same time they have misstated the substance of those arguments. Mr. Critchlow's argument was that due process required a hearing before a guardian ad litem could be appointed for Mary Green. Critchlow did not argue that this had to be done before a guardianship case was commenced. On page 28-29 of his opening brief he quoted *Graham v. Graham*:

> That a guardian ad litem should **not** be appointed by the court **unless a full and fair opportunity** is given to the alleged incompetent to defend and be heard. There **is something fundamental** in the matter of a litigant being able to use his personal judgment and intelligence in connection with a lawsuit affecting him, and not having a guardian's judgment and intelligence substituted relative to the litigation affecting the alleged incompetent. Furthermore, there is **something fundamental** in a party litigant being able to employ an attorney of his voluntary choice to represent him in court and in being free to accept or reject the advice of such an attorney. The **interposition of a guardian ad litem** could very well substitute his judgment and inclinations and intelligence for an alleged incompetent's. (Emphasis added in bold)

[Critchlow opening brief, pgs 28-29] *Graham v. Graham*,40 Wn.2d 64 (1952). *Graham, id* is the seminal case addressing these due process rights. This case has never been overruled and the Washington Supreme court has affirmed/followed it in *Quesnell v. State*, 83 Wn.2d

224 (1973). Indeed, *Graham* has also been affirmed/followed by numerous courts of appeals cases as well. Div. III is in direct conflict with *Graham, id.* A decision of the Supreme court is binding on all lower courts, *State v. Gore*, 101 Wn.2d 481, 681 P.2d 227 (1984)["in failing to follow directly controlling authority of this court, the Court of Appeals erred"]

4.The Div. III discussion of *Marriage of Blakely* demonstrates that the law is not clear in these matters and so how can Mr. Critchlow be sanctioned under Civil Rule 11 for arguing that there should be a right for a contested hearing for appointments of guardian ad litems in guardianship cases? This is a matter of substantial public interest that should be determined by the supreme court. RAP 13.4

In their discussion of *Marriage of Blakely*, 111 Wn. App. 351 (Div. III, 2002) Div. III (Op. 10) states that case dealt with RCW 4.08. 060. Mr. Critchlow also previously noted that the case dealt with RCW 4.08.060. Mr. Critchlow wrote on page 2 of his trial court memo:

The statute sets out no procedure for appointment of a GAL beyond application requirements *Marriage of Blakely*, 111 Wn. App. 351 (Div. III, 2002) citing RCW 4.08.060(2). However case law provides that whenever the issue of a party's competence to understand legal proceedings is raised, the trial court should conduct a hearing to determine whether a party is mentally competent or requires a GAL. *Marriage of Blakely*, 111 Wn. App. 351 (Div. III, 2002) citing *Vin Vo v.Pham*, 81 Wn. App. 781 at 786.

[CP 40-51] Div. III held (Opin 10)"the Department properly sought ex parte appointments of the GAL in this guardianship proceeding under RCW 11.88.090(3)". However, like RCW 4.08.060, RCW 11.88.090(3) also does not specify any particular method for appointing the GAL. It does not say whether the appointment can be done ex parte or whether it must be done by way of a contested hearing with advance notice. How can Mr. Critchlow be sanctioned for making a good faith argument that a contested hearing with advance notice is required when RCW 11.88.090(3) is not clear in this situation and in fact is silent on the subject? Further, there is a different Washington state standard guardianship form GDN 08.0470 (07/2017) which is entitled "Order Appointing Guardian Ad Litem in an Existing Guardianship case." [see appendix]. This form clearly contemplates appointment of a GAL after a guardianship case has already been commenced, presumably with a regular hearing and advance notice to family members. This form also supports Mr. Critchlow's argument that advance notice of such a hearing is better than an ex parte proceeding particularly since court rules and statutes, supra, strictly prohibit ex parte contacts by GAL's.

CR 11 allows for "good faith arguments for the extension, modification or reversal of existing law or the establishment of new law." CR 11 (b)(1). Civil Rule 11 is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. *Kilduff v. San Juan County*, 194 Wn. 2d 859 (2019) citing *Bryant v. Joseph Tree Inc.*119 Wn.2d 210, 219 (1992).

5. The Div. III holding in this case violates the Equal Protection clauses of the 5th and 14th amendments in our federal constitution which involve significant questions of law which should be reviewed per RAP 13.(b)(3)

The Div. III holding in this case is "The department properly sought ex parte appointment of the GAL in this guardianship proceeding under RCW 11.88.090(3)" (Op. 10) But neither statute RCW 11.88.090(3) nor RCW 4.08.060(2) mentions any ex parte procedure for appointment of GAL's. As such, Div. III has created two different methods for dealing with incompetents: 1) those incompetents involved with guardianship proceedings will have a GAL appointed ex parte and without advance notice or a contested hearing and 2) all other cases involving incompetents will have the right to a contested hearing and advance notice before appointment of a GAL. This will not pass must under the **"equal protection clauses"** of our federal

constitution to classify incompetents in such a manner without any rational basis. See *Fire Protection Dist. v. City of Moses Lake*, 145 Wn.2d 702 (2002) citing *Corso Inc. v. Liquor Control Board*, 107 Wn.2d 754 (1987) and US Const. amend. 14.

6a.LSPR 98.22 was raised at the trial court by attorney Diana Evans and so the Div. III holding that this issue is not reviewable since not raised at the trial court is incorrect. Further it appears that the Div. III did actually review LSPR 98.22 by ruling that it was not jurisdictional. These are matters of substantial public interest per RAP 13.4(b)(4).

6b. Div. III violated the Washington state supreme court opinion of *Sunderland Servs. v. Pasco,*127 Wn.2d 782 (en banc, 1995) when Div. III changed the factual record in this case and found that Mr. Critchlow knew that Grovdahl was a pro tem commissioner on April 5, 2019. This should be reviewed per RAP 13.4(b)(1)

The Div. III opinion holds that, since it was raised "for the first time on appeal" (Op.15) "any violation of LSPR 98.22 is not reviewable." (Op.16) At the same time, Div. III holds that "the error complained of by Mr. Critchlow is not jurisdictional "citing *Amy v. Kmart of Wash LLC*, 153 Wn. App. 846 (2009) (Op. 15) which is non sequitur. In his opening brief for the court of appeals Mr. Critchlow had written as follows:

Even GAL Dianna Evans <u>also</u> admitted and understood that a pro tem commissioner could <u>not</u> hear any guardianship matters. Indeed, Evans specifically stated in her Guardian Ad Litem Reponses to Motion for Revision dated April 12, 2019 [CP 278-275] where she attested on page 2 par 4 as follows:

Pro tem commissioners cannot hear guardianship matters but Commissioner Grovdahl is duly appointed and has no restriction in hearing this matters. **See LSRP 98.22**(Emphasis added in bold) [Critchlow Opening Brief, page 16]. Although the issue was specifically raised by Ms. Evans in her trial brief, since it was briefed and argued to the trial court, it can be considered by courts on appeal. See *Assoc. Gen. Contrtrs. King County,* 124 Wn.2d 835 (1994) citing *State v. Riley*, 121 Wn.2d 22 (1993)[courts can consider issues briefed at the trial court]

6b. Div. III violated the Washington state supreme court rule of *Sunderland Servs. v. Pasco,*127 Wn.2d 782 (en banc, 1995) when they changed the factual record in this case held that Mr. Critchlow knew that Grovdahl was a pro tem commissioner on April 5, 2019 which is demonstrably false. This should be reviewed per RAP 13.4(b)(1)

Div. III complains that Mr. Critchlow should have raised his objection at the time of the April 5, 2019 sanctions hearing and then they changed the factual record by stating "that he did raise a point of order that Grovdahl was a **pro tem commissioner** rather than a pro tem judge." (Op. 16) This is clearly not the factual record for this case. At the April 5, 2019 hearing Critchlow was unaware of Steve Grovdahl's' "pro tem" court commissioner status. The March 29, 2019 order merely described Grovdahl as a **"court commissioner"** and not as a **"pro tem court commissioner."** Mr. Critchlow did not find out this specific information until he submitted his GR 31 public records request for Grovdahl's true judicial status which he received on April 9, 2019.

7. GAL Dianna Evans misrepresented Grovdahl's judicial status when she drafted her pleadings in this case and described him as a court commissioner rather than a "pro tem" court commissioner because she knew that Spokane County Local Rule LSRP 98.22 does not allow pro tem court commissioners to sign any orders on guardianship cases. These are matters of substantial public interest to be reviewed by the supreme court per RAP 13.4(b)(4)

As previously noted, GAL Evans was aware of the LSPR 98.22(a) requirement that pro tem court commissioners could not sign orders on any guardianship cases. [CP 278-275] Nonetheless, Evans repeatedly described Grovdahl as a "court commissioner" in all of her pleadings. Indeed she continued to make these misrepresentations well after Mr. Critchlow filed and served his declaration and public records exhibits (showing true Grovdahl judicial status) on April 19, 2019. She is not entitled to any sanctions when she engages in this type of fraudulent misconduct. See In *Mitchell v. Wash. State Inst. of Pub. Policy,* 153 App. 803 (Div. II, 2009), where the court held:

> A cost bill is nothing more than a document that supports a party's request for attorney fees and costs in signed pleadings and motions. It is **not a license to commit fraud or other misconduct in order to enhance the recovery** under a cost bill. Therefore we hold that a cost bill is a legal memorandum subject to sanction under CR11 even though outside the period specified for motions to retax under CR 78(e).(emphasis added in bold)
>
> *Mitchell, id* citing CR 11 and CR 78e (emphasis added in bold).

8. RAP 2.5 (a)(1) allows Mr. Critchlow to raise lack of trial court jurisdiction for the first time on appeal. These are matters of substantial public interest to be reviewed per RAP 13.4(b)(4).

Div. III recognized that Mr. Critchlow made a jurisdictional objection to Grovdahl that the "local rules don't authorize court commissioners to hear civil motions."(Op.16) Div. III also noted Critchlow's written objection to jurisdiction on the April 5, 2019 court order. Thus it is clear that Mr. Critchlow was objecting to Grovdahl's jurisdiction to hear these matters. Jurisdiction can always be raised, even on appeal. See RAP 2.5(a)(1) and *In Re Estate of Reugh*, 10 Wn. App. 2d 20, 43 (2019)

9a. Div. III states that Spokane County GAL policies indicate that this was an uncontested hearing but according to the official court record both Evans and Vidoni knew that the appointment of a GAL was being contested. These are matters of substantial public interest to be reviewed by the supreme court per RAP 13.4(b)(4).

9b. Div. III violated the Washington state supreme court opinion of *Sunderland Servs. v. Pasco,*127 Wn.2d 782 (en banc, 1995) when Div. III changed the factual record in this case and this should be reviewed per RAP 13.4(b)(1)

Div. III (Op.10, fn 7) states that since Mary Green did not have counsel at the time of the GAL appointment the Spokane County GAL policies deem such a hearing as "uncontested" and so any advance notice requirements would not apply to her case. Div. III has changed the factual record in this case which was as stated in the Critchlow opening brief:

GAL Dianna Evans [CP 287-315, Judge Clary status conference transcript of Dec. 11, 2019, RP 23, lines 13-16] was also aware that Jerome Green (and his attorney Robert Critchlow) were contesting this

guardianship but still both Evans and Vidoni failed to the follow written Spokane County GAL policies [Appendix 1, pg 2-3] [Critchlow opening brief pg 25] Div. III's finding that Mary Green's GAL appointment hearing was "uncontested" is simply not supported by the actual record in this case. Div. III has changed the factual record in violation of *Sunderland Servs. v. Pasco,id.*

12. Critchlow's due process rights under the 5th and 14th amendments were violated when respondents Evans and Liljenquist failed to file any response briefs with the court of appeals. These issues involve significant questions of law under the constitution and should be reviewed per RAP 13.4(b)(3)

By letter dated Feb. 18, 2020 the court of appeals advised all respondents (Vidoni, Evans and Liljenquist) of the due dates for their response briefs. [see appendix-clerk letter] On May 26, 2020 Mr. Critchlow filed and served on all respondents his Opening Brief. Respondents Dianna Evans and Levi Liljenquest never filed response briefs .Under the RAP's "a respondent is **obligated to file a brief** and monetary sanctions may be imposed for failure to do so." *State v. Wilburn*, 51 Wn. App. 827 (Div. 11, 1988) citing RAP 18.9. Further, neither Evans nor Liljenquist signed off as formally "joining" in the Response Brief filed by Dawn Vidoni. Finally, respondents Evans and Liljenquist failed to file formal motions with the court of appeals asking that they be "exempted" from having to file response briefs for this case. See e.g. *In Re*

Settlement/Guardianship o A.G.M. 154 Wn. App. 58 (Div. II, 2010)[respondent's motion for exemption granted] This 'prima facie error' rule was first brought to the courts' attention in Mr. Critchlow's motion for oral argument. Respondent Evans filed her "response to motion" wherein she brazenly stated "unless directed by the court **I do not plan to file a formal responsive briefing** or appear for any oral arguments in this matter." [see appendix-Evans response dated Dec. 22,2020] Mr. Critchlow's motion for oral argument was denied.

This rule limits review to whether appellant has established a prima facie case of error. Later cases firmly established and elaborated upon this holding *State v. Wilburn*, 51 Wn. App. 827 (Div. 11, 1988) citing *Stigall v. Courtesey-Chevrolet-Pontiac Inc*, 15 Wn .App. 739 *(1976); Marriage of Forsyth*, 14 Wn. App. 909 (1976); *Foley v. Smith*,14 Wn. App. 285 (1975) and *Martin v. Schoonover* 13 Wn. App. 48 (1975)[respondent choosing not to file a brief does so at his peril]

13. Evans and Liljenquist failure to file response briefs violated Critchlow' due process rights under the 5th and 14th amendments and prevented him from filing a Motion on the Merits to Reverse per RAP 18.14. These matters involve significant questions under our federal constitution and should be reviewed per RAP 13.4(3)

RAP 18.14(b) allows a party to submit a "motion on the merits to reverse" any time after respondent briefs have been

submitted. A motion on the merits is not properly before the court until this is done. See *In Re Marriage of Hennemann*, 69 Wn. App. 345 (Div. I, 1993) fn 1. The failure of Evans and Liljenquist to file any response briefs prevented Mr. Critchlow from filing his motion on the merits to reverse, denying him his due process rights accorded to him under the RAP's and our federal constitution.

14.Div.III overlooked the fact that respondent Levi Liljenquist never gave Mr. Critchlow any notice (oral or written) of his intent to seek CR 11 sanctions which is a violation of Critchlow's due process rights under the 5th and 14th amendments that needs to be reviewed per RAP 13.4 (b)(3).

Div. III states that sanctions were proper since Vidoni and Evans gave Mr. Critchlow proper notice of their intent to seek CR 11 sanctions because they mentioned sanctions in their briefs (Op. 19) even though they had not filed formal CR 11 motions. However, respondent Levi Liljenquist never gave Mr. Critchlow any notice of his intent to seek sanctions, either orally or in writing. This cannot satisfy due process for Mr. Critchlow.

VI. CONCLUSION

For all the above-mentioned reasons this court should accept review, reverse the sanctions judgment against petitioner and award reasonable attorney fees and costs to petitioner.

SUBMITTED THIS 10th day May, 2021

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DECLARATION OF SERVICE

I, Robert W. Critchlow hereby declare under penalty of perjury of the laws of the State of Washington here in Spokane County, WA. that I served Robert Critchlow's Petition for Review via regular mail on the following:

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DECLARED THIS 10th day of May, 2021

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Spokane, WA 99201-1113

CASE # 367746
In re: The Sanction Order Against Attorney Robert W. Critchlow
SPOKANE COUNTY SUPERIOR COURT No. 194002982

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:jab
Enc.

c: **E-mail**—Hon. Steven N. Grovdahl

FILED
FEBRUARY 25, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Sanction Order Against Attorney	)	No. 36774-6-III
ROBERT W. CRITCHLOW.	)	UNPUBLISHED OPINION

SIDDOWAY, J. — Robert W. Critchlow appeals CR 11 sanctions that were imposed on him personally in this guardianship proceeding in which he represented Jerome Green. Mr. Green is the son of Mary Green, the alleged incapacitated party.

We disapprove of the guardian ad litem's (GAL's) choice to seek CR 11 sanctions against Mr. Critchlow without first giving him notice of the legal and factual problems with his challenge to the filing of the guardianship petition and her appointment. His persistence in advancing his baseless arguments demonstrates that for the GAL to have provided notice would not have made a difference, however. We affirm the fees and

costs that were awarded at her request to herself and Mary Green's court-appointed lawyer.[1]

We have no criticism of the conduct of the Department of Health and Social Services (Department), but find that the trial court abused its discretion in awarding sanctions to it. The Department did not allege a CR 11 violation or file a motion for sanctions. The GAL's rationale for awarding fees as the sanction (to protect expense from being borne by Ms. Green's estate) does not apply to the Department. We reverse the award of fees and costs in favor of the Department.

FACTS AND PROCEDURAL BACKGROUND

The prior vulnerable protection order proceeding

Proceedings in this guardianship action followed on the heels of an action in which the Department obtained a vulnerable adult protection order (VAPO) against Jerome Green, Mr. Critchlow's client, in favor of Mary Green, Mr. Green's mother. Mr. Green lived with his mother and helped with her caregiving. Although several types of neglect were alleged against Mr. Green, Commissioner Jacquelyn High-Edwards found only one: that Mr. Green was not following doctor-recommended feeding precautions to

[1] The GAL did not respond to Mr. Critchlow's appeal, having obtained trial court approval not to participate. After Mr. Critchlow challenged her failure to respond late in the appeal proceedings, she filed an explanation, and Mr. Critchlow sought leave to reply to her explanation.

Her explanation is irrelevant to our review, so it has not been considered. No reply is needed or authorized.

protect his mother from choking. As summarized in this court's recent decision in the VAPO appeal,[2] then 100-year-old Mary Green, who is blind and suffers from dementia

> has a narrowed esophagus that places her at risk of choking. Her doctors have recommended she eat sitting up and be monitored for 30 minutes after eating. Ms. Green's food must be chopped into small pieces and she is to avoid foods that present choking hazards such as nuts and grapes. Signs around Ms. Green's home inform caregivers and family members of Ms. Green's dietary needs.

In re Vulnerable Adult Pet. for Green, No. 36856-4-III, slip op. at 1-2 (Wash. Ct. Appeals Feb. 9, 2021) (unpublished).[3]

Mr. Green professed not to know what his mother could or could not eat, which the Commissioner found inexcusable given the signs placed around the home. She ruled that upon demonstrating an understanding of his mother's dietary needs, Mr. Green could petition to remove restrictions placed on his contact with her.

Mr. Green has a sister who lives nearby and the two were often in conflict over their mother; the two had obtained five alternating powers of attorney over a six month period. Commissioner High-Edwards revoked Mr. Green's power of attorney, observing that she could not take the same action against the sister, since she was not a party to the VAPO proceeding. The Department had revealed during the hearing that it planned to petition for appointment of a guardian for Mary Green, and the commissioner observed

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[2] Records of key proceedings in the VAPO action are a part of the record in this appeal.

[3] Https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion &filename=368564MAJ.

that the GAL appointed in the guardianship action could petition the court to revoke the sister's power of attorney.

After the commissioner announced her ruling, Mr. Critchlow, who represented Mr. Green at the hearing, expressed concern that one of Mr. Green's sisters might seek to be appointed as Mary Green's guardian. Commissioner High-Edwards responded:

> The guardianship process has procedure for people who want to be appointed guardians to intervene. Mr. Green certainly will be entitled to do that, as well as the sisters, and then the Court in that hearing would be able to determine who's going to be the guardian.

Clerk's Papers (CP) at 189-90.

When Mr. Critchlow asked if the guardianship case would be filed that day, the Department's lawyer responded, "Probably tomorrow since it's 4 already." CP at 193. Then, recalling it was Friday, the lawyer corrected herself and said, "Monday." *Id.* Mr. Critchlow asked if filing on Monday could be in the order, and the commissioner responded, "Sure." *Id.* In marginal modifications to the form VAPO, the commissioner wrote, "The guardianship petition regarding Mary Green shall be filed on Monday, 2/25/19." CP at 201. The VAPO hearing concluded at 4:10 p.m.

The present guardianship proceeding: events occurring in 2019

Either that afternoon (February 22) or the following Monday (February 25), the Department submitted its petition for a full guardianship of Mary Green's person and estate and obtained, ex parte, an order appointing a GAL. Both were filed on February

25, commencing this action. Mr. Green believes the order was obtained on the afternoon of February 22, since that is the handwritten date entered by Commissioner Tony Rugel, who signed it. The order is date-stamped as filed on February 25, however, as is the petition. The Department contends that Commissioner Rugel simply wrote in the wrong date.

A few days later, Mr. Green, acting pro se, filed a request for special notice of his mother's guardianship proceeding. A couple of weeks after that, Mr. Green filed several handwritten pro se motions, including a motion to intervene in the proceeding.

On March 22, Mr. Critchlow appeared as counsel for Mr. Green in this proceeding and filed additional motions that led to the sanctions at issue in this appeal: motions to strike the order appointing the GAL, to dismiss the guardianship case, and to impose CR 11 sanctions on the Department's lawyer and the GAL. Central to Mr. Critchlow's motions was his belief that there should have been a hearing, with notice to Mary Green, before the guardianship petition could be filed and the order appointing a GAL could be entered. He argued that Mary Green or Mr. Green, as her attorney-in-fact, was entitled to participate in that hearing and contest a finding of incapacity and appointment of the GAL. In requesting CR 11 sanctions he argued it should have been "abundantly clear" to the Department's lawyer and the GAL that Mary Green was entitled to a hearing, with advance notice. CP at 44.

On March 29, the Department responded to Mr. Critchlow's motions. It explained, with citation to relevant statutes, that the petition had been properly filed, that it had been properly served thereafter on Mary Green, and that a hearing to determine whether a guardianship should be established would not take place until April. It observed that "Mr. Green seems to confuse appointment of a guardian with appointment of a guardian ad litem." CP at 60. The Department did not request CR 11 sanctions.

The GAL also filed her opposition on March 29. She pointed out that under RCW 11.88.090, an opportunity to object to her service as GAL arose *after* her appointment, and the time for objection had passed. Most of her argument was devoted to a request for sanctions under CR 11. She argued that Mr. Critchlow had violated a "duty to give written notice" of a perceived violation before filing a CR 11 motion, a duty she argued was imposed by *Biggs v. Vail*, 124 Wn.2d 193, 876 P.2d 448 (1994). CP at 64. She did not demonstrate that she fulfilled the duty imposed by *Biggs* by giving notice to Mr. Critchlow before making her own request for CR 11 sanctions.

The pro se motions filed by Mr. Green were heard on March 29 by Commissioner Steven Grovdahl. Having appeared for Mr. Green, Mr. Critchlow presented the motions on his client's behalf. Mr. Green's motion to intervene was denied, so he did not become a party to the guardianship proceeding. The disposition of the motions Mr. Green filed pro se is not the subject matter of this appeal.

Mr. Critchlow does raise as germane the fact he was under the impression on March 29 that Grovdahl was serving as a pro tem *judge*, since Grovdahl was identified as such by a sign outside his courtroom that day. Grovdahl signed orders on March 29 as "Court Commissioner," however, and Mr. Critchlow says this prompted him to start looking into Grovdahl's status. Mr. Critchlow eventually learned that Grovdahl had served as a pro tem judge for a time.[4] In a reply brief filed on April 3, Mr. Critchlow argued that if Grovdahl had been a pro tem *judge* on March 29, then the orders on Mr. Green's pro se motions entered that day were void because Mr. Green had not consented to having them heard by a pro tem judge.

The motions filed by Mr. Critchlow were heard on April 5. At the outset of the hearing, Mr. Critchlow argued that if Grovdahl was a pro tem commissioner, he lacked authority to hear the motions set for hearing that day. Commissioner Grovdahl, confident he was authorized, proceeded to hear argument from the parties. He denied Mr. Critchlow's motions. He agreed with the GAL that the motions were frivolous, and imposed, as sanctions, attorney fees and costs incurred by the GAL, Mary Green's court-appointed lawyer, and the Department. The commissioner granted the GAL's request that the fees be imposed on Mr. Critchlow personally.

[4] Records later obtained by Mr. Critchlow in response to a public record request establish that Steven Grovdahl was appointed to serve as a judge pro tempore in November 2018. His appointment as a judge pro tempore lasted through March 14, 2019. He was appointed to serve as a commissioner pro tempore on March 15, 2019.

The written order entered thereafter found that Mr. Green's filings brought through Mr. Critchlow were "frivolous" and "legally [and] factually without merit." CP at 114-15. It directed the lawyers and the GAL to submit their fee requests and stated the court would "allow five days for Robert Critchlow to respond to the fees requested prior to this court issuing an order approving the fees." CP at 115.

The Department's lawyer and the GAL submitted fee declarations in April that were based on hourly rates exceeding a county rate of $60 per hour. Mary Green's court-appointed lawyer initially requested a higher hourly rate but later filed a substitute affidavit that adjusted his request to $60 per hour.[5] Nothing in the record indicates that Mr. Critchlow responded or objected to the amount or calculation of the attorney fee requests.

On May 10, Commissioner Grovdahl issued findings of fact and conclusions of law determining that the fee amounts requested and time worked were reasonable. Mr. Critchlow was ordered to pay the GAL $2,368, the Department $1,350, and Mary Green's court-appointed counsel $420.

Mr. Critchlow filed several notices of appeal in the guardianship proceeding on behalf of Mr. Green. Following a commissioner's ruling on appealability and a motion to modify, Mr. Critchlow was permitted to appeal only the April 5 sanction order and the

[5] It is unclear from the record why the pay rate was changed.

findings, order, and judgments entered on May 10. He was directed to do so in his own name.

ANALYSIS

In appealing the sanctions imposed, Mr. Critchlow makes nine assignments of error. In violation of RAP 10.3(a)(4), he fails to present them as a second section of his brief, stated concisely, and with the issues that pertain to them. Instead, he provides them as headings to different sections of his argument. Although it has made review more difficult, we will waive the failure to comply with the rule in the interest of deciding the appeal on the merits. *See* RAP 1.2.

Several issues woven through Mr. Critchlow's argument are outside the scope of the appeal as previously determined by the court, and will not be considered.[6] We analyze his remaining argument as raising three categories of issues.

I. CONTENTIONS THAT THE DEPARTMENT AND THE GAL FAILED TO COMPLY WITH GUARDIANSHIP NOTICE AND OTHER PROCEDURAL REQUIREMENTS. (STATEMENT OF THE CASE AND ASSIGNMENT OF ERROR C (FIRST))

The appointment of guardians for the estate or person of alleged incapacitated persons is governed by chapter 11.88 RCW. Any person, including the attorney general, may petition for appointment of a guardian or limited guardian for the estate or person of an alleged incapacitated person. RCW 11.88.030(1), (3)(a). If appointed, a guardian will

[6] Mr. Critchlow complains, for instance, that the GAL identified a friend to serve as Mary Green's counsel and allowed the lawyer to serve at his private pay rate. He also complains that an ex parte order was later entered allowing the lawyer to withdraw.

often not be appointed for many weeks because of the investigation and reporting that must take place before the appointment decision is made. *See, e.g.*, RCW 11.88.030(6) (presumptive 60-day time frame for hearing). A first step in the process is the appointment of a GAL who the court "*shall* appoint . . . to represent the best interests of the alleged incapacitated person" upon receipt of a petition for appointment of a guardian. RCW 11.88.090(3) (emphasis added).

Not more than five court days after the petition is filed, notice that a guardianship proceeding has been commenced, together with a copy of the petition, shall be personally served on the alleged incapacitated person. RCW 11.88.030(5).

In arguing that a contested hearing is required before appointing a GAL, Mr. Critchlow's motions relied on *In re Marriage of Blakely*, 111 Wn. App. 351, 358, 44 P.3d 924 (2002). But *Blakely* and cases on which it relied deal with RCW 4.08.060, the statute under which the superior court can appoint a GAL for a party to litigation who the court determines is incapacitated and either has no guardian, or whose guardian the court determines is an improper person to appear in the litigation on the party's behalf. The Department properly sought ex parte appointment of the GAL in this guardianship proceeding under RCW 11.88.090(3).[7]

[7] In a brief filed on April 1, Mr. Critchlow also relied on the Spokane County Superior Court guardianship policies' discussion of "Contested Appointment" and "Uncontested Appointment" of a GAL. Read as a whole, it is clear that appointment of a GAL for a person who is not represented by counsel is deemed "uncontested" and

The GAL appointed in a guardianship proceeding must be a person found or known by the court to be neutral and to have the requisite knowledge, training or expertise to perform the duties with which GALs are charged. *Id.* Under the Spokane County Superior Court local special proceeding rules, a GAL registry of qualified persons is maintained by a court-appointed committee. LSPR 98.22. By statute, the GAL must serve parties with a statement of her qualifications upon appointment and there is a short window of time in which any party may file a motion for the GAL's removal. RCW 11.88.090(3).

The GAL is charged with investigating the alleged incapacitated person's condition and circumstances and submitting a written report to the court. RCW 11.88.090(5)(b). Absent an extension, the GAL's report is required to be filed with the court and sent to certain interested persons (e.g., immediate family members) within 45

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appointment of a GAL for a person who already has a lawyer is deemed "contested." Since Mary Green was not represented by counsel when the petition was filed, the following, "Uncontested Appointment" provision applied:

> Where the alleged incapacitated person is not represented by counsel, attorneys or pro se litigants shall contact the Coordinator to receive the first three available GAL names on the Registry and shall select one to serve as GAL. The GAL selected shall be named in the Petition for Guardianship and Order Appointing the Guardian ad Litem. The Coordinator shall initial the original Order Appointing Guardian ad Litem prior to its presentation to the Court.

CP at 84.

days of notice to the GAL that the guardianship proceeding has been commenced, and at least 15 days before the petition is to be heard. RCW 11.88.090(5)(f)(ix).

It is only at the hearing on the petition that the court will make a finding on capacity and determine whether to appoint a full or limited guardian. RCW 11.88.095.

In this case, consistent with applicable statutes and rules, the attorney general's office obtained the name of its proposed GAL from the GAL registry, the proposed GAL agreed to serve, and the proposed GAL was identified in the proposed order submitted or presented ex parte on February 22 or 25.[8]

The petition was filed and an order appointing the GAL was entered. No determination was made at that time that Mary Green was incapacitated or that a guardian would be appointed. Mary Green was served with notice of the guardianship proceeding and petition within five court days after it was filed. The hearing on the petition was originally set for April 11, 2019, but was later continued.

There was no basis in law or fact for Mr. Critchlow's arguments advanced on

[8] We have no reason to doubt the Department's representation that Commissioner Rugel misdated the order. But we also see no prejudice to Mr. Green if the petition and proposed order were delivered to Commissioner Rugel on the afternoon of February 22. Evidently, the reason Mr. Critchlow asked at the VAPO hearing about when the petition would be filed was because he was under the mistaken impression that Mary Green would receive advance notice of presentation of the petition and proposed order and he or his client might be able to attend and object. The Department and Commissioner High-Edwards would have had no reason to suspect this is why Mr. Critchlow wanted to know about the timing.

March 22, 2019, that the Department's actions or those of the GAL violated Mary Green's right to due process or relevant statutes.

II. CONTENTION THAT COMMISSIONER GROVDAHL "HAD NO JURISDICTION" TO ENTER THE SANCTION ORDER AND JUDGMENT AND HIS "MISREPRESENTATION OF HIS JUDICIAL STATUS TO THE LITIGANTS" CONSTITUTES STRUCTURAL ERROR (ASSIGNMENTS OF ERROR A AND B)

LSPR 98.22(a) states in part:

> Orders to Appoint Guardian Ad Litem may be presented to the Guardianship Calendar or to Guardianship Court Commissioner. *Guardianship orders shall not be signed by a Pro Tem Commissioner.*

(emphasis added). Mr. Critchlow argues from the emphasized language that Commissioner Grovdahl, as a pro tem commissioner, had no "jurisdiction" to enter the sanction order. He also argues that Commissioner Grovdahl misrepresented his judicial status.

The Department responds that the intent of the emphasized language was to ensure that pro tem commissioners, who might be unfamiliar with guardianship procedures, will not sign "substantive" orders "determinative of the ultimate guardianship issues." Br. of the Department at 15. It asks us to construe "guardianship orders" as having this narrow meaning.

We need not construe the meaning of "guardianship orders" because any error in failing to comply with the local rule may not be raised for the first time on appeal. The error complained of by Mr. Critchlow is not jurisdictional.

Subject matter jurisdiction

"'Subject matter jurisdiction' is 'the authority of the court to hear and determine the class of actions to which the case belongs.'" *In re Guardianship of Wells*, 150 Wn. App. 491, 499, 208 P.3d 1126 (2009) (quoting *In re Adoption of Buehl*, 87 Wn.2d 649, 655, 555 P.2d 1334 (1976)). Subject matter jurisdiction may be raised for the first time at any point in a proceeding, even on appeal. *In re Estate of Reugh*, 10 Wn. App. 2d 20, 43, 447 P.3d 544 (2019), *review denied*, 194 Wn.2d 1018, 455 P.3d 128 (2020). Where a court lacks subject matter jurisdiction to issue an order, the order is void. *In re Marriage of Buecking*, 179 Wn.2d 438, 446, 316 P.3d 999 (2013).

Superior court commissioners derive their powers from our state's constitution and statute. *In re Marriage of Lyle*, 199 Wn. App. 629, 632, 398 P.3d 1225 (2017); WASH. CONST., art. IV, § 23; ch. 2.24 RCW. They are conferred with most of the powers of a superior court judge, but may not preside over jury trials. *Lyle*, 199 Wn. App. at 632; WASH. CONST. art. IV, § 23; *State ex rel. Lockhart v. Claypool*, 132 Wash. 374, 375, 232 P. 351 (1925) (duties of judges "at chambers" that commissioners are constitutionally empowered to perform include the power to "entertain, try, hear and determine, all actions, causes, motions, demurrers and other matters not requiring a trial by jury"). Commissioner Grovdahl had the constitutional authority, and hence subject matter jurisdiction, to hear the matters before him on April 5. Failure to comply with a court

rule "has nothing to do with subject matter jurisdiction." *Amy v. Kmart of Wash., LLC*, 153 Wn. App. 846, 854, 223 P.3d 1247 (2009).

Batten v. Abrams, 28 Wn. App. 737, 626 P.2d 984 (1981), on which Mr. Critchlow relies, is not to the contrary. He describes it as holding that a "local rule being overlooked invalidates the order granting terms." Appellant's Opening Br. at 18. But as this court explained in *State v. Clark*, 195 Wn. App. 868, 876, 381 P.3d 198 (2016), *Batten*, properly read, involves the application of RAP 2.5(a)(2), which permits a party to raise a "failure to establish facts upon which relief can be granted" for the first time on appeal. In *Batten*, the court rule was analyzed, in essence, as the "cause of action" that the respondent contended entitled it to relief. *Batten* held that by failing to show its compliance with the rule, the respondent failed to prove a fact necessary for recovery. *Clark*, 195 Wn. App. at 876. *Batten* does not help Mr. Critchlow.

Alleged rule violation

We will not review whether Commissioner Grovdahl exceeded his authority under LSPR 98.22(a) because Mr. Critchlow raises the alleged rule violation for the first time on appeal. *See* RAP 2.5(a); *State v. Gentry*, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995) (alleged violation of court rule could not be raised for first time on appeal).

Mr. Critchlow did not bring LSPR 98.22 to the attention of Commissioner Grovdahl on April 5, when the commissioner might have referred the motions to another

judicial officer.[9] He did raise a "point of order" that Grovdahl was a pro tem commissioner rather than a pro tem judge, but his only challenge to Commissioner Grovdahl's authority in his point of order was that "the local rules don't authorize court commissioners to hear civil motions." RP at 19-20. Mr. Critchlow also asked his client, Mr. Green, to make clear that he was not consenting to Commissioner Grovdahl hearing the motions. But party consent is only required in proceedings before pro tem judges, not pro tem commissioners. *Compare* RCW 2.08.180 and WASH. CONST. art. IV, § 7 (requiring written consent to a case being tried by a judge pro tempore) and chapter 2.24 RCW (no consent requirement).

Any violation of LSPR 98.22 is not reviewable.

Judicial bias

Finally, Mr. Critchlow accuses Commissioner Grovdahl of intentionally or negligently misrepresenting himself to be a judge, which he characterizes as structural error. Since he cites *State v. Blizzard*, 195 Wn. App. 717, 727, 381 P.3d 1241 (2016), for support, he appears to be accusing the commissioner of judicial bias. This is despite the fact that Mr. Critchlow does not accuse the commissioner of any of the limited circumstances that *Blizzard* identifies as presenting unconstitutional judicial bias.[10]

[9] The GAL cited the rule in submissions to the court, but not for the proposition now being argued by Mr. Critchlow.

[10] *Blizzard* identifies circumstances found to create judicial bias as "(1) when a judge has a financial interest in the outcome of a case, (2) when a judge previously

Mr. Critchlow's scurrilous charge that Commissioner Grovdahl misleadingly held himself out as a judge lacks any credible support. Commissioner Grovdahl did not hold himself out as a judge during the March 29 and April 5 hearings. The following is representative of how he signed his orders:

DATED AND SIGNED IN OPEN COURT THIS 29th DAY OF MARCH 2019.

Judge/Court Commissioner

STEVEN N GROVDAHL

CP at 71; *and see* CP at 72, 74, 115.

Mr. Critchlow nonetheless testifies that a sign outside the courtroom used by Commissioner Grovdahl identified him as a pro tem judge for a couple of weeks after his appointed role became that of pro tem commissioner. It is far-fetched to suppose that the Spokane County Superior Court assigns the responsibility for updating facility placards to its judicial officers. If there was an oversight in updating signage, the only reasonable assumption is that it was someone else's oversight, not Commissioner Grovdahl's.

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participated in a case in an investigative or prosecutorial capacity, and (3) when an individual with a stake in a case had a significant and disproportionate role in placing a judge on the case through the campaign process." 195 Wn. App. at 727-28. *Blizzard* also observes that "the Supreme Court has suggested, though not held, there may be an impermissible risk of bias when a judge is the recipient of personal criticisms that are highly offensive." *Id.*

The issue is, in any event, a red herring. By the time the sanctions were imposed on April 5, Mr. Critchlow was on notice that Steven Grovdahl was serving as a commissioner.

III. CONTENTIONS THAT MR. CRITCHLOW'S RIGHTS WERE VIOLATED WHEN CR 11 SANCTIONS WERE ORDERED WITHOUT REQUIRED PROCEDURAL SAFEGUARDS (ASSIGNMENTS OF ERROR C (SECOND), D, E AND F)

Mr. Critchlow contends he was denied due process because CR 11 sanctions were imposed without the parties or court complying with procedural safeguards to which he was entitled. CR 11 procedures must comport with due process requirements. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 224, 829 P.2d 1099 (1992). Review of questions of law, such as constitutional due process guaranties, is de novo. *State v. Derenoff*, 182 Wn. App. 458, 465, 332 P.3d 1001 (2014). We otherwise review a superior court's imposition of CR 11 sanctions for an abuse of discretion. *Biggs*, 124 Wn.2d at 197.

No formal motion or notice of hearing

Mr. Critchlow complains that no formal motion requesting CR 11 sanctions was ever filed or duly noted for a hearing.

While due process requires notice and an opportunity to be heard, the notice does not need to be in the form of a freestanding motion that is noted for hearing in accordance with time requirements for motions. *Bryant*, 119 Wn.2d at 224. Our Supreme Court has held that when a party objected in a reply brief that opposing counsel's motion warranted sanctions, the notice provided by the brief and the opportunity to oppose the sanctions

request at the hearing satisfied due process. *Id.* Other cases are in accord. *See In re Marriage of Rich*, 80 Wn. App. 252, 257-58, 907 P.2d 1234 (1996) (where no motion was made but an intent to seek sanctions was raised orally in court and a written notice of a party's intention to seek sanctions was thereafter filed and served, due process was satisfied); *King County Water Dist. No. 90 v. City of Renton*, 88 Wn. App. 214, 231, 944 P.2d 1067 (1997) (due process was satisfied where request for sanctions was raised in reply brief and—while no hearing was set or conducted—offending party had time to respond before order was entered and could have moved for reconsideration); *Watness v. City of Seattle*, 11 Wn. App. 2d 722, 734, 457 P.3d 1177 (2019) (motion for sanctions was filed only four days before it was granted without a hearing; due process was not violated where responding party was able to file a reply), *review denied*, 195 Wn.2d 1019, 464 P.3d 205 (2020).

Here, the GAL's March 29 brief opposing the motions filed by Mr. Critchlow included her request for CR 11 sanctions—indeed, most of her brief was devoted to her request for sanctions. She reiterated her request for CR 11 sanctions in a brief filed on April 3. Mr. Critchlow did not dispute receiving the GAL's briefs and responded to the request for sanctions in a reply brief that he filed on April 3. He also had an opportunity to address the request for CR 11 sanctions at the April 5 hearing. He received due process.

Sanctions against counsel rather than client

It is a conflict of interest for a self-represented lawyer to argue that sanctions should have been imposed on his client instead of on the lawyer. *In re Marriage of Wixom*, 182 Wn. App. 881, 908, 332 P.3d 1063 (2014). Since Mr. Critchlow is self-represented, we will not consider this argument.

That said, we point out that sanctions may be imposed on a party or an attorney, or both. *Wilson v. Henkle*, 45 Wn. App. 162, 174, 724 P.2d 1069 (1986); *Layne v. Hyde*, 54 Wn. App. 125, 136, 773 P.2d 83 (1989).

Constitutional arguments as nonsanctionable

Mr. Critchlow argues that "as a matter of law" he cannot be sanctioned for raising issues of constitutional due process. Appellant's Opening Br. at 43. The authority on which he relies is a dissenting opinion in which it is observed that "a *debatable* issue of first impression raising a constitutional question is no more a violation of CR 11 than it is a violation of RCW 4.84.185." *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 909, 969 P.2d 64 (1998) (Sanders, J., dissenting) (emphasis added) (citing *Hicks v. Edwards*, 75 Wn. App. 156, 163, 876 P.2d 953 (1994)). Constitutional arguments that lack a basis in law or fact and are advanced without a reasonable inquiry, or that are advanced for an improper purpose, are as sanctionable under CR 11 as are nonconstitutional issues.

Failure to give advance notice

"[W]ithout prompt notice regarding a potential violation of [CR 11], the offending party is given no opportunity to mitigate the sanction by amending or withdrawing the offending paper." *Biggs*, 124 Wn.2d at 198. "Prompt notice of the possibility of sanctions fulfills the primary purpose of [CR 11], which is to deter litigation abuses." *Id.* In *Biggs*, our Supreme Court "adopt[ed] as [its] own" the advice of a federal rules advisory committee that

> in most cases, "counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a [CR 11] motion." Fed. R. Civ. P. 11 advisory committee note, 28 U.S.C.A. 186 (West Supp. 1994). Such informal notice is not a substitute for a CR 11 motion, but evidence of such informal notice, or lack thereof, should be considered by a trial court in fashioning an appropriate sanction.

Id. at 198 n.2 (third alteration in original).

Mr. Critchlow points out that the GAL did not give him informal notice of a potential violation before filing her brief asking for CR 11 sanctions. A situation like this one—where the responding lawyer, the GAL, is a specialist in an area of law and the alleged CR 11 offender, Mr. Critchlow, is not—epitomizes why *Biggs* imposes a duty to provide an offender with notice and an opportunity to withdraw an ungrounded position before asking the court to impose CR 11 sanctions. Mr. Critchlow filed his motions on March 22 and the GAL did not respond until March 29. The GAL should have given Mr.

Critchlow informal notice of his misunderstanding of procedure before asking for CR 11 sanctions.

Because she did not, we might well have reversed the GAL's sanctions award if Mr. Critchlow had backed away from his erroneous positions and challenged only the imposition of sanctions. Upon learning that sanctions would be sought, however, Mr. Critchlow doubled down on his meritless arguments. That compels the conclusion that for the GAL to have responded more professionally would not have made a difference.

The superior court was aware that this might be a private payment guardianship, with the fees and costs of the GAL and Mary Green's court-appointed counsel coming out of Ms. Green's assets. We find no abuse of discretion in the decision to impose those fees and costs as sanctions.

Ms. Green's estate was not chargeable with the cost of the Department's lawyer, however. The Department did not move for CR 11 sanctions or give notice to Mr. Critchlow before the April 5 hearing that it might seek them. It merely responded to the superior court's direction to submit a fee request. We have no criticism of the Department's conduct in the matter. But we conclude that the sanctions order in the Department's favor offends *Biggs* and related cases. CR 11 is not a mechanism for providing attorney fees to a prevailing party where such fees would otherwise be unavailable. *Bryant*, 119 Wn.2d at 220.

Entry of sanctions order ex parte

Mr. Critchlow contends that final orders and judgments were entered on the sanctions on May 10, 2019 ex parte, without him having the opportunity to be present.

The April 5 order imposing sanctions stated in relevant part:

> 8. Counsel and the Guardian ad Litem shall submit their fees and a proposed order on fees to Comm. Grovdahl directly & this court will allow five days for Robert Critchlow to respond to the fees requested prior to this court issuing an order approving the fees and signing a judgment summary in ex-parte fashion.

CP at 115. Mr. Critchlow signed the April 5 order, indicating "Objected to based on no jurisdiction of commissioner to hear the matters." *Id*. The record on appeal includes declarations supporting fee requests filed by the Department and the GAL on April 26, 2019.

On May 10, 2019, Commissioner Grovdahl entered findings of fact and conclusions of law, a further order imposing sanctions, and judgment summaries reflecting the three fee awards. The findings and conclusions recite that declarations supporting fee requests were received from the GAL, the Department, and counsel for Ms. Green.

The findings, order, and judgments entered on May 10 include matters to which Mr. Critchlow objects on appeal. Mr. Critchlow was permitted to respond to proposed orders and fee requests in writing, within five days of their receipt, but did not. It appears

he was afforded that opportunity;[11] there is nothing in the record to suggest that he was not. The party appealing sanctions has the responsibility to submit a record adequate to permit review. *Sarvis v. Land Res., Inc.*, 62 Wn. App. 888, 894, 815 P.2d 840 (1991).

If Mr. Critchlow had objections, he should have raised them in the trial court. We will not consider objections raised for the first time on appeal. RAP 2.5(a).

Excessive hourly rate and "self dealing"

Mr. Critchlow contends the hourly rates requested by the GAL and court-appointed counsel for Ms. Green were excessive private pay rates, rather than the county pay rate, which he asserts was ordered at some point by Judge Annette Plese. He characterizes this as "self-dealing." Appellant's Opening Br. at 42-43.

Again, Commissioner Grovdahl's sanctions order stated that Mr. Critchlow had five days to respond to the declarations for fees. If Mr. Critchlow had an issue with the amount of fees requested, he needed to raise it in the trial court.

[11] The GAL, the Department's lawyer and counsel for Ms. Green each presented or signed off on the materials affecting them. A signature block on the findings and conclusions and further order imposing sanctions is included for Mr. Critchlow, and states, "Notice of presentment provided to . . . ROBERT CRITCHLOW." CP at 243, 245. It is unsigned.

We affirm the imposition of sanctions in favor of the GAL and Mary Green's court-appointed counsel and the associated judgment summaries. We reverse the imposition of sanctions in favor of the Department and its associated judgment summary.[12]

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, A.C.J.

WE CONCUR:

Lawrence-Berrey, J.

Staab, J.

[12] Mr. Critchlow advances two theories under which he argues he is entitled to be awarded fees and costs on appeal. Both depend on a demonstration, which he has not made, that his actions in the trial court were justified and the actions of the GAL and Department were not. His request for fees and costs is denied.

Renee S. Townsley
Clerk/Administrator

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TDD #1-800-833-6388

The Court of Appeals of the State of Washington
Division III

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April 29, 2021

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CASE # 367746
In re: The Sanction Order Against Attorney Robert W. Critchlow
SPOKANE COUNTY SUPERIOR COURT No. 194002982

Counsel:

Enclosed is a copy of the order denying Appellant's motion for reconsideration of this court's February 25, 2021 opinion.

A party may seek discretionary review by the Washington Supreme Court of a Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a petition for review in this court within 30 days after the attached order on reconsideration is filed. RAP 13.4(a). Please file the petition electronically through the court's e-filing portal. The petition for review will then be forwarded to the Supreme Court. The petition must be received in this court on or before the date it is due. RAP 18.5(c).

If the party opposing the petition for review wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service on the party of the petition. RAP 13.4(d). The address of the Washington Supreme Court is: Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:jab
Attachment

FILED
APRIL 29, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Sanction Order Against Attorney ROBERT W. CRITCHLOW.	))))))	No. 36774-6-III ORDER DENYING MOTION FOR RECONSIDERATION

THE COURT has considered Appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of February 25, 2021, is hereby denied.

PANEL: Judges Siddoway, Lawrence-Berrey, Staab

FOR THE COURT:

REBECCA L. PENNELL
Chief Judge

Spokane Co. Sup. Court Local Rule LSPR 98.22(a) provides as follows:

> **Guardians Ad Litem**. When the appointment of a guardian ad litem is required, the appointee shall come from the guardian ad litem registry maintained by the Superior Court Guardianship Monitoring program. In order to be placed on the registry a person must present a written statement of their qualifications, WSP background check resume, cover letter and complete a training program approved by the court. The Spokane County superior court judges shall appoint a committee of and/or court commissioners and interested members of the Spokane County bar association to maintain the registry and provide training to those persons who wish to participate in the program. Initials from the Guardianship Monitoring Program on the Order to Appoint Guardian Ad Litem is required before presentment. Orders to Appoint Guardian Ad Litem may be presented to the Guardianship Calendar or to Guardianship Commissioner. **Guardianship orders shall not be signed by a pro tem commissioner**. To remain on the Guardian Ad Litem Registry the Guardian Ad Litem must attend the entire annual mandatory training, provide statement of qualifications and WSP background check by annual deadline. (Emphasis added in bold)

SPOKANE COUNTY SUPERIOR COURT

Statement of Policies and Procedures regarding Guardians Ad Litem in RCW Title 11.88 matters

I. General Policy

Any individual who wants to serve as a Guardian Ad Litem (GAL) in any matter under RCW Title 11.88 must be a member of the Guardianship Guardian Ad Litem Registry (Registry).

II. Qualifications

In addition to any qualifications required by statute, the following shall be the qualifications for the Spokane County Registry:

a. Attorneys: A resident of the state of Washington, a member of a State and/or District of Columbia Bar Association in good standing and three years experience in the practice of law.

b. Non-attorneys:

1. Graduate level degree in any of the following fields: social work, law, psychology, nursing, counseling, psychiatry or equivalent field; and current license or certification by the State of Washington in the following areas: social worker, mental health therapist, marriage and family counselor, nurse, psychologist, psychiatrist or medical physician in good standing; and

2. Must have professional experience in dealing with disabled individuals.

c. All applicants: Shall be of high moral character, and shall not have any:

1. Felony convictions or any convictions involving theft, dishonesty, or moral turpitude;

2. A professional certification or license suspension or revocation;

3. A pending investigation or action for either (1) or (2).

III. Administration

The Spokane County Superior Guardianship Monitoring Program shall maintain a registry of those qualified to serve as a GAL. The Registry will be updated as new applications are received and approved, upon review by the Committee at the next quarterly meeting.

Applications for initial placement on the Registry shall be reviewed by the Guardianship Registry Committee of the Superior Court at the next quarterly meeting. The Committee shall

review initial applications and annual updates to determine compliance with the Registry policies and statutory requirements.

The Registry shall be continuously open for new applications. Spokane County will offer training for new applicants once a year if four persons, or more, preregister for the session. Spokane County will also consider new applicants who have successfully completed training in counties where the local Bar Association is hosting the training and follows statute. If a private party is hosting the training, this committee would need to review the training agenda. Successful applicants will be notified of their placement on the Registry and the date thereof. Newly approved applicants will be placed at the bottom of the Registry.

The Guardianship Monitoring Program Coordinator shall maintain a separate file for each person on the Registry. The file shall include the statement of background information and qualifications required under RCW 11.88.090, verification of completion of training, together with all correspondence (including evaluations) with reference to the person's service as a GAL and any action thereon by the Court.

The information contained in the file maintained under subsection 2.4 shall be open for public inspection. Review of the file shall occur in the Guardianship Monitoring Program office.

IV. Appointment of GAL from registry:

Uncontested Appointment

Where the alleged incapacitated person is not represented by counsel, attorneys or pro se litigants shall contact the Coordinator to receive the first three available GAL names on the Registry list and shall select one to serve as GAL. The GAL selected shall be named in the Petition for Guardianship and Order Appointing Guardian ad Litem. The Coordinator shall initial the original Order Appointing Guardian ad Litem prior to its presentation to the Court.

Under extraordinary circumstances the attorney or pro se litigant may move for the appointment of a specific GAL with particular expertise pursuant to RCW 11.88.090(4)(a). The motion shall specifically address the particular qualifications which are needed. In the event that the motion is granted by the court, the attorney or pro se litigant shall provide a copy of the Order Appointing Guardian ad Litem to the Coordinator following entry.

Contested Appointment

Attorneys/pro se litigants shall schedule a Motion to Appoint a Guardian Ad Litem (GAL) on the Guardianship calendar. The parties must have contacted the Guardianship Monitoring Program prior to scheduling the hearing to obtain the next 3 GAL names.

After the attorneys/pro se litigants receive notification of the three available GALs, each attorney/pro se litigant has the right to reject one of the names on the list and if they do not reject any of the proposed GALs, the Court shall select the first GAL available on the list.

If the attorneys/pro se litigants each reject a different name from the three available names given, the third GAL not rejected shall be appointed. If the attorneys/pro se litigants reject the same GAL, the Court will decide the GAL appointment from the remaining two names. If the attorneys/pro se litigants reject all three names, the next GAL available on the Registry shall be appointed.

Under extraordinary circumstances the attorney/pro se litigant may move for the appointment of a GAL with a particular expertise pursuant to RCW 11.88.090(4)(a). In the event the court grants the motion and the GAL selected is not one of the three names originally given, the attorney/pro se litigant shall prepare findings and an order outlining the reasons for the appointment of a GAL with particular expertise.

The attorneys/pro se litigants shall have three judicial days to decide on a GAL and present the Order. If the Order is not presented within three judicial days, the Court will release the GAL names to be considered for other cases.

If two different parties approach the GMP for GAL names on the same individual, all inquiries shall be given the same 3 GAL names.

The attorneys/pro se litigants may request the background information and hourly rate of the GALs from the Guardianship Monitoring Program at the time the attorneys/pro se litigants receive the three names.

The Order Appointing GAL must be initialed by the Guardianship Monitoring Program before being submitted to the Guardianship commissioner or full time Court Commissioner. Once the Order is signed, the GAL appointed shall be moved to the bottom of the Registry. The two names not chosen shall remain at the top of the Registry list.

Generally, a GAL will be required to accept county pay cases. If a GAL declines the appointment, he/she will be placed at the bottom of the Registry. If the GAL has previously accepted two county pay cases within the last 12 months, the GAL may decline the appointment and will remain in the same position of the Registry.

V. Retention on the Registry

A GAL shall remain on the Registry unless he or she fails to comply with the policies and procedures set forth herein or the person is removed or suspended as set forth in section VIII below.

Each GAL must submit the update of background information statement annually due January 2nd or date set in the reminder letter or email. The Coordinator will send out one reminder letter or email a month or so before deadline. If the GAL does not prepare an annual update and WSP

background check by the deadline, he/she will be suspended from the Registry. Once the required documents are submitted the Coordinator will forward to the Committee at the next quarterly meeting and it shall be determined if the GAL should be reinstated on the Registry or other action is required.

Each GAL must attend all required training otherwise, the GAL will be removed from the Registry immediately. He/She will be suspended from the Registry until training is obtained. The training certificate shall be submitted and the Coordinator will forward to the Committee at the next quarterly meeting if the GAL should be reinstated on the Registry or other action is required.

If a GAL requests to be removed from the Registry, he/she shall do so in writing and submit the letter or email to the Coordinator.

VI. Evaluation Procedure - See LSPR 98.22

VII. Complaint Procedure - See LSPR 98.22

VIII. Discipline Procedure - See LSPR 98.22

File Date	Sub Number	Docket Entry
		AFFIDAVIT DECLARATION CERTIFICATE CONFIRMATION OF SERVICE
4/29/2019	67	SEALED PERSONAL HEALTH CARE RECORDS COVER SHEET
4/29/2019	68	REPORT OF GUARDIAN AD LITEM SUMMARY
4/29/2019	69	REPORT OF GUARDIAN AD LITEM
4/30/2019	70	TRANSMITTAL LETTER COPY FILED
5/2/2019	0	EX PARTE ACTION WITH ORDER Order on petition for instructions.
5/2/2019	71	AFFIDAVIT OF MAILING
5/2/2019	72	PETITION FOR INSTRUCTIONS
5/2/2019	73	ORDER ON PETITION FOR INSTRUCTIONS
5/2/2019	74	TRANSMITTAL LETTER COPY FILED
5/3/2019	75	NOTICE RE CASE 19200542-32
5/9/2019	76	NOTICE FROM THE SUPREME COURT
5/10/2019	0	EX PARTE ACTION WITH ORDER Order of Motion for CR 11 Sanctions and Attorney Fees and Costs; Findings of Facts and Conclusions of Law on Request for Attorney Fees and Costs; Judgment Summary - D. Evans
5/10/2019	0	EX PARTE ACTION WITH ORDER Judgment Summary - L. Liljenquist
5/10/2019	0	EX PARTE ACTION WITH ORDER Judgment Summary - D. Vidoni
5/10/2019	77	FINDINGS OF FACT AND CONCLUSIONS OF LAW
5/10/2019	78	ORDER RE SANCTIONS
5/10/2019	79	JUDGMENT SUMMARY
5/10/2019	80	JUDGMENT SUMMARY
5/10/2019	81	JUDGMENT SUMMARY
5/21/2019	82	REPORT OF GUARDIAN AD LITEM 2ND INTERIM
5/23/2019	83	AFFIDAVIT DECLARATION CERTIFICATE CONFIRMATION OF SERVICE
5/30/2019	84	AFFIDAVIT DECLARATION CERTIFICATE CONFIRMATION OF SERVICE
6/5/2019	85	NOTICE OF APPEAL TO COURT OF APPEALS AMENDED
6/7/2019	86	ORDER ON ASSIGNMENT REASSIGNMENT
6/18/2019	87	ORDER OF PREASSIGNMENT /PLESE
6/20/2019	88	NOTICE OF STATUS CONFERENCE 8-23-19@8:30/PLESE
6/25/2019	89	AFFIDAVIT DECLARATION CERTIFICATE CONFIRMATION OF SERVICE
6/25/2019	90	REPORT OF GUARDIAN AD LITEM 3RD INTERIM
7/17/2019	91	NOTICE THE SUPREME COURT
8/1/2019	92	AFFIDAVIT DECLARATION CERTIFICATE CONFIRMATION OF SERVICE
8/1/2019	93	REPORT OF GUARDIAN AD LITEM 4TH INTERIM
8/13/2019	94	PERFECTION NOTICE FROM COURT OF APPEALS
8/14/2019	95	DECLARATION OF MAILING
8/14/2019	96	DECLARATION AFFIDAVIT RE LTR FROM AAG
8/19/2019	97	DECLARATION OF MAILING
8/19/2019	98	CONFIDENTIAL REPORT IN SEALED ENVELOPE DSHS CONSENT FORMS

Superior Court of Washington
County of _____

In the Guardianship of: _____, An Incapacitated Person	**Case No.:** **Order Appointing Guardian ad Litem (GAL) in an Existing Guardianship** (ORAPGL) **Clerk's Action Required, para 6, 7**

Findings

The court has determined:

☐ after considering the motion of (name) _____, or

☐ on its own initiative,

that a Guardian ad Litem (GAL) should be appointed in this matter based upon the following:

_____

_____

_____

_____

_____

Order

The court orders that:

1. (Name)_____ is appointed as GAL for the incapacitated person.

2. The duties of the GAL shall be to investigate and report as follows:

   ☐ whether the guardianship of the person and/or estate should be modified as follows:

   _____

   _____

☐ whether the guardian has acted appropriately regarding:

☐ whether a successor guardian of the person and/or estate should be appointed and who would be appropriate.

☐ Other:

3. The GAL shall have the following authority:

4. The GAL's Authority and Access to Information

☐ Upon request of the GAL, all providers that are covered entities under Health Insurance Portability and Accountability Act (HIPAA) and their business associates, shall release copies of any medical, psychiatric, and psychological information or documents.

☐ Upon the GAL's request, financial institutions holding accounts in the name of the alleged incapacitated person, or in the name of the alleged incapacitated person and any other individual, shall provide the GAL with all records and financial information regarding those accounts. By this order, copies of financial information regarding the alleged incapacitated person shall be released to the GAL.

☐ The GAL shall have access to the Adult Protective Service (APS) file and social report if any exists, provided that APS shall not be required to release the identities of persons making reports under RCW 74.34 et. seq., and shall have the right to reserve other privileged or confidential information as it deems appropriate to protect the incapacitated person. Any APS records released to the GAL are provided for the purpose of assisting the GAL in his/her investigation and report to the court. The records released to the GAL shall not be further disseminated without a court order and prior notice to the Attorney General's Office.

☐ Other:

_____

_____

_____

_____

_____

_____

5. The GAL shall file a report in this matter by _____ (date) and shall provide copies of the same to the following:

_____

_____

_____

_____

6. Payment of the GAL shall:

☐ be at **public expense**, to be paid by _____County at a rate not to exceed $_____ per hour up to a maximum of $_____ / _____(hours) unless the GAL obtains prior approval from the court for a different amount. If evidence is submitted showing that there was not financial hardship or that financial hardship no longer exists, the court shall be reimbursed the filing fee and all other fees and costs.

☐ be at **private expense**. The GAL shall be paid at a rate of $_____ per hour up to a maximum of $_____ / _____(hours) unless the GAL obtains prior approval from the court for a different amount.

☐ not be allocated by this court because the GAL is a salaried employee of a public agency.

☐ be determined at a future hearing.

7. A hearing:

☐ shall be held on _____ (date) at _____ (hour) at _____ (court's location and room or department).

☐ shall be scheduled by the ☐ petitioner ☐ court or ☐ GAL.

Dated _____

_____
Judge/Court Commissioner

Presented by:

_____	_____
Signature of Petitioner/Attorney	Printed Name of Petitioner/Attorney, WSBA/CPG#
_____	_____
Address	City, State, Zip Code
_____	_____
*Telephone/Fax Number	Email Address

***If you do not want your personal phone number on this public form, you may list your telephone number on a separate form which may be available to parties and the court, as well as its staff and volunteers, but will not be made available to the public. Use Form WPF GDN 03.0100, Guardianship Confidential Information Form (Telephone Numbers), for this purpose. GR 22(b)(6)**.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals of the State of Washington Division III

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February 18, 2020

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Attorney at Law
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Spokane, WA 99205-4751
Richard@LegalRWP.com

CASE # 367746
In re: The Sanction Order Against Attorney Robert W. Critchlow
SPOKANE COUNTY SUPERIOR COURT No. 194002982

Counsel:

Enclosed is a copy of the Order Granting in Part and Denying in Part Motion to Modify the Commissioner's Ruling of November 19, 2019. Joyce, ext. #224, is assigned to assist you with this case

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.5(a). A party seeking discretionary review must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after this Court's Order. The address for the Washington State Supreme Court is: Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0929.

The time periods for compliance with the Rules of Appellate Procedure are as follows:

1. The **designation of clerk's papers** was filed and served with the trial court, with a copy filed in this court, August 21, 2019. RAP 9.6(a).

2. The **statement of arrangements** was filed August 21, 2019.

3. The **verbatim report of proceedings** is due April 20, 2020. The court reporter or authorized transcriptionist shall promptly serve notice of filing on all parties and shall provide a copy of the report of proceedings to the party who arranged for transcript. RAP 9.5(a).

Please note:

1) The Court will post public accessible briefs to the Washington Courts website.
2) All parties filing a brief must serve one copy of the brief on every other party and on any amicus curiae and must file proof of service with this court. RAP 10.2(h).
3) When preparing your brief and referring to clerk's papers, use the page numbers assigned on the index to clerk's papers. Do not refer to the Superior Court docket numbers.

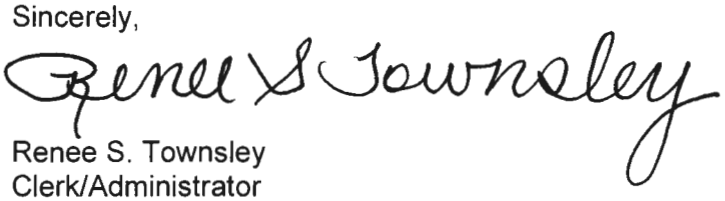
4. **Appellant's brief** is due in this court 45 days after the report of proceedings is filed. RAP 10.2(a).

If the record on review does not include a report of proceedings, the appellant's brief is due 45 days after the designation of clerk's papers has been filed. RAP 10.2(a).

5. **Respondent's brief** is due in this court 30 days after service of the appellant's brief. RAP 10.2(c).

6. A **reply brief**, if any, is due 30 days after service of respondent's brief. RAP 10.2(d).

Sincerely,



Renee S. Townsley
Clerk/Administrator

RST:sd

c: Spokane County Superior Court, via email
Robin Dean, Court Reporter, via email

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

IN RE THE MATTER OF SANCTIONS AND JUDGMENT AGAINST ATTORNEY ROBERT CRITCHLOW	Appeal No. 36774-6 RESPONSE TO MOTION

TO: THE CLERK OF THE COURT OF APPEALS

I have not formally appeared in this matter or filed responsive briefs in reliance on the Order of the Spokane Superior Court entered May 5, 2019, a copy of which is attached hereto, obviating my obligation to do so. I was the Guardian ad Litem in the Guardianship of Mary Jewel Green. I support the position taken by the Attorney General in this matter and do not believe I need to engage actively in Mr. Critchlow's appeal. His filings were found to be frivolous at the lower court and I continue to find his briefing and recitation of the issues frivolous but am confident in the court's ability to rule on the issues presented without duplicative briefing. Unless directed by the court, I do not plan to file a formal responsive briefing or appear for any oral arguments in this matter. I respectfully defer to the Attorney General's responsive pleadings on the issue of whether the judgments entered against Robert Critchlow were necessary and appropriate. I am only writing this statement due to Mr. Critchlow's most recent filing arguing that my silence in this appeal is a violation of some rule. If the court feels it is necessary, I move for an order exempting me from filing any pleadings herein, I will do so.

//

LAW OFFICE
RICHARD W. PEREDNIA
DIANNA J. EVANS
28 West Indiana Avenue, Ste. E
Spokane, Washington 99205
(509) 624-1369

DATED this 22nd day of December 2020.

DIANNA J. EVANS, WSBA #45702
Former Guardian ad Litem for Mary Jewel Green

CERTIFICATE OF SERVICE

I, DIANNA J. EVANS, hereby certify that I served the parties outlined below, via USPS regular mail, at the address indicated below, a true and correct copy of this amended respondent's supplemental designation of clerk's papers, on file herein:

Robert Critchlow
208 E. Rockwell Ave
Spokane, WA 99207

Dawn Vidoni
Assistant Attorney General
1116 W Riverside Ste 100
Spokane, WA 99201

Levi Liljenquist
425 E Midway Rd
Colbert, WA 99005-9379

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

DATED this 22nd day of December 2020, at Spokane, Washington.

DIANNA J. EVANS, WSBA #45702

LAW OFFICE
RICHARD W. PEREDNIA
DIANNA J. EVANS
28 West Indiana Avenue, Ste. E
Spokane, Washington 99205
(509) 624-1369

CN: 1940029832

SN: 73

PC: 2

FILED

MAY 02 2019

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

(Copy Receipt)

(Clerk's Date Stamp)

SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

In the Guardianship of:	CASE NO. 19-4-00298-32
MARY JEWEL GREEN	ORDER ON PETITION FOR INSTRUCTIONS
	Clerks Action Required (OR)

The Guardian's Petition for Instructions came on for hearing before the Court on this date; the Court reviewed the Petition and records on file herein and heard the presentations of those present. The Court now enters the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. DIANNA J. EVANS was appointed under RCW 11.88 to investigate the capacity of Mary Jewel Green and issue a recommendation related to this guardianship filing.
2. Upon filing of said guardian ad litem report and medical report, her duties are fulfilled. Only the continued interim reports should be required until the conclusion of this case.

LAW OFFICE
RICHARD W. PEREDNIA
DIANNA J. EVANS
28 West Indiana Avenue, Ste. E
Spokane, Washington 99205
(509) 624-1369

ORDER OF INSTRUCTIONS

1. Dianna J. Evans' scope of appointment is to prepare and file a guardian ad litem report outlining her recommendations. After obtaining a medical report and filing her Guardian ad Litem report, her scope will be limited to filing interim reports as required until the conclusion of this case.
2. Dianna J. Evans, as Guardian ad Litem, is not required to brief or prepare any appeals, reply briefing, or any other briefing in response to the actions filed by Jerome Green and Robert Critchlow. Responding to these motions and appeals are outside her scope and unduly burdensome.

DATED AND SIGNED IN OPEN COURT THIS 2 DAY OF ~~APRIL~~ MAY 2019.

~~Judge~~/Court Commissioner — ~~Jacquelyn M. High-Edward~~ Court Commissioner

Presented By:

DIANNA J. EVANS, WSBA #45702
Guardian ad Litem

Copy Received, Approved for Entry:

"no objection"

DAWN VIDONI, WSBA #36753
Attorney for Petitioner

Copy Received, Approved for Entry:

LEVI LILJENQUIST, WSBA #36959
Attorney for Mary Jewel Green

Notice of presentment provided per the Declaration of Service filed under separate cover to:

ROBERT CRITCHLOW, WSBA #17540
Attorney for Jerome Green

LAW OFFICE
RICHARD W. PERKINS
DIANNA J. EVANS
28 West Indiana Avenue, Ste. E
Spokane, Washington 99205
(509) 624-1369

LAW OFFICE OF RICHARD W. PEREDNIA

December 22, 2020 - 3:41 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36774-6
Appellate Court Case Title:	In re: The Sanction Order Against Attorney Robert W. Critchlow
Superior Court Case Number:	19-4-00298-2

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ROBERT W. CRITCHLOW

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Filing Petition for Review

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Appellate Court Case Title:	In re: The Sanction Order Against Attorney Robert W. Critchlow (367746)

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