

NO. 38301-2-II

**ORIGINAL**

COURT OF APPEALS, DIV. II  
OF THE STATE OF WASHINGTON

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In re the Guardianship of BERNADYNE E. JACOBY,  
An Incapacitated Person

RANDAL JACOBY, Petitioner

and

INGRID CAMERON, Respondent.

STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II  
09 MAY 14 PM 4:22  
DEPUTY

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**RESPONDENT'S OPENING BRIEF**

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## **I. STATEMENT OF THE CASE**

On October 2, 2006, Gary Jacoby (“Gary”), one of two children of Bernadyne E. Jacoby (“Ms. Jacoby”), filed a Petition for Guardianship under King County Superior Court cause number 06-4-05388-2KNT with respect to his mother and nominated certified professional guardian, Ingrid Cameron (“Cameron”), as guardian. CP 501-535. Even though Ms. Jacoby had designated Gary as her attorney-in-fact under a Durable Power of Attorney for Health Care and Durable General Power of Attorney, and as sole trustee of the Bernadyne E. Jacoby “Revocable Living Trust (“Jacoboy Trust”), Gary commenced the guardianship proceeding because he wanted to make sure his mother had an adequate decision maker regarding personal and financial decisions. CP 503.

Ms. Jacoby had been diagnosed to be in the early stage Alzheimer’s dementia. CP 504. Specifically, Gary had concerns that his brother, Randal Jacoby (“Randal”) had convinced Ms. Jacoby to make Randal her attorney-in-fact under a power of attorney. CP 504. Gary also believed that if Randal was successful, Randal would not provide the necessary care for his mother. CP 504. For example, Randal had been arrested by the King County Sheriff’s Office for obstructing a police officer performing a welfare check on Ms. Jacoby. CP 682-684.

In support of his Petition for Guardianship, Gary provided an Assessment and Preliminary Care Plan for Ms. Jacoby prepared by Chris Swanson, RN. CP 523-535. The Swanson Assessment dated August 22, 2006, states the following:

CURRENT DIAGNOSIS, CONDITIONS, PROBLEMS: Alzheimer's dementia, scoring 14/30 on mini mental exam. Deficits include moderate short term and mild long term memory loss, difficulty with word finding and thought process, reasoning and judgment. Less than optimal body weight, living alone for two to three week periods with no family or caregiver in her home. Anger toward pt. from her son, [Randal] when he is home. CP 524.

The Swanson Assessment also opined that Ms. Jacoby "appears close to needing 24/7 hour care and supervision." CP 526. Ms. Swanson also submitted a letter to the court entered on November 14, 2006. In her statement to the court, Ms. Swanson states:

The greatest concern to me as a health care provider was her [Ms. Jacoby's] voluntary statements, on several occasions, that she was afraid of her son, Randal. She stated to me, "I am afraid of him because he gets so angry at me when I can't remember things." "He throws things and calls me names." CP at 610.

Ms. Swanson's statement also informs the court as follows:

Based on the above needs and lack of reliable, appropriate, and nurturing care, it was my recommendation to Bernadyne and her son, Gary, she should not be living alone and that we proceed

to identify a next-step in the planning for her care. I set up an appointment with Bernadyne and Carol, to take her out and show her some care facilities so she could take part in at least part of her own decisions, by indicating her preferences. Due to the short-term memory loss, she would need support and reminders to actually choose one.

However, upon his return to Washington, Randal Jacoby completely stifled this plan by discharging Carol and indicating that she, nor anyone else, was to contact his mother.

It was for these reasons that Gary, Carol and myself reported this situation to Adult Protective Services, feeling that she was being neglected for six days a week when Randal was out of State, isolated from her friends, under-nourished, and verbally abused when Randal was in town.” CP 611.

As required by RCW 11.88.090, attorney Ken Rekow, was appointed Guardian ad Litem (“GAL”) upon the filing of Gary’s Petition for Guardianship. CP 539-545. The GAL is an experienced attorney and had previously acted as a certified professional guardian. CP 550. On October 19, 2006, upon the recommendation of the GAL, the court appointed Marilyn Smith (“Ms. Smith”) as attorney for Ms. Jacoby. CP 551-552. Both the GAL and Ms. Smith remained on the case and were not discharged until the court appointed Cameron as successor trustee. CP 64; 146.

On November 2, 2006, the GAL filed the first of his five verified reports. CP 560-611. The first GAL report indicates that he performed a comprehensive investigation by interviewing over

fifteen persons, reviewing medical reports, and analyzing any viable alternatives to guardianship. CP 563-565. As part of his statutory duties, the GAL interviewed Ms. Jacoby and set forth these comments based on his interview with her:

She said she would like to get back to her home, but she would need to get her son Randal out of there. He likes to control everything when he is around. She said he moved in without being invited and without asking her. He stays out late nights and is away for lengths of time. He changed the locks on her doors, and she said he may have taken some money from her. She says that she is afraid of him. She says son Gary has her power of attorney. She did not mention a later power of attorney to Randal dated 9/16/06, copy of which was sent to me by Randal on October 23, 2006. I understand that the police investigators will have the signatures compared in the State Laboratory. CP 562.

With respect to alternatives to guardianship (i.e. the acceptable range of choices), the GAL states:

Powers of Attorney have not worked. Ms. Jacoby's sons are disagreeing about which is effective, and who should have power of attorney. Ms. Jacoby is confused about this issue, but stated that Randal should not have such authority. CP 565.

On November 6, 2006, the court continued the hearing on the appointment of guardian to allow the GAL to hear from all interested parties and report back to the court. CP 570-571. Notably, Randal personally attended the November 6, 2006 hearing in King County Superior Court. CP 570. On

November 17, 2006, the GAL filed a Supplemental Report of Guardian ad Litem.<sup>1</sup> Appendix A. The Supplemental Report states as follows:

When I asked Ms. Jacoby if she had given her power of attorney to any one, or named any one as trustee, she said that maybe Randal now had it, but that she wants it taken back. Appendix A.

This report goes on to make the following observation:

I note that Ms. Jacoby was assessed by Chris Swanson, RN on August 22, 2006. A copy of the assessment was attached to the petition in this matter. This assessment may be important in determining whether after that date Ms. Jacoby possessed the requisite ability to understand and sign future documents, revising her earlier written decisions. In any event, her declining health makes future documents suspect, and with the other facts set forth in this matter, including Detective Ostrum's report, indicate to me that the later documents should be either invalidated or that the new Guardian should be named trustee of Ms. Jacoby's trust. Appendix A.

On November 13, 2006, Randal filed a narrative addressed to the GAL wherein he expresses his contempt for his brother, Gary, and "some weirdoes from her [Ms. Jacoby's] church!" CP 573-574. On November 16, 2006, Gary, through counsel, responded to Randal's narrative which reaffirmed Gary's request

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<sup>1</sup> Though Respondent's Designation of Clerk's Papers and Exhibits identifies the Supplemental Report of Guardian ad Litem filed on November 17, 2006 (Sub No. 27), the document was not included in the Clerk's Papers forward to the Court of Appeals. RP 1338. Therefore, Respondent has attached the Supplemental Report of Guardian ad Litem as Appendix A to its opening brief.

that an independent professional guardian be appointed and that the appointed guardian also be named successor trustee of the Jacoby Trust. CP 615-618. Gary's response also included a King County Sheriff's Office report detailing an investigation by the Sheriff's Office which included a summary of the investigation of an interview between Detective Ostrum and Ms. Jacoby. CP 619-862. The report found evidence of misconduct by Randal with respect to Ms. Jacoby's assets and recommended that a Protection Order be entered in the guardianship matter to protect Ms. Jacoby from Randal. CP 634. The summary of the Sheriff's report puts into question the veracity of Randal's narrative filed on November 13, 2006. CP 619-635.

On November 20, 2006, the court appointed Cameron as full guardian of Ms. Jacoby and instructed Cameron to petition to become successor trustee of the Jacoby Trust. CP 1 - 9. On December 19, 2006, Cameron filed a Petition to Replace Trustee. CP 10 - 59.

Ms. Jacoby had originally created the Jacoby Trust on February 19, 1985. Amendment 1 to the Jacoby Trust has never been located, but Amendment 2 restates the original trust document in its entirety. Appendix A. The trust provides distributions to Ms. Jacoby of principal and income as directed by Ms. Jacoby. Appendix A. In the event that Ms. Jacoby is declared incapacitated, the trust states that Ms. Jacoby's power to direct

distributions from the trust or to revoke or modify the trust are suspended. Appendix A. Upon Ms. Jacoby's death, the trust provides 5% of the trust be distributed to the church of which Ms. Jacoby was a member at the time of her death and another 5% to Biblical Foundations International of Federal Way, Washington. Appendix A. The remainder of the trust estate is to be distributed to her two sons, Gary and Randal equally. Appendix A. Amendments 3 through 5 to the trust essentially modify the designated acting trustee and alternate trustees. Appendix A. Amendment 3, dated August 11, 2005, confirms Ms. Jacoby's appointment of herself as the acting trustee and names her two sons as alternate co-trustees. Appendix A. In Amendment 4 dated March 14, 2006, Ms. Jacoby resigns as trustee and appoints her son Gary as the acting trustee and her son Randal as the alternate trustee. Appendix A. In addition, this Amendment provides that upon Ms. Jacoby's death, her two sons will act as co-trustees. Appendix A. It is worth noting that Amendment 4 states:

Acting Trustee is Bernadyne E. Jacoby. Trustor Bernadyne E. Jacoby has been diagnosed with early stage Alzheimer's and desires to turn over the management of the Trust to Trustor's son, Gary A. Jacoby. To that end, Trustor hereby resigns as Trustee and appoints Gary A. Jacoby as sole trustee.

Amendment 5, dated September 16, 2006, appears to copy Amendment 4, but Ms. Jacoby "resigns" as trustee (though Ms. Jacoby had already resigned by signing Amendment 4) and

names her son, Randal, as the acting sole trustee. Appendix A. Amendment 5 further states that upon Ms. Jacoby's death, Randal will continue to be the sole trustee and Marie Jurlin and Camille Hutchinson will be the alternate trustee and the second alternate trustee, respectively. Appendix A. Amendment 5 completely removes Gary as a primary or alternate trustee. Appendix A. All the Jacoby Trust documents, except for Amendment 5, were prepared by Ms. Jacoby's estate planning counsel (Albertson Law Group of Kent, Washington). Appendix A. Amendment 5 was prepared by Randal's friend, at Randal's request and executed at a "do-it-yourself legal documents shop." CP 342. Randal had initially asked that the Albertson Law Group prepare Amendment 5, but they declined. CP 342.

In her Petition to Replace Trustee, Cameron correctly informed the trial court that Randal had vacated Ms. Jacoby's house and had not filed any notice with the court with a new address and that, under the circumstances, notice to Randal of the hearing on the Petition to Replace Trustee should not be required. CP 12-13.

The Guardian ad Litem filed his Second Supplemental Report on December 26, 2006, addressing the issue of whether Cameron should be appointed successor trustee. CP 1173-1176. The recommendation of the GAL was as follows:

## RECOMMENDATIONS

I believe, and recommend, that Ingrid Cameron, C.P.G., should be appointed as successor trustee of the Bernadyne E. Jacoby Revocable Living Trust (Trust) originally dated February 9, 1985, as modified and amended, the last time known being Amendment number 5.

In Amendment number 4 Ms. Jacoby appointed her son, Gary Jacoby, as acting Trustee and her son Randal Jacoby as alternate.

Amendment number 5 dated September 16, 2006, copied Amendment number 4, but names her son Randal Jacoby as acting Trustee. This last Amendment number 5 was signed after Ms. Jacoby had been assessed as suffering from dementia, and under circumstances which might lead to the conclusion that this last amendment was not signed by Ms. Jacoby as her free will. Since that time Ms. Jacoby has expressed regret at having signed the document.

The reasons which led to the appointment of a full Guardian of the person and the revocation of all Durable Powers of Attorney, are persuasive concerning the substitution of Ingrid Cameron, a professional guardian, to be successor Trustee of Ms. Jacoby's trust.

For these same reasons, as set out in my preliminary and second request, I recommend that Ingrid Cameron's petition requesting to be named successor trustee shall be approved.

Service: Ms. Jacoby's son, Gary Jacoby, has approved the naming of Ms. Cameron as successor trustee. I understand that son Randal Jacoby has not been served with either Notice of the Petition for a Restraining Order, nor of this Motion. It is reported

that he spends much of his time out of state and does not have a permanent address or residence.

I believe that even if Randal Jacoby were served, and even if he appeared at a hearing on the matter, that Ms. Cameron should, and would, be appointed successor trustee. Randal Jacoby should not be able to deny attention or necessary assistance to his mother by avoiding service.

I believe that having the trust supervised by this Court is very important, considering the charges and counterclaims which have been made by and between each brother, and considering Ms. Jacoby's best interests.

#### SPECIFIC RECOMMENDATIONS

I concur with the petitioner as follows:

1. All original and acting trustees should be removed as trustee of the trust and Ingrid Cameron, C.P.G., should be substituted as successor trustee effective upon entry of an Order, and Elizabeth Stone should be named as alternate successor trustee;
2. That Ingrid Cameron, C.P.G, as successor trustee should not be liable for any previous trustees activities with respect to the Trust;
3. That the successor trustee be required to make annual reports of trustee and the court simultaneously with the guardian's annual reports to the Court;
4. That the Court order that the guardian's existing bond in the amount of \$100,000 be adequate, if other assets are held in real property or in blocked accounts;

5. That the successor trustees provide an inventory of the trust to the court on February 26, 2007;

6. That the Court retain ongoing jurisdiction over the trust. CP 1174-1176.

On December 22, 2006 the GAL emailed to Randal and mailed to Randal, at his last known address, a copy of his Second Supplemental Report. CP 1177-1178. The record is devoid if any response from Randal.

On January 3, 2007, Commissioner Eric Watness entered an Order Replacing Trustee which appointed Cameron as successor trustee. CP 60-62. The court made a specific finding that adequate notice had been provided to the interested parties and the court also specified that the Trust be court supervised. CP 60.

On February 22, 2007, the GAL filed his Third Supplemental Report. CP 1201. This report recommended that Ms. Jacoby remain at the adult family home and that efforts be made to increase her socialization. CP 1201.

On February 26, 2007, Commissioner Kimberly Prochnau entered an Order Approving Guardian/Trustee's Inventory and Guardian's Personal Care Plan. CP 66. This Order also restrained Randal from visiting Ms. Jacoby. CP 66. The Order required the guardian to supplement her Care Plan to increase the socialization opportunities for Ms. Jacoby and to investigate whether she could be relocated back to her home. CP 66.

On March 6, 2007, attorney Douglas Schafer entered a Notice of Appearance on behalf of Randal in the guardianship proceeding. CP 67.

On March 22, 2007, the GAL filed his Fourth Supplemental Report which included his opinion that the guardian's Inventory was adequate. CP 1243-1261. On May 29, 2007, Randal filed objections which argued that no Restraining Order against Randal should be entered, that the Guardian's Care Plan included some deficiencies such as not returning Ms. Jacoby to her home, that the guardian's Inventory was deficient, and that Randal had complaints about the guardian's behavior. CP 121-128. On May 29, 2007, despite these objections, the court entered Orders that approved the guardian's amended Personal Care Plan and further authorized Cameron as trustee to expend funds to maintain Ms. Jacoby's house and take steps to sell the house. CP 137-138; 145-147. The court did not enter a Restraining Order against Randal, it did order that the current address of Ms. Jacoby not be disclosed to anyone unless otherwise ordered by the court. CP 146.

On November 6, 2007, Ms. Cameron as Trustee filed a Petition to approve the proposed purchase and sale agreement for Ms. Jacoby's. CP 1280-1326.

On December 13, 2007, the court entered an Order confirming the sale and on that same date, nearly twelve months

after Cameron's appointment as successor trustee, Randal filed a Motion to Vacate the Order appointing Cameron as successor trustee. CP 1333-1334; 153-155. Also on December 13, 2007, a Lis Pendens was filed by Randal with respect to Ms. Jacoby's house which was also presumably filed with the King County Auditor's office. CP 1331-1332. On January 10, 2008, Pro Tem Commissioner Rod Simmons entered an Order vacating the trustee appointment Order of January 3, 2007. CP 176-177.

On February 1, 2008, by agreement of the parties, an Order Transferring Venue to Pierce County was entered. CP 178-179.

On March 3, 2008, Cameron filed Guardian and Trustee's First Annual Report with the court and her counsel filed a Declaration Regarding Attorney Fees. CP 181-258; 259-275. On March 5, 2008, Cameron filed a Petition to Appoint Successor Trustee requesting that she be appointed again as trustee of the Jacoby Trust, or in the alternative, that she be appointed interim trustee until the issues raised in the Petition were resolved pursuant to RCW 11.96A. CP 276-280. Also on March 5, 2008, Detective Robin Ostrum, filed her declaration which stated:

I am nearing the end of my investigation and will be referring this case to the King County Prosecutor's Office, as I find that there is Probable Cause to charge Randal with DV-Forgery of documents (Class C felony) and DV-Obtaining Signature by Deception or Duress (Class C felony). These charges are all in relation to the changes that were made to Bernadyne Jacoby's legal documents, to

include her General Durable Power of Attorney, Health Care Power of Attorney and Bernadyne's Trust Documents. CP 285.

On March 12, 2008, Randal filed Objections to Guardian and Trustee's First Annual Report. CP 291-316. On March 13, Cameron filed a reply to Randal's Objections, and on March 31, 2008, filed a Supplemental Petition to Appoint Successor Trustee. CP 317-325. The Supplemental Petition suggests that the court appoint another third party certified professional guardian as successor trustee. CP 318-319.

On April 16, 2008, Randal filed an Answer concerning the Petition to Appoint Successor Trustee and on April 17, 2008, filed a Motion to Vacate Rulings Dependent Upon an Order Later Vacated as Void. CP 326-374; 375-389. Further, on April 21, 2008, Randal filed Additional Objections to Guardian and Trustee's First Annual Report. CP 390 - 348. On April 25, 2008, Cameron filed her Declaration addressing issues that were previously objected to by Randal. CP 399-420.

On April 25, 2008, the court entered an Order reserving some issues concerning the Guardian/Trustee's Annual Report for a later hearing and appointed Cameron as trustee of the Jacoby Trust. CP 421-425; 426-439.

On June 20, 2008, Cameron filed a Petition to Confirm Previous Orders requesting that all prior Orders with respect to the trustee's activities and reports be affirmed; and also filed a Petition

Regarding Authority for Specific Expenditures providing the court with, among other things, additional information requested at the April 25, 2008 hearing. CP 440-441; 442; 443-454.

On June 26, 2008, Randal filed three pleadings: Renewed Objection to Petition for Fees and Approval of Accounting; Renewed Objection to Petition to Confirm Previous Orders Concerning Jacoby Trust; and Motion and Declaration to Vacate Order. CP 440-441; 442; 443-444.

In response to a letter entered by Judge Van Doorninck on July 18, 2008, Randal filed a Response to the letter on August 7, 2008 repeating previous objections to the appointment of Cameron as trustee of the Jacoby Trust. CP 445-454. 476. On August 13, 2008, Cameron filed a Declaration and her counsel filed a Declaration in support of Cameron's request that the court appoint her as successor trustee. CP 455-457; 458-460. On August 14, 2008, Randal filed a Reply to those two above-referenced Declarations. CP 476. On August 15, 2008, the court entered both of the Orders referenced in Judge Van Doorninck's letter of July 18, 2008. CP 463-464; 465-466. One Order reinstated all Orders with respect to the trustee's activities from her initial appointment on January 3, 2007. CP 463-464. The other Order approved all of the guardian/trustee fees and attorney fees. CP 465-466. Also on August 15, 2008, the court entered an Order Approving Guardian's Report and an Order Vacating the Order

dated April 25, 2008. CP 467-468; 469. The Order Vacating was entered to allow Randal to appeal the Order entered on April 25, 2008. CP 469.

Randal filed a Notice of Appeal on September 10, 2008. CP 461-462.

## **II. ARGUMENT**

**A. Summary of Argument:** In short, the trial court did not abuse its discretion in making the rulings to which Appellant assigns error. The trial court's Orders should be affirmed and Respondent should be awarded fees against Appellant.

**B. Standard of Review:** Noticeably absent from the Appellant's Opening Brief is any reference to this Court's standard of review in this matter. There are three main issues raised by the Appellant in this matter: (1) That the trial court's decisions regarding the appointment of Cameron as trustee should be reversed; (2) that the Appellant did not waive his objection to lack of personal jurisdiction under the Civil Rules; and (3) that the trial court should not have awarded Cameron her attorney's fees and costs as Guardian and as Trustee of the Jacoby Trust. All three issues are subject to the "abuse of discretion" standard of review.

Regarding the issue involving the appointment of Cameron as Trustee or, as the Appellant believes, his removal as Trustee, "[a] trial court's decision in a trustee removal case will seldom be reversed absent a manifest abuse of discretion." In re Estate of

Ehlers, 80 Wn. App. 751, 761, 911 P.2d 1017 (1996)(citing Fred Hutchison Cancer Research Ctr. v. Holman, 107 Wn.2d 683, 716, 732 P.2d 974 (1987)). This Court's standard of review on this issue is therefore "manifest abuse of discretion."

The Appellant also asserts that the trial court lacked personal jurisdiction over him despite his repeated submissions to the trial court asking for affirmative relief, discussed *infra*. Cameron asserts that the Appellant waived any defense of lack of personal jurisdiction pursuant to CR 12(g) and CR 12(h). "Decisions regarding application of civil rules are reviewed for an abuse of discretion." Sprague v. Sysco Corp. et al., 97 Wn. App. 169, 171, 982 P.2d 1201 (1999)(citing Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 142, 937 P.2d 154 (1997)). This Court's standard of review in determining whether the Appellant waived his alleged defense of lack of personal jurisdiction under CR 12(g) and CR 12(h) is reviewed for abuse of discretion.

Finally, Appellant seeks reversal of the trial court's award of attorney fees and costs to Cameron as Guardian of Ms. Jacoby and as Trustee of the Jacoby Trust. The trial court in such matters had broad discretion to award fees to any party as it sees fit. In re Estate of Black, 116 Wn. App. 476, 491, 66 P.3d 670 (2003). "The standard of review of a fee award is manifest abuse of discretion." Fisher Properties, Inc. v. Arden-Mayfair, Inc. 115 Wn.2d 364, 375, 798 P.2d 799 (1990). Therefore, the standard of review for

this Court on the trial court's award of attorney fees and costs is "manifest abuse of discretion."

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). "A trial court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." In re Marriage of Lawrence, 105 Wn. App. 683, 686 fn. 1, 20 P.3d 972 (2001)(citing State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)).

In order to be successful in this appeal then, the Appellant must establish that the trial court's decisions he is appealing are outside the range of acceptable choices given the facts and the applicable legal standard or he must establish that the trial court's decisions he is appealing are based on an incorrect standard or that the facts do not meet the requirements of the correct standard. Notably, the Appellant makes no arguments using this test in Appellant's Opening Brief. That is because the trial court did not abuse its discretion in this case. It afforded every opportunity possible for the Appellant to set forth his position (several times in

fact). However, the facts simply did not support the relief the Appellant sought from the trial court. Instead, the facts supported appointment of an independent and neutral Trustee of the Jacoby Trust instead of the Appellant. As a result, this Court should affirm the trial court's rulings in whole and award Cameron her attorney's fees and costs on Appeal.

**C. The trial court did not abuse its discretion in appointing Cameron as trustee of the Jacoby Trust.**

Washington's Trust and Estate Dispute Resolution Act ("TEDRA") along with the guardianship statute, provide the authority to affirm the trial court's actions. TEDRA gives the trial court plenary powers to resolve all trust and guardianship disputes in an expeditious manner. RCW 11.96A.020. The guardianship statute specifically authorizes the court to review all alternative arrangements (i.e. trusts) made by an alleged incapacitated person and to terminate them if its in his/her best interest. The evidence before the trial court and before this court demonstrated that the trial court did not abuse its discretion, supported its decision appointing Cameron as trustee of the Jacoby Trust and confirming her actions as de facto trustee.

1. *The trial court's decision to appoint Cameron as trustee of the Jacoby Trust was based on tenable grounds and reasons and was within the range of acceptable choices.*

In a guardianship proceeding, the GAL is required to make recommendations to the court regarding alternative arrangements

made by the alleged incapacitated person to manage his or her affairs. The guardianship statute further directs the GAL to recommend whether such arrangements should be discontinued with specific findings as to why such arrangements are contrary to the best interest of the incapacitated person. RCW 11.88.090(5)(f)(iv). In this case, the GAL made recommendations to the court that the court appointed guardian (Cameron) also be named as trustee of the Jacoby Trust. The GAL essentially sets forth two reasons why naming Cameron as trustee was in Ms. Jacoby's best interest: (1) that given the charges and counterclaims between Ms. Jacoby's two sons, it was proper and necessary to name an independent trustee; and (2) that the circumstances surrounding Amendment 5 naming Randal as trustee, may have not been made by Ms. Jacoby as her free will and that she later expressed remorse at naming Randal as trustee.

Appellant asserts that there was no admissible evidence to support the court's Order appointing Cameron as trustee.

However, Washington law recognizes the GAL as a type of expert to give admissible testimony in guardianship proceedings.

Guardianship of Stamm, 121 Wn. App. 830, 91 P. 3d 126 (2004).

In Stamm the court stated:

In both guardianship and custody cases, the role of the GAL is the same: to investigate and supply information and recommendations to the court in circumstances where family dynamics make a neutral assessment particularly important. In both

contexts, the objective is also the same: to provide a voice for the best interests of the subject of the proceedings. Also, like the family law GAL, the guardianship GAL is not a traditional expert, but becomes an expert on the status of the alleged incapacitated person and the dynamics of his circumstances in order to offer an independent and common sense perspective to the court. Like the family law GAL, a guardianship GAL must qualify by training and experience before appointed. The guardianship statute does create a category of non traditional experts and provides for the court to receive their opinions and recommendations. Stamm at 837.

The Stamm court went on to say:

Performing his or own duties under the statute, a GAL is required to consult with those knowledgeable about the alleged incapacitated person. The statute does contemplate that hearsay will be the basis for the GAL's opinions. In order to evaluate the GAL's opinions, the fact finder needs to know the basis for them.

We therefore hold the trial court has discretion under ER 702 to permit a GAL to testify to his or her opinions if the court is persuaded the testimony will be of assistance, it may permit the GAL to state the basis for those opinions, including hearsay. Stamm at 37.

RCW 11.88.090(5)(f)(iv) implicitly gives the trial court the authority to revoke or modify such alternative arrangements put in place by Ms. Jacoby if the evidence supports such action and its in her best interest. In this case, the GAL strongly recommends that Cameron be appointed as trustee. The GAL reports are admissible

evidence and properly relied upon by the court to appoint Cameron as successor trustee.

RCW 11.88.045(1)(b) identifies the role of the GAL “to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual’s expressed preferences.” On the other hand, the attorney for the alleged incapacitated individual “shall act as an advocate for the client and shall not substitute counsel’s own judgment for that of the client on the subject of what may be in the client’s best interests. In this case, the Guardian ad Litem appropriately recommended that Cameron be appointed substitute trustee and counsel for Ms. Jacoby did not object to the recommendation. In contrast, the majority of the evidence Randal highlights in support of his position are his self serving declarations.

*2. Randal was not the validly appointed trustee of the Jacoby Trust. Even if he was, the trial court had personal jurisdiction to remove him as he waived any defense to the jurisdiction issue.*

Appellant spends one page of his Opening Brief arguing that the trial court lacked personal jurisdiction over him. App. Op. Br., 14-15. However, Appellant makes no argument as to the relief he requests as a result of this alleged error. That is because the Appellant’s argument regarding alleged lack of personal

jurisdiction is a red-herring, designed to stray this Court from addressing the true issues in this case.

The Appellant waived any challenge to personal jurisdiction when he sought affirmative relief from the trial court as described herein. CR 12(g) and (h). “For in seeking affirmative relief, the defendant is invoking the court’s jurisdiction; he cannot at the same time deny that jurisdiction.” Kuhlman Equipment Co. v. Tammermatic, Inc., 29 Wn. App. 419, 424, 628 P.2d 851 (1981)(quoting Globig v. Greene & Gust Co., 193 F. Supp. 544, 549 (E.D. Wis. 1961).

In numerous instances, the Appellant sought affirmative relief on the substantive issues underlying his appeal, establishing that he has waived any defense of lack of personal jurisdiction:

- Gary filed the Petition for Guardianship in October, 2006. In November, 2006, Randal filed a Declaration opposing the relief Gary sought (including that the independent guardian be named as the successor trustee of the Jacoby Trust;
- On January 3, 2007, the Commissioner entered an Order appointing Cameron as the successor trustee of the Jacoby Trust and on March 6, 2007, Randal’s counsel filed a Notice of Appearance with the Court;

- On March 22, 2007, the GAL filed his Fourth Supplemental Report and Randal objected to that. CP 121-128. After hearing Randal's objections, the Court authorized Cameron as Trustee to expend funds to maintain Ms. Jacoby's house;
- On December 13, 2007, Randal sought and obtained an Order vacating the previous order appointing Cameron as Trustee;
- On February 1, 2008, Randal agreed to transfer venue of the matter to Pierce County Superior Court;
- On March 5, 2008, Cameron filed a Petition to be appointed trustee of the Jacoby Trust. On March 12, 2008, Randal filed Objections to Guardian and Trustee's First Annual Report. CP 291-316.
- On April 16, 2008, Randal filed an Answer to the Petition to Appoint Successor Trustee and on April 17, 2008, filed another Motion to Vacate; CP 326-374; 375-389.
- On April 21, 2008, Randal filed Additional Objections to Guardian and Trustee's First Annual Report. CP 340-348.
- On June 26, 2008, Randal filed a Renewed Objection to Petition for Fees and Approval of Accounting; Renewed Objection to Petition to Confirm Previous Orders Concerning Jacoby Trustee; and Motion and Declaration to Vacate Order. CP 440-441; 442; 443-444.

- On August 7, 2008, Randal filed a Response to a letter from the trial court repeating his previous objections. CP 445-454.
- On August 14, 2008, Randal filed a Reply to Declarations filed by Cameron. CP 476.

To state that Randal submitted himself to the jurisdiction of the underlying cause is an understatement. He cannot now be heard to argue that the very court to which he made application lacked jurisdiction over him.

Appellant argues that his appearance by counsel in the guardianship proceeding affords no basis for personal jurisdiction over him in his capacity as the alleged trustee of the Jacoby trust. App. Op. Br. at 15 (citing DiBernardo-Wallace v. Gullo, 34 Wn. App. 362, 364, 661 P.2d 991 (1983)). In this case, though, the guardianship proceeding was the same proceeding in which the Appellant was removed as trustee. Both occurred under King County Superior Court Case No. 06-4-05388-2KNT as directed by the trial court. This is simply an argument of convenience for the Appellant. When it suits his needs, the Appellant applies to the Court for affirmative relief. When he does not like the ultimate result of the trial court's decisions, he appeals and argues the trial court lacked jurisdiction over him. The Appellant cannot have it

both ways. He appeared in the very proceeding which is the subject of this appeal and sought affirmative relief from the trial court. He cannot now be heard to complain that the very court he appeared in lacked jurisdiction over him.

*3. Randal was not validly appointed trustee of the Jacoby Trust. Even if he was, the trial court had personal jurisdiction to remove him pursuant to RCW 11.96A.*

It is true Randal was never personally served with a summons in this matter. However, RCW 11.96A.100(2) and 11.96A.090(2) do not require service of a summons upon those parties who are already parties to an existing judicial proceeding incidental to the same trust or estate. A “party” is defined under the statute as any other person who has an interest in the subject of the particular proceeding. RCW 11.96A.030(4)(i). Randal was identified as a party of interest in the guardianship matter as one of the two sons of Ms. Jacoby. Randal had knowledge of the guardianship proceedings. Further, he has never refuted that he had knowledge of the Petition to appoint Cameron as trustee. In fact, the Guardian ad Litem Report recommending the appointment of Cameron as trustee was sent to Randal Jacoby’s last known address and emailed to him.

The Petition to appoint Cameron as trustee of the Jacoby Trust was incidental to the guardianship proceeding because it was the guardianship court that instructed Cameron to petition the court

to become trustee. The Petition was filed under the same cause number as the guardianship. In addition, it is undisputed that a majority of Ms. Jacoby's assets were titled in the name of the Jacoby Trust and it was important for the guardian to control these assets for Ms. Jacoby's ongoing health, welfare and maintenance.

Ms. Jacoby created the Jacoby Trust for her primary benefit. In the guardianship action, it came to the attention of the court that it needed to review whether Ms. Jacoby's trust arrangements were in her best interest. Whether Ms. Jacoby needed a guardian and whether her revocable trust needed some review and action by the court were clearly two TEDRA matters incidental to one another. The court implicitly recognized this when at the hearing appointing Cameron as guardian, it also directed her to petition the court to become trustee.

Appellant's Brief cites In Re Marriage of McKean, 110 Wn. App. 191, 195 38 P.3d 1053 (2002) for the proposition that the court must have personal jurisdiction over an individual in their representative capacity as trustee before they are removed as trustee. Cameron does not dispute this proposition, but argues that RCW 11.96A eliminates the need for service of a summons upon a trustee before a trustee is removed in certain circumstances. In McKean, the court was not dealing with two TEDRA matters, but was dealing with a dissolution case with respect to a trustee's activities involving marital assets. In the instant case, we do have

two incidental matters relating to Ms. Jacoby; one matter as the incapacitated person and the other matter as the primary beneficiary of a trust which she created.

*4. The trial court's decision to remove Randal as trustee was not manifestly unreasonable.*

It is important to keep in mind that the main interest of the trial court was to act in the best interest of Ms. Jacoby. The GAL provided the court with an exhaustive evaluation of the issue of whether Cameron should be appointed trustee. The GAL recommended that the appointment of Cameron as trustee was in the best interest of Ms. Jacoby given the family dynamics, the accusations involving Randal, and the uncertainty regarding the validity of Amendment 5 to the Jacoby Trust.

*5. TEDRA provides this court with the authority to replace a trustee of a trust created by an incapacitated person.*

As discussed earlier, the court has authority under RCW 11.88.090 to review all Ms. Jacoby's alternative arrangements to managing her assets and whether such arrangements should be continued or not.

RCW 11.96A.020 and RCW 11.96A.020 provides additional authority to the trial court. RCW 11.96A.020(2) states:

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in Section (1) of this section, the court nevertheless has full power and authority to proceed with such administration and

settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

RCW 11.96A.060 states:

The court may make, issue and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title.

The trial court was faced with at least uncertainty with respect to the administration of the Jacoby Trust. It also was provided GAL Reports which, without reservation, recommended that Cameron be appointed trustee of the Jacoby Trust. This recommendation was made after a thorough review of the circumstances of this case.

**D. The trial court did not err by confirming Cameron's activities as a de facto trustee of the Jacoby Trust.**

Washington law supports the actions of the trial court judge confirming Cameron as trustee of the Jacoby Trust and confirming all previous Orders in this matter related to Cameron's activities as a de facto trustee.

*1. The trial court had authority to appoint Cameron as trustee of the Jacoby Trust and to confirm previous court Orders with respect to Cameron's activities as a de facto trustee.*

Soon after the court entered the Order on January 10, 2008, vacating Cameron's appointment as trustee, Cameron filed a

Petition to appoint herself as successor trustee, or in the alternative, to appoint another professional trustee of the Jacoby Trust. A hearing was held on April 25, 2008, to resolve the issues set forth in the Petition. At that hearing, the court reviewed briefing on behalf of Cameron and Randal, which included the relevant evidence in the case supporting the appointment of Cameron as trustee. The court appointed Cameron as trustee, and suggested that the court would entertain a motion to confirm previous Orders approving of Cameron's actions as trustee. RP at 20-21. The court entered an Order on August 8, 2008, approving all of Cameron's activities as a de facto trustee since she was initially appointed trustee on January 3, 2007.

Again, RCW 11.96A.020 provides the court with plenary powers and wide discretion to do what is necessary and proper in related trust and estate matters. Further, in Irrevocable Trust of McKean, 144 Wn. App. 333, 183 P.3d 317 (2008) (McKean II), this court adopted the concept of a de facto trustee in certain circumstances. Once it is determined that a party is acting as a de facto trustee, then all the de facto trustee's actions are binding on third parties. McKean II at 341. In order for the de facto trustee concept to apply, the person or entity must (1) assume the office of trustee under a color of right or title, and (2) exercise the duties of the office. McKean II at 341. In confirming a party's status as a de facto trustee, the McKean II court stated:

Commencement Bay assumed the office of trustee under color of right when the dissolution court appointed it trustee. Commencement Bay acted as the trustee, marshalling and protecting the trust's assets. Commencement Bay reasonably believed it was the trustee and acted in good faith. The irregularity in the dissolution court's appointment did not invalidate Commencement Bay's de facto trustee status. Allen Trust, 210 OR App. 648, 657, 159 P.3rd 319 (2007). McKean II at 342.

The court also supports its decision by referring to TEDRA's grant of plenary powers to the trial court. McKean II at 343.

The court's obligation in guardianship and trust matters is to protect the best interest of the incapacitated person and the trust beneficiary. As stated in McKean II:

Given the trial court's authority to take action in the face of uncertainty, and its primary duty to protect the assets of the trust beneficiary, we are unwilling to invalidate the de facto trustee's efforts on behalf of the trust beneficiaries under the court's appointment. McKean II at 343.

The court Order approving the trustee's activities entered on August 8, 2008, was based on a Petition by Cameron, several objections from Randal, replies from Cameron and then the ultimate Order. In other words, the court received voluminous materials and heard argument from the opposing parties advocating for approval of the trustee's activities and arguing against such approval. The McKean II case was cited by both parties in their

written materials. The trial court's ruling to approve Cameron's activities as a de facto trustee is authorized by McKean II.

2. *Cameron had a good faith belief that she was acting as a trustee.*

Appellant argues that Cameron did not have a good faith belief that she was acting as trustee. This statement completely ignores the fact that (1) the court directed Cameron to petition the court to become successor trustee with her activities supervised by the court; (2) that the court appointed Cameron as trustee based on the evidence including the GAL Report; (3) that the Order Vacating the Appointment of Trustee was not entered until almost one year later on January 3, 2007; and (4) that another judicial officer appointed her trustee and confirmed all her previous actions by court Order on August 8, 2008. Further, after numerous petitions, responses and replies, the court has approved the guardian and trustee's activities in this matter.

When Cameron filed her Petition to become successor trustee at the direction of the trial court, she disclosed to the court that she did not serve Randal with the Petition and asked that such service be waived. The court entered a specific finding with the Order entered on January 3, 2007 that all notices had been properly provided. Further, the Guardian ad Litem Report recommending that Cameron be appointed successor trustee was provided to

Randal Jacoby's last known mailing address and sent to him via electronic mail.

For all these reasons, the court's confirmation of Cameron's activities as a de facto trustee were supported by the evidence.

**E. The trial court did not abuse its discretion in approving Cameron's trustee and guardian fees and her attorney fees.**

The court has wide discretion to approve trustee's fees and trustee's attorney fees and such approval will not be overturned except for an abuse of that discretion. The trial court had a verified Petition from the trustee detailing daily entries for time devoted to her activities as guardian and trustee; and her counsel also provided a detailed Declaration with respect to fees incurred with respect to the guardianship and trust matters. In addition, Randal filed objections to these fees and at least two court hearings were held to review the fees. Ultimately, after all of this, the court approved the fees in total.

**F. The trial court did not abuse its discretion in approving the Annual Report and activities of the guardian and trustee.**

Appellant argues that trust and guardianship assets should be separately and accurately identified and accounted for. The same argument was made to the trial court and trustee's counsel responded to these objections. Once again, the trial court found

that the accountings of the guardian and trustee were proper. This decision was not an abuse of discretion.

**G. The trial court properly ordered that Cameron file Ms. Jacoby's residential address under seal.**

At the April 25, 2008 hearing, counsel for Randal pointed out to the court that Cameron had not filed with the court the residential address of Ms. Jacoby. The court was mindful of Ms. Jacoby's fragile situation and felt it appropriate to file the residential address under seal. RP 40. GR 15 authorizes the court to seal certain records if specific findings are entered as identified in that rule. Though the specific written findings were not entered with the April 25, 2008 Order, the court's oral remarks articulated compelling privacy and safety concerns that outweigh the public's interest in access to Ms. Jacoby's residential address. Throughout these proceedings the court has entered Orders restricting Randal's access to his mother because of his mother and, more importantly, Ms. Jacoby's fears of her son. The court actions were in the best interest of Ms. Jacoby and were supported by the court's oral ruling.

**H. Cameron should be awarded her attorney's fees against Randal.**

RCW 11.96A.150 gives broad and equitable powers to the Appellate Court to award a reasonable attorney fees and costs to any party, from any party to the proceeding, or from the assets of the estate or trust involved in the proceeding. Cameron requests

that its reasonable attorney fees and costs be awarded against Randal. Cameron was directed by the court to petition to become trustee, was appointed by the court to act as trustee and reappointed by the court to continue to act as trustee. The court appointed Cameron because it is in the best interest of Ms. Jacoby. Randal, on the other hand, has made no legitimate argument why it would be in Ms. Jacoby's best interest if he were acting as trustee or any good legal or practical reason why the trial court Orders should be reversed.

### **III. CONCLUSION**

Throughout these proceedings, Appellant's arguments have focused on how he has been unfairly treated by the system and his purported right to be the trustee of the Jacoby Trust has been "hijacked" by the system. Relatively little, if any, of Appellant's focus has been devoted to what is in the best interest of his mother, Ms. Jacoby. On the other hand, the trial court has focused on the best interests of Ms. Jacoby. Given this paramount concern and in the face of the factual circumstances of this case and supported by ample evidence and legal authority, the trial court appointed Cameron as trustee and approved her activities. This court should affirm the trial court's Orders entered below.

\* \* \*

\* \* \*

\* \* \*

DATED this 14<sup>th</sup> day of May, 2009

EISENHOWER & CARLSON, PLLC

By: 

David B. Petrich WSBA # 18711

Stuart C. Morgan WSBA #26368

Of Attorneys for Respondent

Ingrid Cameron

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CERTIFICATE OF SERVICE

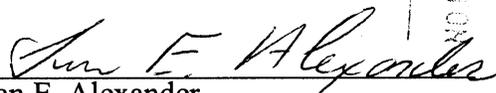
I hereby certify that on the 14<sup>th</sup> day of May, 2009, I served Appellant with a copy of the foregoing document by depositing a true and correct copy of the foregoing Respondent's Opening Brief with ABC Legal Messengers to be delivered to the below-listed counsel for the Petitioner:

Douglas A. Schafer  
SCHAFFER LAW FIRM  
950 Pacific Ave., Suite 1050  
P.O. Box 1134  
Tacoma, Washington 98401-1134

I arranged for the original of the foregoing document to be filed with the Court of Appeals, Division II, by depositing the same with ABC Legal Messengers for delivery to the following address:

Clerk of the Court  
Washington State Court of Appeals, Division II  
950 Broadway, #300  
Tacoma, WA 98402

DATED this 14<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
Susan E. Alexander

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DIVISION II  
09 MAY 14 PM 4:22  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
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## **APPENDIX A**

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

In re the Guardianship of ) Cause No. 06-4-05388-2 KNT  
BERNADYNE E. JACOBY, ) SUPPLEMENTAL REPORT OF  
An Alleged Incapacitated Person. ) GUARDIAN AD LITEM

RECOMMENDATIONS

I continue to recommend that the Court appoint INGRID CAMERON, C.P.G., Cameron and Associates, as the guardian of the person and guardian of the estate of Bernadyne E. Jacoby, and as successor trustee, who shall make all major decisions after consultation with Ms. Jacoby, and, at the Guardian's option, after consultation with other family members and friends.

I recommend a combination of bond of \$100,000 and blocked accounts.

I recommend that reports be filed on a yearly basis.

I recommend that the AIP not retain the right to vote, she is not interested.

1. Appointment:

Set out in first report.

SUPPLEMENTAL REPORT OF  
GUARDIAN AD LITEM - 1  
#599257 v1 / 38875-001

*Law Offices*  
KARR·TUTTLE·CAMPBELL  
*A Professional Service Corporation*

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ORIGINAL

1           Supplemental: At the hearing on November 6, 2006 the Court continued the matter  
2 to allow interested parties to voice their opinions to the GAL and to the Court. The matter  
3 was continued to November 20, 2006 at 10:30 a.m.

4  
5           2.       Precipitating Issues:

6           Ms. Jacoby's son, Gary, who lives in California, expressed concern about  
7 Ms. Jacoby's welfare and finances to attorney Robin J. Williams, who filed a petition for  
8 guardianship. Both the police, through Detective Ostrom, the State of Washington through  
9 the Department of Social and Health Services, became actively involved in investigating  
10 Ms. Jacoby's welfare and assets. Their investigations are ongoing. Detective Ostrum's  
11 report may be filed independently with the Court. A State of Washington report is not  
12 readily available.

13  
14  
15           3.       Personal Information:

16           No changes. Ms. Jacoby continues to reside at an undisclosed location. She has  
17 reportedly been visited there by Detective Ostrom, by Ms. Marilyn Smith, her Court  
18 appointed attorney, and by myself. A restraining order has been secured based on  
19 recommendations made by Ms. Jacoby's attorney, the petitioning attorney, and the police.

20  
21           4.       Medical Psychologist Report:

22           No changes or additions.

23           5.       Meeting with AIP:

24           Supplemental: I met with Ms. Jacoby again on November 14, 2006 at her  
25 temporary residence.  
26  
27  
28

1        Agreement or Objection to Appointment of a Guardian: Ms. Jacoby again stated  
2 that she has no objection to a guardian being appointed, and that she likes Ms. Cameron.

3        Reaction to Proposed Guardian: No change – neutral.

4        Right to Counsel: Has met with Marilyn Smith, attorney.

5        Right to Jury Trial: Does not want.

6        Notes from Interview: I met with Bernadyne Jacoby at her place of temporary  
7 residence on November 14, 2006 for approximately forty (40) minutes. Ms. Jacoby was  
8 neat and clean and resting in her room when I visited at approximately 1:30 p.m. Her  
9 health care provider explained to me that Ms. Jacoby stays in her room most of the time,  
10 but that she is seemingly not displeased with her situation and eats regularly and is pleasant.  
11 Evidently, Ms. Jacoby had a pain in her neck earlier, which was reported to her regular  
12 physician, but Ms. Jacoby did not mention any pain when I asked her how she felt.  
13

14  
15  
16        When I entered Ms. Jacoby's room, I asked her if she recognized me from my  
17 earlier visit. She said yes, but could not remember my name or function, even though I  
18 have sent several communications to her.

19        I asked Ms. Jacoby if she had been advised of the results of the earlier hearing. She  
20 said yes, but could not remember who told her the results. She then said "Oh yes", and  
21 after looking through her papers, she brought me a copy of my earlier Guardian ad Litem  
22 Report (GAL Report), which of course was done before the previous hearing.  
23

24        I asked Ms. Jacoby if she knew that another hearing would be held. She said yes,  
25 but could not remember how she knew.  
26  
27  
28

1 I told Ms. Jacoby that her son, Randal, and several friends attended the hearing.  
2 She then interjected that Randal had planned to take her somewhere she did not want to go,  
3 but she could not remember where - maybe Bend, Oregon (?). She said she had seen  
4 "some paper" about Bend, Oregon.  
5

6 Ms. Jacoby then told me that two police officers came to her home, but that Randal  
7 really wasn't taking her on a vacation, but to Bend, Oregon. She exhibited great confusion  
8 about the situation.  
9

10 Ms. Jacoby then volunteered that Randal had taken "lots of stuff" from her, and that  
11 she did not want to go to Bend; that Randal had taken thousands of dollars from her. I  
12 asked how she knew, and she stated she "just knew".  
13

14 Ms. Jacoby said she was sorry that she had not been "on top" of everything, and  
15 that Randal took her money and that he had convinced her, against her best judgment, to  
16 "put her name on things". When I asked her what things, she could not explain.  
17

18 I advised Ms. Jacoby that Randal had stated that he wants her to attend the next  
19 hearing. She very defiantly said that she did not want to attend, and that she does not want  
20 to see Randal. Ms. Jacoby stated that Randal had been taking money from people for a  
21 long time. She said she knows it sounds crass, but that she does not want to see him or go  
22 to the hearing.  
23

24 I asked Ms. Jacoby if Detective Ostrum had visited her, she said she thought so and  
25 I asked her how that went. Ms. Jacoby said that Detective Ostrum asked about what  
26 happened with the Oregon "thing, etc."  
27  
28

1 I then asked Ms. Jacoby about the following people who are participating in the  
2 hearing, or who have sent me letters:

3 Marilyn Smith (appointed attorney for Ms. Jacoby):

4 Ms. Jacoby did not remember who Marilyn Smith was, and said she had not visited  
5 her, but might in the future. I reminded her that Marilyn Smith was her attorney  
6 and then Ms. Jacoby found her card and said she would meet with Ms. Smith later.  
7 She said she could not tell if she was a good attorney until they met.  
8

9 Ingrid Cameron (proposed Guardian for Ms. Jacoby):

10 Ms. Jacoby did not originally remember Ms. Cameron, but then later pointed out  
11 her name on my original GAL Report. Ms. Jacoby said Ingrid Cameron had visited  
12 her and that she liked her. It would be "okay" to have her help Ms. Jacoby with  
13 her life.  
14

15 Margaret Carson (DSHS representative):

16 Ms. Jacoby could not remember her, but found her card among her papers.  
17

18 Susan Sullivan (friend):

19 Ms. Jacoby could not remember who Susan Sullivan was.  
20

21 Carl Teodoro (friend):

22 Ms. Jacoby said Carol Teodoro was one of her good friends. Carol and her  
23 husband have been very good to her for a long time. They live in Auburn and  
24 would have taken her to the hearing, but she decided not to go. If Randal is at the  
25 hearing he would cause a commotion.  
26

1        Lucille Y. and Robert P. Bush (neighbors):

2        Ms. Jacoby recognized their names, said they lived across the street and that they  
3        saw the police at her house. They have a son, but he does not live at home.

4        Evelyn Ramirez (sister-in-law):

5        Ms. Jacoby knows she is a relative, but could not think of who she is, except that  
6        she is a lady and is on her side of the family.

7        At this point, I asked Ms. Jacoby about her ties to the State of New Mexico. She  
8        said "oh yes", she had grown up there. I asked her where, but she could not remember. I  
9        asked her what her father did for a living, but she could not remember, only that he worked  
10       with / for a railroad.

11       Priscilla Parker (friend):

12       Ms. Jacoby could not remember Priscilla Parker.

13       Marie Jurlin (friend):

14       Ms. Jacoby said that Marie Jurlin was a good friend.

15       Bev Dummitt:

16       Ms. Jacoby could not remember Bev Dummitt.

17       Ron Clark:

18       Ms. Jacoby said that she does not know Ron Clark.

19       Kathy and Brooke Somerville:

20       Ms. Jacoby said that she did not know them, but later said that they may be  
21       neighbors - "yes, neighbors".

1 I then asked Ms. Jacoby if she agreed with my earlier GAL Report and if she had  
2 any comments about my assisting her. She stated that she could not think of anything in  
3 my report that she would disagree with, that the report was okay.  
4

5 I asked Ms. Jacoby about her son, Gary Jacoby. She said that he had been a real  
6 help to her, that he does a lot for her, and that he is trying to get her money back. When I  
7 asked her where her money was now, she said she really did not know.  
8

9 I asked Ms. Jacoby about her temporary residence. She said it was okay, no  
10 problems, they were real nice people and the meals were okay.

11 When asked about the future, Ms. Jacoby said she would like to be able to go back  
12 to her home, but does not know if she could "contend". She volunteered that she had real  
13 nice neighbors.  
14

15 When asked about her son, Randal, helping her, she was emphatic that she does not  
16 what Randal living in her house. She said that it was too bad to feel that way about her  
17 son, but that he had not been truthful about her money.  
18

19 Ms. Jacoby said that she does not want to move to California - where Gary lives "it  
20 is too hot".

21 Ms. Jacoby said that she was not interested in living in an assisted living place, that  
22 she wants to go back to her home if possible.  
23

24 When I asked Ms. Jacoby if she had given her power of attorney to any one, or  
25 named any one as trustee, she said that maybe Randal now had it, but that she wants it  
26 taken back.  
27  
28

1 Before that time, she said Gary had power of attorney, but he decided to get a  
2 guardianship.

3 When I asked her about having a living trust, Ms. Jacoby said that Randal may have  
4 taken it out of her house, but she did not really understand what I was asking.  
5

6 I asked Ms. Jacoby about the Teodoros and if they took anything from her. She  
7 said no, they go to church and are wonderful friends.

8 I asked Ms. Jacoby if she knew who Patricia Wright was - she could not remember  
9 her, and could not identify Dr. Wright as her physician.  
10

11 Ms. Jacoby said she did not wish to vote, that she does not keep up with politics.

12 At this point, Ms. Jacoby volunteered that her son, Randal, had taken her down to  
13 Auburn to sign some documents, but that was dumbest thing she ever did. She could not  
14 give me the specifics about time, place or type of documents.  
15

16 Ms. Jacoby also volunteered that Randal had taken jewelry from her safe deposit  
17 box, that he had secured her keys in some way.

18 I asked Ms. Jacoby if she knew how much her house was worth, she said no, but it  
19 was in the house somewhere.  
20

21 I asked Ms. Jacoby about her bonds. She said that Randal wanted them. She could  
22 not tell me their value.

23 Ms. Jacoby again said that she did not want to come to the hearing, that Randal  
24 would cause a commotion and she cannot stand that. She does not want Randal to do that  
25 to her.  
26  
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28

1 Ms. Jacoby then volunteered that her younger son is helping her get her money and  
2 property back.

3 INVESTIGATION

4  
5 6. Written Material Reviewed:

6 No further medical/psychologist reports, but a further review of the assessment done  
7 by Nurse Swanson on August 22, 2006, confirms her earlier fears of her son, Randal, and  
8 causes doubt, whether her subsequent actions, especially in revising her trust and estate  
9 planning documents, were of her own free will.

10  
11 7. Individuals Contacted:

12 During the course of my further investigation I had contact from, to or with the  
13 following persons:

<u>Name</u>	<u>Dates</u>	<u>Relationship</u>
Marilyn Smith	Multiple	Attorney for AIP
Robin Williams	Multiple	Petitioner's Attorney
Ingrid Cameron, CPG	Multiple	Proposed Guardian
Bernadyne Jacoby	November 14, 2006	AIP
Gary Jacoby	November 9, 2006 and other dates	Son
Randal Jacoby	November 9, 2006	Son
Margaret Carson	November 6, 2006	State Investigator
Detective Ostrom	November 6, 9, 13, 15, 2006	Police
Marie Jurlin	November 6, 2006	Friend
Robert P. Bush	November 8, 2006	Friend
Lucille Y. Bush	November 8, 2006	Friend
Ron Clark	November 9, 2006	Friend
Camille Marie Hutchison	Week of November 6, 2006	Friend
Kathy Somerville	November 9, 2006	Neighbor
Brooke Somerville	November 9, 2006	Neighbor
Unknown	November 13, 2006	Asst. Atty General

26 Copies of the communications received from eight interested persons are attached hereto as

27 Exhibit A.

1 I also attach as Exhibit B an earlier communication dated October 27, 2006 from  
2 friends Carol and Don Teodoro, which was not previously supplied to the Court.

3  
4 Investigation re the AIP's Ability to Manage Health, Safety, Nutrition and Housing:

5 Supplemental: Many of the statements supplied by interested parties confirmed that  
6 Ms. Jacoby needs assistance with her normal living functions. See statements of: Marie  
7 Hurlin, ¶ 7; Bush, pg. 2-¶ 4; Camille M. Hutchison, ¶ 7, 9; Kathy Somerville, ¶ 1; Randal  
8 Jacoby, pg. 2, ¶ 1.

9  
10 When I interviewed Ms. Jacoby, she admitted that she needed assistance, that she  
11 did not want Randal involved in her life, and that Ms. Cameron was okay as a proposed  
12 guardian.

13  
14 8. Nature Course and Degree of Incapacity:

15 No supplemental medical information. The belief/recommendation that Ms. Jacoby  
16 needs full assistance is based on my contacts with her friends, family, interviews with her,  
17 and medical reports.

18  
19 9. Evaluation of Proposed Guardian:

20 No change would be appropriate.

21  
22 10. Alternatives:

23 The dueling sons both contend that The other's Durable Power of Attorneys, or  
24 appointments as trustee, are not the AIP's desire, and/or that Ms. Jacoby's later signatures  
25 were obtained through duress. The professionals involved indicate that these documents  
26 would not provide adequate protection to Ms. Jacoby or her finances. This is a clear case  
27 where a neutral Professional Guardian is warranted.

1 Trust and Powers of Attorney

2 Ms. Jacoby evidently established a Living Trust in 1985. I have not been able to  
3 secure a copy of that document.

4 However, it was apparently amended in whole on December 2, 1999. (Amendment  
5 Two) A copy is attached here to as Exhibit C. It names Ms. Jacoby as acting trustee. In  
6 the event of her death, he sister-in-law Evelyn M. Ramirez shall serve as trustee.  
7 Alternatively, her sons Randall and Gary shall serve as co-trustees (page 15).  
8

9 An Amendment Three was evidently signed on August 11, 2005. It names trustee's  
10 sons Randal and Gary to serve as alternate co-trustees. (Page 2)

11 An Amendment Four was evidently signed on March 14, 2006. It states that while  
12 the "Acting trustee is trustor Bernadyne E. Jacoby" that she has been diagnosed with early  
13 stage Alzheimer's and desires to turn over management of the trust to trustor's son Gary A.  
14 Jacoby. She resigned as trustee.  
15

16 Ms. Jacoby's Will dated December 2, 1999 is a "pourover" will to her trust.  
17 Evelyn M. Ramirez is appointed Personal Representative and sons Randall and Gary are  
18 appointed alternate Co-Personal Representatives. (Page 2)  
19

20 In a codicil dated August 11, 2005, Ms. Jacoby appointed her sons Randall and  
21 Gary as Co-Personal Representatives. (Page 2)  
22

23 Ms. Jacoby's Durable Power of Attorney for Health Care, dated March 14, 2006  
24 names Gary Alan Jacoby as her agent.  
25

26 Ms. Jacoby's Durable General Power of Attorney dated December 2, 1999 names  
27 GARY ALAN JACOBY as her attorney-in-fact.  
28

1 Ms. Jacoby's Health

2 I note that Ms. Jacoby was assessed by Chris Swanson, RN on August 22, 2006. A  
 3 copy of the assessment was attached to the petition in this matter. This assessment may be  
 4 important in determining whether after that date Ms. Jacoby possessed the requisite ability  
 5 to understand and sign future documents, revising her earlier written decisions. In any  
 6 event, her declining health makes future documents suspect, and with the other facts set  
 7 forth in this matter, including Detective Ostrum's report, indicate to me that the later  
 8 documents should be either invalidated or that the new Guardian should be named trustee of  
 9 Ms. Jacoby's trust.  
 10  
 11

12 Some quotes from the August 22, 2006 assessment:

13 "Equipment and Needs Upon Admission." No equipment  
 14 needs. However, pt. does need more attention and  
 15 supervision, due to memory loss. She is at risk due to  
 16 possible injury and the subsequent inability to reason what to  
 17 do, who to call. She also needs someone to fix her meals,  
 18 take her out, get her hair done, blood checks." (Page 1, last  
 19 paragraph.)

20 In Current Diagnosis, Conditions, Problems (pg. 1, middle paragraph) Nurse  
 21 Swanson set forth:

22 Alzheimer's dementia, scoring 14/30 on mini mental exam.  
 23 Defects include moderate short term and mild long term  
 24 memory loss, difficulty with word finding and thought  
 25 process, reasoning and judgment. Less than optimal body  
 26 weight, living alone for two to three week periods with no  
 27 family or caregiver in her home. Anger toward pt. from her  
 28 son when he is home.

1 On page 4, ¶ 2, Nurse Swanson reports as follows:

2 "Pt. has two sons, Gary in California, who is her P.O.A. and  
3 another son Randal who resides in her home, but is away  
4 often. Pt. reports to this assessor that her son, Randal, gets  
5 mad at her when she cannot remember things or get her words  
6 out. She states she is afraid of him when he is angry. She  
7 could not remember if he has been physically aggressive with  
8 her, but she states his words frighten her. Update of 9-13-06.  
9 Randal has apparently gotten power of attorney, i.e. replaced  
10 by son Gary Jacoby.

11 New Documents

12 After the assessment of August 22, 2006, it has been reported by Randal Jacoby that  
13 Ms. Jacoby revised her documents.

14 Trust Amendment Five.

15 Dated September 16, 2006 appears to make Randal L. Jacoby her sole trustee. The  
16 alternate is Marie Juslin, a friend. It should be noted that this amendment five was not  
17 signed at the law firm which prepared the original or earlier amendments. Ms. Jacoby's  
18 signature, and her exercise of her free will when signing this document have been  
19 questioned. Note that son Gary Jacoby has been removed entirely. See Detective Ostrum's  
20 Report.

21 General Durable Power of Attorney

22 Dated September 16, 2006, appears to make Randal L. Jacoby her solo attorney-in-  
23 fact, and names him Guardian, if one is necessary. Alternatively Marie Juslin is named  
24 alternate attorney-in-fact. Again, son Gary Jacoby has been removed entirely.  
25  
26  
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1 Durable Power of Attorney for Health Care

2 Dated September 16, 2006, also names Randal L. Jacoby as agent with Marie Jurlin  
3 and Camille Hutchison as alternates. Son Gary Jacoby has been entirely omitted.

4 CONCLUSION RE DOCUMENTS

5  
6 Because of the circumstances surrounding the revocation of the earlier versions of  
7 estate planning documents and Ms. Jacoby's health, and the circumstances surrounding the  
8 signing of the later September 16, 2006 documents, I recommend that they all be revoked  
9 and superceded by the naming of an independent Guardian. Alternatively, the new  
10 Professional Guardian should be named successor trustee of Ms. Jacoby's trust.

11  
12 11. Degrees of Assistance Request:

13 Full, after consultation with Ms. Jacoby concerning major decisions.

14  
15 12. Recommendation as to Appointment of Guardian:

16 Ingrid Cameron, CPG.

17  
18 13. Duration and Limitations:

19 Perpetual

20  
21 14. Vote

22 AIP said she was not interested in voting.

23  
24 15. Jury Trial:

25 Ms. Jacoby waived.

26  
27 16. Independent Counsel:

28 Attorney Marilyn Smith has been appointed and is so acting. Ms. Jacoby is satisfied  
with her.

1        17.    Estimate of Estate:

2        No change.

3        Income approximately:    \$     800.00

4        Value of Assets:            \$ 800,000.00

5        18.    Bond:

6        I recommend a minimum of \$100,000 with other assets blocked. Annual report.

7        19.    Recommendation Regarding Presence of AP at Hearing.

8        Ms. Jacoby confirmed that, under no circumstances, did she want to attend the  
9        hearing.

10       Ms. Jacoby's attorney confirmed waiver of her presence.

11       See also statement dated October 27, 2006 prepared by Carol Teodoro.

12       I thereby recommend that Ms. Jacoby's attendance be waived for good cause.

13       20.    Other Recommendations:

14       Ms. Jacoby's sons should be able to provide information to the guardian, but all  
15       final decisions should be up to the Professional Guardian. If Randal Jacoby could act in a  
16       rational and temperate manner, he could provide assistance to his mother. He could show  
17       his concern for her welfare in this manner.

18       21.    GAL's Continued Involvement:

19       Not necessary.

20       22.    Individuals to be Advised:

21       No changes.

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Supplemental Statement: While the court and the professionals involved know the functions of a GAL, perhaps some of the friends and family do not. The two ultimate functions are:

22.1. To Make a Recommendation to the Court Concerning whether Ms. Jacoby needs a Guardian. It appears clear to me that the three medical assessments, my personal observations, and the consensus of family, friends and other professionals indicate strongly that Ms. Jacoby needs full assistance with her medical, financial, living and social activities. I recommended strongly that Ms. Jacoby be provided a professional Guardian.

22.2. To make a recommendation to the Court whether the person/agency nominated is an appropriate person/agency to be Ms. Jacoby's Guardian. Note: Only one person/agency has been so nominated and I have investigated her credentials and having heard absolutely no negative comments concerning her ability and professionalism, I believe Ingrid Cameron, CPG to be an appropriate person/agency to be Ms. Jacoby's Guardian.

22.3. Further. It should be noted that I have no duties to investigate the actions of the Adult Protective Services; to investigate the earlier activities of Gary Jacoby, nor Randal Jacoby; to investigate missing assets, nor the police involvement thereof; to investigate Randal's relationship with friends or neighbors, nor to investigate friend's relationships with Ms. Jacoby, or with either of her sons, or with her church or other activities.

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While I could spend much time responding to concerns raised by friends, let me say that I listened (or read) to anyone who I knew wanted to communicate with me, and that I, to the best of my professional ability, relayed that information to the Court.

23. Other Documents.

I recommend that all other estate planning documents be superceded by the appointment of a Professional Guardian and/or Ms. Cameron should be ordered to act as successor trustee.

24. Compensation:

In accordance with the continuance of this matter and the Order of the Court I request compensation for 20 hours time and costs as set forth in the separate affidavit. I attest that more than forty (40) hours time was expended on the matter.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington, November, 16 2006.

  
Kenneth E. Rekow, WSBA #2241  
Guardian ad Litem  
Phone: 206-224-8022  
Email: krekow@karrtuttle.com

**EXHIBIT A**

Nov. 8. 2006 8:06AM

No. 8270 P. 2

Ex Parte Department  
Kent Regional Justice Center  
401 4<sup>th</sup> Avenue North  
Kent, WA 98032-2312

November 7, 2006

To: Court Commissioner

Re: Bernadyne E. Jacoby, Cause No. 06-4-05388-2 KNT

As the neighbors of Bernadyne Jacoby, we are submitting this information to the Court for the record relating to Bernadyne's care and custody.

We have lived next door to Bernadyne Jacoby since she purchased her home next to ours over 10 years ago. During those years, we have come to know her very well and have had ample opportunity to observe and converse with her regularly until she was recently removed from her home. During that time, we would let her know whenever we were going to be away on a trip or vacation, we would give her our mailbox key so she could pick up our mail for us and she would watch our property while we were gone. When she needed help with something she could not handle, she would ask us for help, the most recent being just before she was removed from her home. In that case, she called to say that she had water on her kitchen floor, thought it was coming from under her refrigerator and asked if I (Robert) could come over to determine the source of the water. It turned out to be a leak from the water dispenser located next to her refrigerator.

I (Robert) have been in her house a number of times and it is always very well kept, clean and neat. From my personal observations, she is very capable of maintaining her home. She is also capable of recognizing if she needs assistance, and has demonstrated that she can ask for and receives help if she needs it, as in the recent case just noted above.

Based upon our personal knowledge, we believe the accusations that Bernadyne is afraid of her son Randal are totally without merit. We have never heard her speak negatively of Randal and we have not seen any evidence or actions by Bernadyne or heard her make any comments indicating that she was afraid of Randal or concerned for her safety. We have talked with Bernadyne on several recent occasions when Randal was not in town. In Randal's absence, Bernadyne had every opportunity to ask us for help if she had any concerns about her safety or treatment by Randal. Her only comment was that she wished Randal would do a little more yard work. We have observed that he has mowed the lawn, done weeding and other yard maintenance and constructed a tool and storage shed while staying with Bernadyne.

We have not seen any actions by Randal that would indicate any risk or threat to Bernadyne or her safety. The opposite has been true: Randal has consistently demonstrated a high level of concern for her well-being and welfare. Over a year ago Randal came to us and asked if we had observed her, if she appeared to have any problems, if she needed any help. Randal provided us with his phone number and asked that we contact him if we had any concerns about her well-being or if she needed anything. It is significant that Randal is the only person we have seen who has demonstrated an interest or desire to provide for Bernadyne's care and well-being. We have not spoken with Bernadyne's other son in California, we have not seen

him visit her and we have not seen anything to indicate that he has made any of the efforts Randal has made to care for Bernadyne.

Based upon our friendship with Bernadyne and knowledge of her current condition, we have very grave concerns about what has recently happened to her, her being removed from her home and what appear to be efforts by others to exercise control over her. No one, not even the Guardians and attorneys involved in this case, has contacted us to ask if we had knowledge of Bernadyne's condition or capabilities. Quite the opposite, Lucy has made numerous efforts to contact people to determine what has happened to Bernadyne and get information regarding her condition and well-being.

There are specific questions that need to be addressed regarding Bernadyne's care and welfare:

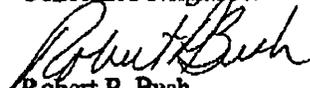
- 1) Why was she removed from her home?
- 2) Who removed her from her home?
- 3) What medications has she been given?
- 4) Who is keeping her and where has she been kept?
- 5) Why has she not been allowed to return home?
- 6) Why has she not been present in court as others make decisions about her life?  
(Certainly the Court can provide for her safety in the courtroom and the Court should take the opportunity to hear her speak directly to the Court.)

The Report of Guardian Ad Litem noted Bernadyne was very thin and needed assistance with her diet. We have known Bernadyne for over 10 years, she has always been very thin and looks no different now than she did 10 years ago, other than the normal aging process.

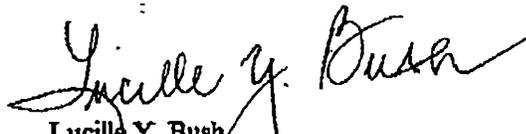
We have noted that Bernadyne sometimes has difficulty expressing herself, sometimes pausing in mid-sentence as though she has lost her train of thought. This usually passes quickly and it is evident that she knows what she wants to say but has difficulty in saying it. Being removed from her home and not being allowed to return has probably induced a lot of stress in Bernadyne, making it more difficult for her to express herself, respond to questions from strangers and make decisions.

Based upon our experience with Bernadyne and the current circumstances, we firmly believe that the best interests of Bernadyne would be served by returning her to her home, allowing her to make her own life decisions and allowing her to select the level of assistance from family, friends and other sources of service and assistance as needed. We have observed that she is intelligent, capable of taking care of her home and cognizant of when she may need help and capable of asking for such help as she needs.

Concerned Neighbors

  
 Robert P. Bush  
 WSBA # 8092  
 31304 47<sup>th</sup> Avenue south  
 Auburn, WA 98001

253-939-9670

  
 Lucille Y. Bush  
 Registered Nurse

Ex Parte Department  
Kent Regional Justice Center  
401 4<sup>th</sup> Ave. North

Monday, November 2006  
10:30 am

In The Superior Court Of The State Of Washington  
For King County

In re the Guardianship of

Cause No. 06-4-05388-2 KNT

Bernadyne E. Jacoby

Report Of Guardian Ad Litem

An Alleged Incapacitated Person.

(RTGAL)

Dear Commissioner,

I'm writing on behalf of Randal Jacoby and Bernadyne Jacoby. The last four months Randal has been at our home and we've been hanging out in Auburn/Lake Tapps area and at music festivals this past summer. We've been able to discuss our elderly mothers on a regular basis and share stories of taking care of them. I know that Randal has always kept in close touch by phone, or in person, with Bernadyne. Many times Randal came over to our house for dinner after he cooked and cleaned up for his mother.

The Wednesday before the Friday That Ms. Jacoby was taken from her home I was at her house and talked to her. Randal told me about problems with his brother Gary and some people from Bernadyne's church. I asked "What is the problem and she and Randal explained a long story about her not wanting to move and go to and assisted living home. The brother had plans to sell her house when he thought Randal was going to be out of town. I said, "It seems like every thing was fine at her home"? "She said that she was happy and well cared for by her son Randal. "With a son like him I don't need any thing." I observed that the house was clean and she was well cared for along with her cats. The yard was clean and well groomed. I didn't see any problems at her home and there was a friendly and loving relationship between the two of them. I spent at two hours there discussing life and talking to Bernadyne and Randal. I was also there to discuss getting rid of material goods in the garage and in storage in a shed in the back yard. I never sensed any fear or saw any indication of any fear the whole time I was there. Bernadyne freely came in and out of our conversations and locations all over the house, garage, and back yard. Not one bit of fear just a guy taking care of his mother and trying to make her life a little easier.

She was able to recall a very long story about her mother riding horses and living in New Mexico when she was young. It appeared that she is able to clean and cook and take care of herself with no problems. The house was clean and she seemed to

11/09/2006 11:13

25

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PAGE 02

to be aware of daily chores and functions. No sign of some being incapacitated at all. I feel it's an injustice to apply this label to Bernadyne.. Short term memory was a slight problem but no worse than anybody else at almost 80. It was evident that Randal made up for any of her deficiency.

It's very odd that she didn't come to her own hearing. After reading the paper work for this case it's hard to believe that this is happening to Randal and Bernadyne. Something is very wrong with this case. I was at the hearing and was shocked at what I heard. Ken Rekow claimed that he had interviewed me for his report and that was not factual or truthful. I was never contacted !! I would just like to say that there didn't seem to be anything unhealthy or wrong with Bernadyne's home or her relationship with Randal. There is something very wrong when a person is held against her will and does not come to her own hearing. I would like to see a jury trial for this case and Bernadyne to be there. Common sense will prevail with any jury in this case.

Thank you for your consideration,

Ron Clark



Nov 9-06

**Kenneth E. Rekow**

---

**From:** Brooke Somerville [roadkingbrooke@comcast.net]  
**Sent:** Thursday, November 09, 2006 12:51 PM  
**To:** Kenneth E. Rekow  
**Subject:** Cause No. 06-4-05388-2 (BERNADYNE JACOBY)

KENT REGIONAL JUSTICE CENTER

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

In re the Guardianship of BERNADYNE E. JACOBY, An Alleged Incapacitated Person.

Cause No. 06-4-05388-2 KNT REPORT OF GUARDIAN AD LITEM (RTGAL)

Kenneth E. Rekow,

After meeting Randall Jacoby when he came to care for his mom, he gave me his cell phone number in case his mom, Bernadyne, needed him whenever he was away. When Randall decided to take his mom on a 2 weeks vacation, he gave me her mail key to pickup the mail while they were gone.

I helped Bernadyne several times at her home and she showed no signs of being afraid of Randall.

Thank you,

Brooke Somerville (neighbor)

11/9/2006

**Kenneth E. Rekow**

---

**From:** Kathy Somerville [kmsomerville01@comcast.net]  
**Sent:** Thursday, November 09, 2006 1:08 PM  
**To:** Kenneth E. Rekow  
**Subject:** Cause No: 06-4-05388-2 (BERNADYNE JACOBY)

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

In re the Guardianship of BERNADYNE E. JACOBY, An Alleged Incapacited Person.

Cause No. 06-4-05388-2 KNT REPORT OF GUARDIAN AD LITEM (RTGAL)

To: Kenneth E. Rekow

I often spoke to Bernadyne when I saw her working in her yard. The last time we spoke, she said she had to speak slowly so that her thoughts would come out clearly. She was aware of her dementia. We spoke about the nice backyard shed that Randall had built for her. She mentioned that Randall had taken her to some doctor appointments. Bernadyne didn't give me any indication that she was fearful of Randall.

Thank you,

Kathy Somerville (neighbor)

11/9/2006

Ex Parte Department  
 Kent Regional Justice Center  
 401 4<sup>th</sup> Ave North  
 Kent, Washington 98032-2312

Monday, November 20, 2006  
 10:30 am  
 CAUSE NO  
 06-4-05388-2  
 KNT

Dear Commissioner,

I request that you expand the hearing for Bernadyne Jacoby to a trial so that the facts and the truth can be heard in this case. There has been so much manipulation and lying in this case that a short hearing or a short trial cannot clear up either the truth nor the damage done in this case. It's apparent that the State appointed guardian ad litem and state appointed attorney are not representing Bernadyne's best interest in this matter! The other major matter is Habeas Corpus! How can Ms. Jacoby be abducted from her home and held from family, friends, neighbors, and professional legal counsel for over a month, and now you want to have an honest hearing? What has the United States of America, State Of Washington, King County, the town of Auburn come to in these days of modern law! Gary Jacoby and Dr. Patricia Wright, Carol Teodoro, and others directly lied to D.S.H.S. /A.P.S. to initiate these guardianship hearings under completely false premises! I will go through it line by line. Maybe we should have a meeting in chambers to clear this up and not waist your time, and court time and money? None of the people on the State's side have any valid information about or from Ms. Jacoby because she wasn't giving it to them. None of the State people or others had any information from or about Randal because Bernadyne was not giving it to them and they didn't talk to Randal. One phone call goes along way. The attorney's never interviewed Randal, and have never been to Ms. Jacoby's house, never interviewed the neighbors. All the information presented to the Commissioner has come from people covering up, lies, second hand info, complete fabrications from acquaintances from a church who were stealing her money, and from an abducted 79 year old woman who is confused and scared and brain washed. How can we allow her to be a victim of the Stockholm Syndrome and then expect her to feel comfortable at trial or a hearing? I ask that there is a rehab and recovery time before her next trial or hearing!

I request a five day trial with all involved to be present. If Ms. Jacoby's son Gary, is going to accuse her of something, then he should be there and tell her to her face. If Gary and his attorney are going to make wild accusations about Randal then bring some proof and face him also. Everything in this case so far has been heard second or third hand, completely fabricated and color in a false way, or down right lied about! The only truth so far is that Ms. Jacoby is going on 80 yrs.old and needs help from time to time. She has had a son Randal protecting and watching out for her. Unfortunately when the wolves came to her door and Randal turned them away they didn't like it!

These people should all be present: The doctors and nurses from Virginia Mason , especially Dr. Patricia Wright, D.S.H.S./A.P.S. ( Margaret Carson ), neighbors, friends of important information, Bernadyne's attorney's of her living trust(Albertson Group), and Bernadyne's private attorney(not a state appointed attorney by Ken Reiko the lying guardian ad litem). I ask that the Commissioner release funds from Ms. Jacoby's accounts so that she can have her own private real attorney represent for her. Mr. Reiko has made a mockery of an already bad system and did not do his job. Marilyn Smith did not do her job. Both Mr. Reiko and Ms. Smith claim to be under funded, so cut them loose and let Ms. Jacoby get her own attorneys and work with her son Randal who she has granted P.O.A. Let's get to the truth of this matter.

The TRUTH: Gary Jacoby had a plan to sell Bernadyne's house and move her to California into an assisted living situation and Ms. Jacoby did not want that.

Carol and Don had a plan for Ms. Jacoby to move to an assisted living situation so that they could control her life and she did not want that.

Bernadyne asked her son Randal and Marie Jurlin to take over P.O.A. duties and protect her from the Teodoros and from her son Gary! Randal took her to her attorney's and had a meeting with Jim Davies at the Mark Albertson Group in Kent. Carol Teodoro had taken her there in March and had the P.O.A. changed in her trust to manipulate her. The Teodoros had been told to stay out of her financial affairs in February/March/April/May/June/August/September of 2006. Later they had to be told not to interfere with the rest of her life and they didn't like that! Gary was told that the P.O.A. was changed. Jim Davies advised Bernadyne to call her son and tell him to leave her alone and that he no longer had any P.O.A. Jim Davies said to Bernadyne, "You need to call Gary and tell him NO and mean it!" This she did by leaving a message on his phone. Gary's response was to file a phony guardianship hearing. His other response was to lie to D.S.H.S. and create this whole problem. In my humble opinion this is the response of an immature loser that has no idea what he has set off here with D.S.H.S. He has been told for years that Bernadyne does not want to move near him or go to Southern California! What part of NO doesn't he understand!

Bernadyne plans and her desires were well known to Randal, and spelled out in a living trust, about how she wanted to live her life. She expressed these desires to Marie and Nick Jurlin and asked that Marie be a back up P.O.A. in case something happened to Randal. Bernadyne wanted to remain in her house with home nursing and care. She was very content having Randal take care of all her affairs and assist her with her living situation. Carol Teodoro should have never gone through her house, her life, the living trust, and her finances and called Gary or Randal. This should have been settled in the family, and I thought that we were all working towards Bernadyne's goal until the Carol and Don Teodoro started interfering and Gary starting making deceptive plans of his own! Carol Teodoro had a plan. Gary Jacoby had a plan. The plans were not in Bernadyne's best interest. Randal followed a trail of information and money and spoiled the plans. Then Randal was actually threatened by Don Teodoro, "We don't know what we're going to do about you." Carol and Don have stolen money and have been in Bernadyne's finances where they should have never been! They have been divisive with their actions between both Gary and Randal. Now Randal is faced with an uphill battle to get to the truth and hopefully let Bernadyne get back to a space that is not degraded and live out the little time she has left the way she wants!

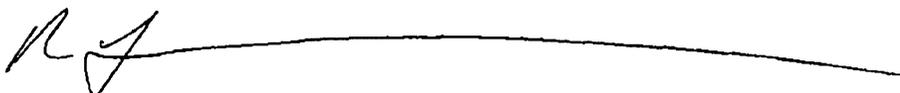
Enclosed is the pack of information I sent Ken Rekow so that you can see how he manipulated this case, suppressed information, and in my opinion did not do his job at all. I could not believe he asked for a raise and more money at the hearing? There were seven witnesses before you at the hearing all saying that Ken Rekow is a liar! He knows better! I've been told that everyone lies in court but this is sad. He and Marilyn Smith both came to the hearing totally unprepared and flounder at a hearing where someone's life is at stake! Marilyn and Ken were contacted repeatedly by myself and the witnesses with information and chose to do nothing.

Thank you so much for listening at the hearing and reading the letters. This is not a normal case by any means. There's a lot going on here and all I want is to clear it up and make the system work and maybe afterwards work towards making these hearings transparent and truthful. I feel this whole thing could have been solved with a couple polite phone calls but that is not the way D.S.H.S. operates.

Thank you for your consideration,

Randal Jacoby  
31308 47<sup>th</sup> Ave. S.  
Auburn, WA 98001

11/8/2006



Ex Parte Department  
Kent Regional Justice Center  
401 4<sup>th</sup> Ave North  
Kent, Washington 98032-2312

Monday, November 20, 2006  
10:30 am

Upon the request of the court, I am writing my concerns for Bernadyne Jacoby.

On the day she was removed from her home, I was out of state. I received a panicked call from Bernadyne on my cell phone saying "Marie, they have taken our boy (Randal) away in shackles and I don't understand why". When I told her I was out of town she said "I know, you aren't here and can't do anything. I need you to pray for him". Now we are told that she is afraid of her son, Randal and doesn't want to see him. I believe that she has been strongly influenced and perhaps, drugged into believing this.

I feel that Bernadyne was taken from her home against her will. If she had gone willingly, she would have made arrangements for her cats; they were left in the house unattended for five days, until Randal was allowed back into the house. One of the cats has subsequently died.

When my daughter (Camille Hutchison) visited Bernadyne one afternoon, we encountered Ms. Margaret Carson in Bernadyne's walkway. At that time, her only concerns were for her meds and diet. Bernadyne would not let her into the house, nor would she come out until Ms. Carson was gone. Bernadyne then let us in and we could see that she was visibly shaken. I have made repeated requests to Ms. Carson to see Bernadyne and have not been allowed to do so.

Mr. Rekow, in response to my email, stated to me that Bernadyne was content where she was. If she is happy and content, why have I been denied visitation? In addition, Mr. Rekow stated in court, that he interviewed me either by phone or email. As you will see by the attached copies of my email communications with him, it was in fact I who contacted him and he only responded with a one sentence reply. This in my opinion does not constitute an interview.

My husband (Nick Jurlin) and I were at Bernadyne's house for dinner on the Wednesday before she was taken from her home. Randal prepared and served dinner and then cleaned up. Her house was in order. She was happy to have us there. At one point, she stated to me her concern about the son in California. I assured her that I knew this and that Randal would take care of everything. She smiled and hugged me.

I realize that Bernadyne needs some assistance. So far, her son Randal has provided all that she needs. He takes her to doctor appointments, monitors her meds, cooks and cleans for her and spends quality time with her, such as taking her to watch a sunset at the beach.

I have known Bernadyne and her family for over 40 years. In that time, there has never been anything other than good rapport and a loving relationship between Bernadyne and her son, Randal. Therefore, I can not understand this sudden "fear of Randal" that she apparently reported to said friends, and was not willing to come to the hearing. She in fact was more concerned about her son, Gary, and the Teodoros and requested that I be made Power of Attorney after Randal for her protection. I strongly recommend that you would request her presence at the next hearing.

Thank you, for your time and consideration.

  
Marie Jurlin  
3312 45<sup>th</sup> St NW  
Gig Harbor, WA 98335  
253-851-9273

Ex Parte Department  
Kent Regional Justice Center  
401 4<sup>th</sup> Ave North  
Kent, Washington 98032-2312

Monday, November 20, 2006  
10:30 am

In response to the Commissioner's request to submit a written letter in regard to the guardianship of Bernadyne Jacoby, I, Camille Marie Hutchison swear the following is the truth and of my own words.

Bernadyne Jacoby, as well as her son, Randal Lee Jacoby have been friends of our family since 1964. We were neighbors in San Pedro California from 1964 to 1973 at which time our family moved to Gig Harbor, Washington.

A few years later, Randal moved to Seattle, WA to pursue his career in the Arts. After the death of his father (Henry), Bernadyne moved to Seattle to be closer to Randal.

Randal and Bernadyne came to Gig Harbor on a regular basis to visit at my parent's home. I would often swing by to say hello or spend some time with them. My mother, Marie Jurlin, and Bernadine were very good friends; sharing many of the same interests, but mostly enjoying spending time together. On occasion, my parents or my mother and I would go to visit Bernadyne at her home in Auburn or take her out to lunch, etc.

Approximately ten years ago, Bernadync was diagnosed with an aneurism in her neck, which her doctors believe has been the root of some memory loss. Although she has forgotten some words, given time, she will work her way through a sentence and convey her message completely.

One thing that has never changed is her devotion to and her love for her son, Randal.

Randal has been aware of the changes in his mother and has stepped up to the plate regarding her care. He has seen to her medications, her nutritional needs and to the maintenance of her home as well as companionship and recreation.

Recently, my mother and I drove up to Auburn to take Bernadyne to lunch. As we parked the car, we noticed a woman coming down the walkway of her home. We inquired as to whom she was, as she did, likewise. We found her name was Margaret Carson, a social worker for the State of Washington and was sent by request to check on the welfare of Bernadyne. She stated there were some concerns for her welfare regarding her medications and her diet. According to Ms. Carson, she was not allowed to disclose who requested her visit. We acknowledged the need for care and assured her she was well cared for by her son, Randal. Ms. Carson then asked if we (my mother and I) would be willing to help in any way and we said "Of course, we would be happy to help in any way we can". Bernadyne was visibly shaken by Ms. Carson's visit. We calmed her and assured her all would be well. We proceeded to the restaurant.

While waiting for a table, she turned to me and said "I am so frustrated that my words don't come to me like I want and I don't seem to be able to do things I used to like to do, but

something is wrong. The boy in California and the people from the church are up to some monkey business and I don't like it. I was given medication by them that makes me funny in the head. I could hardly get up out of bed." I assured her that she was safe and that nothing would happen to her again. Randal was aware and would take care of everything. She said "I sure hope so, because it's just not right." During the course of lunch I became aware that Bernadyne had a bit of difficulty navigating her fork. I spoke to Randal that night about it and he said it was his intention to spend the whole winter with his mom and set up the care for her that she needed.

After our lunch we returned to Bernadyne's home. She took us through to show us how Randal had lined up her medications for her. We were very impressed. She was able to show us her meds for the following 3 weeks and was able to explain how she takes them. I put her leftovers, from lunch, away and noticed how well the refrigerator and pantry were stocked. She then took us to the back bedrooms to see her cats. I was very impressed by how tidy everything was. Two Siamese cats were in one room with their own bathroom, set up with food, water and a clean litter box. The same was true for a third, orange tiger striped cat in a second bedroom with an adjoining bathroom. She took such pride in her cats and talked of them often. She showed us how Randal had set up emergency phone numbers for her and how to listen to the answering machine. Her home was as neat as a pin.

A few weeks later, my mother called me from vacation in Los Vegas. She said she had just received a frantic call from Bernadyne, stating that "They took our boy away in shackles and I don't know why". Mom told her she couldn't do anything as she was in Los Vegas and Bernadyne said, "I realize you can't do anything, just please pray". I tried calling Bernadyne after that and there was no answer. I left her a message to please call me. I have not heard from or seen Bernadyne since that day. I do not understand why she was taken or why she was not allowed to make arrangements for her cats (one of which has since died due to being neglected for 5 days). Also, to hear from the Guardian ad Litem that he heard from friends of Bernadyne's that she was afraid of Randal and didn't want to be at the hearing because of him just didn't make sense. This does not sound like the Bernadyne I know. I have had plenty of time alone with her and she never once mentioned a fear of Randal. She has always been open and honest with me. We share the same faith and values. I fully believe if there was a problem, she would have told me. I believe it is imperative for Bernadyne to be at the hearing.

I thank you, Commissioner for seeing that there is more to this situation than what was presented at the initial hearing and I implore you to look even further; to hear the whole truth and make a just decision.

Respectfully,



Camille M. Hutchison  
4804 70<sup>th</sup> Ave NW  
Gig Harbor, WA 98335  
253-851-2971

POOR QUALITY  
ORIGINAL

**EXHIBIT B**

**Kenneth E. Rekow**

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From: Kenneth E. Rekow  
 Sent: Friday, October 27, 2006 1:36 PM  
 To: Carol & Don Teodoro  
 Cc: 'Don Teodoro'  
 Subject: RE: Bernadyne Jacoby - case #06 4 05388 2KNT

If Mrs Jacoby is fearful of her son at the hearing she does not have to be there. Also the guardian, not her son would have future say...

-----Original Message-----

From: Carol & Don Teodoro [REDACTED]  
 Sent: Fri 10/27/2006 12:09 PM  
 To: Kenneth E. Rekow  
 Cc: 'Don Teodoro'  
 Subject: Bernadyne Jacoby - case #06 4 05388 2KNT

Ken,

Bernadyne Jacoby has spoken to me about her upcoming hearing, wondering if I was going, and could she go. I told her that my husband was accompanying me so I did not have to face Randal alone. When she heard that Randal might be there her response was, "then I don't want to go."

I just thought I should notify you of this. I didn't know if you planned to take her or not.

She has been trying to read through the legal documents and calls me concerned that Randal will have any say in what happens to her. She doesn't want him listed as a contact on her Living Will Registry or as a secondary power of attorney. My thought is that if the guardianship is granted her guardian would be the one contacted, but I do not know that for sure. I would like to reassure her that Randal will not have a say in what happens, but only if that is indeed correct.

Bernadyne has expressed fear of her son Randal and anger at the things he has tried to do. Is this something that should/will be testified about at the hearing?

Her son Randal called our church on 10-25-06 (Bible Chapel, Auburn, WA) and our pastor, Dr. William Britt felt sufficiently threatened to call the police to find out how best to protect himself and the church.

I just received a call from Marilyn Smith, Bernadyne's attorney. She would like Bernadyne to be present at the hearing, but I am reluctant to transport her due to fear for my safety as well as hers. I assume she will apprise you of our conversation.

Thank you for your help in this matter.

Sincerely,  
 Carol Teodoro  
 [REDACTED]

**EXHIBIT C**

## AFFIDAVIT OF TRUST EXISTENCE AND AUTHORITY

STATE OF WASHINGTON, County of King; ss.

BERNADYNE E. JACOBY, being first duly sworn on oath, states as follows:

1. ESTABLISHMENT OF TRUST. On February 19, 1985, the BERNADYNE E. JACOBY TRUST was established by me. The Trust is amendable and revocable by me.

2. NAME. The name of the Trust is (assets are titled thus): BERNADYNE E. JACOBY, TRUSTEE OF THE BERNADYNE E. JACOBY TRUST, U/A DTD February 19, 1985.

3. PRESENT TRUSTEE. I am the existing Trustee. The Trust provides that I can undertake any transaction relating to the management of the assets of the Trust.

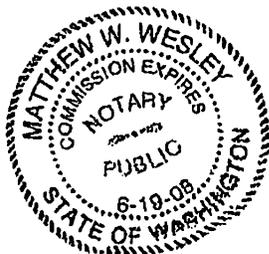
4. SUCCESSOR TRUSTEES. The Trust provides that if a Trustee becomes incapacitated, dies, or resigns that the next successor Trustee shall automatically succeed to all the powers and duties outlined. The Trust provides that in the event of the death, incapacity, or resignation of Trustor, Trustor's son, Gary A. Jacoby, shall be the sole Trustee.

5. TRUSTEE POWERS. Article IV of the Trust provides that the "Trustees shall have as to the Trust Estate and in the execution of this Trust all the rights, powers and privileges which an absolute owner of the same property would have, including, without limiting the generality of the foregoing, the powers granted by law and the following special rights, powers, and privileges: . . ." The specific rights, powers, and privileges are very extensive and broad and are designed to give the Trustees wide latitude in managing the Trust.

6. TRUST EXISTENCE. All of the provisions of the Trust outlined above are as established and set forth in the Trust document and any amendments as of the date of this affidavit and there are no amendments, addendums, or other changes of any kind that alter the above statements. Any person to whom this Affidavit is presented may rely upon the statements herein for purposes of dealing with the Trustor and Trustees, including but not limited to the transfer of the assets of Trustor to the BERNADYNE E. JACOBY TRUST.

*Bernadine E. Jacoby*  
 BERNADYNE E. JACOBY TRUSTOR-TRUSTEE

SUBSCRIBED and SWORN TO before me March 14, 2006.



*Matthew Wesley*  
 NOTARY PUBLIC: Matthew Wesley  
 In and for the State of Washington  
 My appointment expires 06-19-2008

ALBERTSON LAW GROUP, P. S.  
 124 4<sup>TH</sup> AVENUE SOUTH, SUITE 200  
 KENT, WASHINGTON 98032  
 (253) 852-8772

# **BERNADYNE E. JACOBY TRUST**

Revocable Living Trust Agreement

Date of Trust: February 19, 1985

Date of Amendment: December 2, 1999

**REHBERG & ALBERTSON, P.S.**

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Attorneys and Counselors at Law  
2800 S. 192nd, Suite 104  
Seattle, WA 98188  
(206) 246-8772

**BERNADYNE E. JACOBY TRUST**  
**LIVING TRUST AGREEMENT**  
**AMENDMENT TWO**

ARTICLE I	THE TRUST ESTATE
ARTICLE II	RIGHTS RESERVED BY THE TRUSTOR
ARTICLE III	PURPOSE, BENEFICIARIES AND DISTRIBUTIONS
ARTICLE IV	POWERS AND DUTIES OF THE TRUSTEE
ARTICLE V	ACCOUNTING
ARTICLE VI	TRUSTEES
ARTICLE VII	MISCELLANEOUS PROVISIONS
ARTICLE VIII	CONTROLLING LAW
SCHEDULE A	ASSETS
SCHEDULE B	DISTRIBUTIONS FROM THE TRUST ESTATE
SECTION I	TRUSTOR LIVING
SECTION II	TRUSTOR DECEASED
SECTION III	GENERAL PROVISIONS
ACKNOWLEDGMENT	
POUROVER WILL	

# BERNADYNE E. JACOBY TRUST

## LIVING TRUST AGREEMENT

### AMENDMENT TWO

TRUSTOR, BERNADYNE E. JACOBY, pursuant to the rights reserved by Trustor in Article II, Paragraph 2.1 of the BERNADYNE E. JACOBY TRUST dated February 19, 1985, hereby amends and modifies said Trust IN ITS ENTIRETY.

This Trust, for purposes of identification, shall be called the BERNADYNE E. JACOBY TRUST. ACTING TRUSTEE is BERNADYNE E. JACOBY.

Trustor, realizing the uncertainty of this life place full confidence and trust in her Lord and Savior Jesus Christ, who promised: "I am the resurrection and the life; he that believeth in Me, though he were dead yet shall he live; and whosoever liveth and believeth in Me shall never die" (John 11:25-26)

Knowing that the wages of sin is death, Trustor believes that Jesus Christ, the only Son of God, suffered and died for the forgiveness of all her sins, which she neither deserves nor merits, but receive as a free gift of God, who is rich in grace and mercy.

Trustor urges her heirs not to set their hopes on uncertain riches, but to take hold of the life which is life indeed through faith in Jesus Christ.

**ARTICLE I**  
**THE TRUST ESTATE**

- 1.1 This Agreement shall apply to the assets described in Schedule A, attached hereto and made a part of this Agreement by this reference; and
- 1.2 Any other assets transferred to the Trustee of the Trust herein created. The property being at the time administered by the Trustee hereunder shall be referred to as the Trust Estate. All property, including jointly-owned marital property, community property, and separate property, transferred to the Trust shall retain its character, unless otherwise specifically stated in this Trust. Trustor has the right under applicable State law to recharacterize property.

**ARTICLE II**  
**RIGHTS RESERVED BY THE TRUSTOR**

Trustor reserves the following rights:

- 2.1 To revoke or modify this Trust or withdraw any part of the Trust assets at any time. Trustor shall have full use of all Trust assets as she may choose without obligation to compensate the Trust in any way or account to anyone. However, if Trustor is not Trustee, the powers, duties and liabilities of any acting Trustee shall not be materially changed by Trustor without the written consent of such Trustee.
- 2.2 To direct all actions with regard to the property in this Trust.
- 2.3 To direct the distribution of income from the Trust Estate.
- 2.4 To add to the Trust Estate other property acceptable to the Trustee.

- 2.5 At any time Trustor is acting as Trustee, all transactions involving real or personal property held hereunder shall be effective upon her signature alone.

**ARTICLE III**  
**PURPOSE, BENEFICIARIES AND DISTRIBUTIONS**

- 3.1 The purposes of this Trust are to provide for Trustor's care and welfare during her lifetime, and to provide for the management of her property in the event of her incapacity, and to ensure an orderly, prompt and economical transition of Trustor's assets after Trustor's death to the distributees and beneficiaries identified in Schedule B, attached hereto and made a part of this Agreement by this reference.
- 3.2 The Trust shall provide to the Trustor, or to her order, so much of the income or principal, or both, as she shall direct.
- 3.3 Upon the death of Trustor, Trustee shall administer the Trust assets, or pay them over, in the manner designated in Schedule B.
- 3.4 If an acting Trustee, because of illness or other reason, is incapable of managing or directing the Trust affairs, such Co-Trustees or successor Trustee as is designated in Paragraph 6.1 to continue or assume the responsibilities of Trustee shall, upon being furnished with written statements of two competent medical doctors as to such incapacity, assume full duties as Trustee for such time as the incapacity continues to exist. If Trustor is similarly declared incapacitated, the rights reserved by Trustor in Article II hereof shall be suspended. Restoration of competency, established by similar medical evidence, shall reinstate Trustor's or Trustee's standing.

**ARTICLE IV**  
**POWERS AND DUTIES OF THE TRUSTEE**

Trustee shall have as to the Trust Estate and in the execution of this Trust all the rights, powers, and privileges which an absolute owner of the same property would have, including, without limiting the generality of the foregoing, the powers granted by law and the discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the Trust property in accordance with the standards provided by law, and the following special rights, powers, privileges, and duties:

- 4.1 In acquiring, investing, reinvesting, exchanging, selling and managing property hereunder, Trustee shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise.
- 4.2 Trustee may freely act under any of the powers set forth in this Trust Agreement in all matters concerning this Trust, without the necessity of obtaining the consent or permission of any person interested herein, or the consent or approval of any court, and notwithstanding that Trustee may also be acting individually, or as a trustee of other trusts, or as an agent for other persons or corporations interested in the same matters, or may be interested in connection with the same matters as a stockholder, director, or otherwise; provided, however, that Trustee shall exercise such powers at all times in a fiduciary capacity, primarily in the interest of the Trustor and beneficiaries hereunder. It is expected that Trustee will consult with the Trustor, and any adult beneficiaries then receiving benefits with regard to transactions of the Trust, but no approval for such transactions need be obtained unless specifically provided otherwise herein.
- 4.3 Subject to the foregoing provisions, Trustee shall have as to the Trust Estate and in the execution of the directions of this Trust the following specific rights, powers, and privileges:

# BULKY SUB

CASE # 06-41-05388-2 *cont.*

SEGMENT: 2 OF 2

- 4.3.1 To hold and retain any property received in trust hereunder even though such property not be of a character authorized by the laws of the controlling state including, but not by way of limitation, retention of shares of stock issued by any corporate trustee hereunder, and retention of assets received in trust, even though they may represent an undue proportion of the Trust Estate, are wasting in nature or unproductive, are improved or unimproved, are inherently hazardous or are otherwise disqualified for trust investments. Any or all securities of any kind included in the Trust Estate may be held in the name of a nominee.
- 4.3.2 To rent or lease Trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the Trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements.
- 4.3.3 To subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth.
- 4.3.4 To change the character of or abandon a Trust asset or any interest in it.
- 4.3.5 To sell and convey any of the property of the Trust Estate or any interest therein, or to exchange the same for other property, for such price or prices and upon such terms as in Trustee's sole and absolute discretion and judgment may be deemed for the best interest of the Trust and the beneficiaries hereunder, and to execute and deliver any deed or deeds (with or without warranty), receipts, releases, contracts or other instruments necessary in connection therewith.

- 4.3.6 To create restrictions, easements, including easements to public use without consideration, and other servitudes.
- 4.3.7 To make all repairs and improvements at any time deemed necessary and proper to, and upon, real property constituting a part of the Trust Estate, and to build, construct, and complete any building or buildings upon such property, to demolish any improvements, raze existing structures, which in Trustee's sole and absolute discretion and judgment may be deemed advisable and proper and for the best interest of the Trust and the beneficiaries hereunder, and to determine the extent to which the cost of such repairs and improvements shall be apportioned as between principal and income.
- 4.3.8 To manage any business interest, regardless of form, received by the Trustee from the Trustor of the Trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:
- (a) To hold, retain, and continue to operate that business interest solely at the risk of the Trust, without need to diversify and without liability on the part of the Trustee for any resulting losses;
  - (b) To enlarge or diminish the scope or nature or the activities of any business;
  - (c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;
  - (d) To use the general assets of the Trust for the purpose of the business and to invest additional capital in or make loans to such business;

- (e) To endorse or guarantee on behalf of the Trust any loan made to the business and to secure the loan by the Trust's interest in the business or any other property of the Trust;
- (f) To determine, in Trustee's sole and absolute discretion, the manner and degree of the Trustee's active participation in the management of any business, and the Trustee is authorized to delegate all or any part of the Trustee's power to supervise, manage, or operate to such persons as the Trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the Trustee to take part in the management of such business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the Trustee;
- (g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the Trust or any Trustee;
- (h) To cause or agree that surplus be accumulated or that dividends be paid;
- (i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;
- (j) To treat the business as an entity separate from the Trust, and in any accounting by the Trustee it is sufficient if the Trustee reports the earnings and condition

of the business in a manner conforming to standard business accounting practice or other comprehensive basis of accounting;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the Trustor of the Trust would have if alive at the time of the exercise, including all powers as are conferred on the Trustee by law or as are necessary to enable the Trustee to administer the Trust in accordance with the instrument governing the Trust, subject to any limitations provided for in the instrument; and,

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, first out of the business and second out of the estate or Trust, but in no event may there be a liability of the Trustee, and if the Trustee is liable, the Trustee is entitled to indemnification from the business and the Trust, respectively;

4.3.9 To cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where Trust property may be affected and retain any property received pursuant to the change.

4.3.10 To limit participation in the management of any partnership and act as a limited or general partner.

4.3.11 To deduct, retain, expend, and pay out of any money belonging to the Trust any and all necessary and proper expenses in connection with the operation and conduct of the Trust, and to pay all taxes, insurance premiums, and other valid assessments, debts, claims or charges which at any time may be due and owing by, or which may exist against, the Trust.

- 4.3.12 To continue after Trustor's death, or during the incapacity of Trustor, any insurance policies owned by Trustor on the life of any person or persons and to pay premiums, assessments, and any other proper charges out of income, principal, or both, as Trustee deems best; and Trustee shall have full discretionary power to exercise any or all rights granted under any such policies, such as the right to take a premium loan, elect paid-up insurance or surrender the policies.
- 4.3.13 Nothing in this Trust Agreement or any insurance policy ownership or beneficiary endorsement signed by Trustor shall be construed to give Trustor or Trustee any incidents of ownership in any policy which would cause the proceeds to be taxed in the insured's estate. The right reserved by Trustor to amend this Trust shall not be construed as reserving to an insured Trustor the right to affect the disposition of proceeds of any life insurance policy on Trustor's life.
- 4.3.14 To employ such agents and counsel as may be necessary or desirable in Trustee's sole and absolute discretion for the proper administration of this Trust, or in its defense against legal or equitable attack, without liability for the acts or defaults of such agents and attorneys selected by Trustee with due care; to pay a reasonable fee for such services, and to act in reliance upon the opinion or legal advice of such counsel.
- 4.3.15 To determine the allocation of receipts and expenses between income and principal in accordance with the Washington Principal and Income Act; provided, there is reserved to the Trustee the power to make such equitable allocation as may nevertheless be contrary to the terms of that Act with respect to allocations relating to under productive property, depreciation, bond premium and discount, corporate distributions and the operation of a trade, business, or farm except that the Trustee

may not take any action regarding such equitable allocation that may impair any marital deduction gift contained in this instrument.

- 4.3.16 To issue proxies to any of the adult beneficiaries of this Trust for voting stock of the Trustee corporation in the event the Trustee of this Trust is a corporation.
- 4.3.17 To pledge, encumber or hypothecate any asset or assets, including insurance policies of any kind, to secure financing from any source and for any purpose deemed appropriate by Trustee in Trustee's sole and absolute discretion.
- 4.3.18 Within the limitations of the standards outlined in this Article, Trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations and stocks, preferred or common, partnership interests either limited or general, and insurance policies and annuities on the lives of the beneficiaries.
- 4.3.19 To buy, sell and trade, in Trustee's sole and absolute discretion: securities on margin or in a margin account, commodities or commodity futures of any type and in any manner, securities options either privately or through an exchange, puts and calls, other securities or assets of a similar type, precious metals, gems, and similar tangible items, and he, she, or they may pledge any securities held or purchased as security for loans or advances made to the Trust or elsewhere, and he, she, or they may borrow funds in any manner, under any conditions, and with or without collateral, including in the operation of a money management account and any related credit card or similar type activities.
- 4.3.20 To hold Trust assets in one or more brokerage Trust accounts having separate purposes such as, but not restricted to, growth and income.

- 4.3.21 If Trustee, or successor hereunder, is named as trustee under any other trust agreement containing provisions substantially similar to the provisions contained herein, Trustee is authorized and empowered to consolidate the Trust created hereunder with any such other trust or trusts insofar as it is practicable to do so and it is not in conflict with the express terms of this Trust or of such other trusts. Variations in minor details as to the management and distribution of the Trust Estate shall not be considered conflicting within the meaning of this paragraph. The determination by Trustee as to any consolidation hereunder shall be final and conclusive on all parties interested in the Trust Estate.
- 4.3.22 To accept and manage assets from any source which are designated as assets to be held in an irrevocable status and such assets shall not be withdrawable by Trustors in any way. Such assets are to be held, managed, and distributed by the Trustee in such manner as is directed by the person or persons depositing the assets. Trustee has the right to not accept any such assets if it is determined by Trustee, in Trustee's sole and absolute discretion, that acceptance of such assets and directions would not be in the best interest of Trustor.
- 4.3.23 To appoint an ancillary Trustee or agent to facilitate management of assets located in another state or foreign country.
- 4.3.24 To exercise any powers not otherwise granted in this instrument or given by law which the Trustee, in Trustee's sole and absolute discretion, determines are necessary and desirable and not inconsistent with the provisions of this instrument.
- 4.3.25 To continue to hold in Trust any distribution of principal or income otherwise authorized in this instrument to be made to or for any beneficiary for such length of time as the Trustee, in Trustee's sole and absolute discretion, considers appropriate

because a significant portion of beneficiary's distribution is threatened by (a) a court proceeding or judgment involving the beneficiary or the beneficiary's family, (b) a terminal illness of the beneficiary, (c) the acute or chronic alcohol or drug abuse or dependency of the beneficiary, (d) a threatened or probable transfer that the beneficiary would make of such distribution or any transfer which the beneficiary has made or has permitted or suffered to be made in anticipation of any such distribution, which the Trustee, in Trustee's sole and absolute discretion, deems to be imprudent or ill-advised or in exchange for what the Trustee deems to be insufficient or inappropriate consideration.

In the event any such payment or distribution is being withheld at the death of the beneficiary, unless provided otherwise herein, Trustee shall appoint such payment or distribution to any one or more of Trustor's heirs, or add any such payment or distribution to any Trust or Trusts for one or more of them, as the Trustee, in Trustee's sole and absolute discretion, shall select. In the exercise of any such discretion, the decision of the Trustee shall be final and binding on all persons. Provided, however, as to this hold-back power, that the appointment of any such payment or distribution on the death of the beneficiary may not be made to Trustee, Trustee's estate or Trustee's creditors. Such appointment may be made for life or for such other estates as Trustee may determine, in trust or otherwise, and it may be made subject to lawful spendthrift provisions.

4.3.26 To exercise the powers given the Trustee in this instrument and by law only in the Trustee's fiduciary capacity; and notwithstanding any other provision in this instrument, the Trustee shall have no power under any such provision to enlarge or shift any of the beneficial interests under this instrument except as an incidental consequence of the discharge of the Trustee's fiduciary duties.

4.3.27 S Corporation Stock.

- (a) When making distributions of S Corporation stock, Trustee is authorized to distribute such S Corporation stock at such times and in such manner as required to preserve S Corporation status. This may include non pro rata distributions in kind if required to maintain S Corporation status.
- (b) If any stock of an S Corporation becomes distributable to a trust created under this Trust agreement, and such trust is not a qualified Subchapter S trust, Trustee may implement any of the following alternatives with respect to the S Corporation stock:
- (1) A Sole Beneficiary. Where the original trust is for a sole beneficiary, Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.
  - (2) Multiple Beneficiaries. Where the original trust is for multiple beneficiaries, Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S Corporation stock, and shall qualify as a Subchapter S trust.
  - (3) Outright Distribution. If circumstances prevent Trustee from accomplishing the first two alternatives under this paragraph, Trustee may, in Trustee's sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S Corporation property in trust.

Each newly created S Corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trust shall be as consistent as possible with the original trusts and still qualify as a Subchapter S trust.

Trustee may take any action necessary with regard to S Corporations, including making any elections required to qualify stock as S Corporation stock, and may sign all required tax returns and forms.

4.3.28 Interest in Professional Practices. If the Trust owns any interest in a professional corporation or professional practice, then trustee powers as to such interest shall be limited so as to comply with applicable law and regulations. For example, only the professional practicing trustee may be able to exercise any rights or powers over such interest.

4.3.29 Continuation of Gifting Plan. Trustee is authorized to continue any pattern of gifting begun by a Trustor if Trustee determines, in Trustee's sole discretion, that such gifting is in accord with Trustor's prior wishes. If possible, this shall be done in such a way so as not to cause inclusion of such gifts in Trustor's taxable estate.

## ARTICLE V ACCOUNTING

5.1 Trustee shall be relieved from the duties which would otherwise be required by state law relating to accountings by Trustees in force at the time of the execution of this Agreement and any amendment or amendments thereof, and any similar Act or Acts of this or any other jurisdiction; and in lieu thereof, Trustee shall furnish to present beneficiaries, and if

any beneficiary is a minor or under a legal disability then to the beneficiary's parent or guardian, a statement of accounting of administration upon reasonable request to do so. However, this requirement of accounting to beneficiaries shall not apply at any time Trustor is an acting Trustee.

## **ARTICLE VI** **TRUSTEES**

6.1 Acting Trustee is Trustor Bernadyne E. Jacoby. In the event of the death, incapacity (as defined in Paragraph 3.4 hereof), or resignation of Trustor, Trustor's sister-in-law, Evelyn M. Ramirez, shall serve as sole Trustee. In the event of the death, incapacity, or resignation of Evelyn, Trustor's sons, Randal L. Jacoby and Gary A. Jacoby, shall serve as Co-Trustees. In the event of the death, incapacity, or resignation of either Randal or Gary, the other shall serve as the next alternate and successor Trustee.

Unless stated otherwise, this Article VI shall determine the Trustees of all trusts created by this Trust.

6.2 Should a private successor sole Trustee have no named and qualified successor Trustee, such Trustee shall designate in a notarized statement who his or her successor shall be, and deliver a copy thereof to the so-designated successor Trustee and all current beneficiaries, and if any beneficiary is a minor or under a legal disability then such notice shall be made to the beneficiary's parent or guardian. The right of designation granted in this paragraph includes the right to change such named successor Trustee by giving notice in the same manner, except that if such designated successor Trustee has become the acting Trustee, the right to change Trustees granted in this paragraph shall become ineffective.

In the event of the death, incapacity, or resignation of the last successor Trustee, and no successor Trustee has been designated, the current beneficiaries (or their parent or guardian) shall have the right to vote for a successor Trustee or Trustees. Such beneficiaries may agree by unanimous vote who the successor Trustee or Trustees shall be, as well as who shall be the future successor Trustees. In the absence of unanimous agreement, the person or organization (only one shall be chosen) receiving the most votes shall be the successor Trustee (i.e., a majority is not required) and the person or organization so chosen shall immediately designate in writing who their successor shall be. In the case of a tie, the beneficiaries shall go through two more rounds of voting until the tie is broken. If there is still a tie, the oldest current beneficiary shall designate one other beneficiary to call "heads" or "tails" for one of the nominated trustees in the tie; the oldest current beneficiary shall then flip a coin and the next Successor Trustee shall be determined by the call made by the so designated beneficiary.

- 6.3 Trustees named herein and successor Trustees shall not be required to furnish bond or other security for performance of their duties in any jurisdiction.
- 6.4 The authorized acts of any Trustee with regard to this Trust and its assets shall be fully binding on, and effective as to, all of the assets of the Trust without restriction and shall be binding on all other Trustees.
- 6.5 Trustee shall be paid such compensation as is reasonable considering the time involved, the value and nature of the assets, and the expertise required. Any Trustee or Co-Trustee entitled to such fees may waive all or any part of them. Trustee is additionally entitled to reimbursement for any and all reasonable out-of-pocket costs.
- 6.6 In the event any Trustee is called on to perform extraordinary services outside the normal range of duties, said Trustee shall be paid reasonable and adequate compensation therefor, unless the Trustee or Co-Trustee entitled to such fee chooses to waive it.

- 6.7 Any Trustee, or designated successor Trustee, may resign trusteeship of this Trust by giving the Trustor a notice of resignation in a notarized statement no less than seven days in advance, or in the event Trustor is not alive and capable, by giving such written notice to the acting Trustee, named successor Trustees, and all present beneficiaries, and if any beneficiary is a minor or under a legal disability then such notice shall be made to the beneficiary's parent or guardian. No Trustee, however, shall resign unless there is a designated successor.
- 6.8 Successor Trustees in every case shall succeed to all the powers, authority, and discretion and be subject to all of the duties and responsibilities of each predecessor, but may accept the Trust Estate as offered at the time of succession and need not audit or inquire into the activities of any predecessor Trustee in any way. Successor Trustees shall not be liable for any breaches of trust by preceding fiduciaries.
- 6.9 In any event where there is only one acting Trustee, that Trustee shall have the option of requesting the next named qualified successor Trustee to act as Co-Trustee with him or her. The named successor Trustee must in all cases be asked in the order in which named and the refusal to so act does not waive his or her right to act at a later time in the normal succession of Trustees as provided herein.
- 6.10 During the administration of this Trust by two Co-Trustees at any time other than when Trustor may be serving with a Co-Trustee (Ref. Para. 2.5), the Trustee powers may only be exercised by, or the Trustee duties may only be carried out by, the agreement of the two Co-Trustees, and all transactions shall be effective upon the act and signatures of the Co-Trustees jointly, unless specifically provided otherwise herein. In the event of disagreement, the two Co-Trustees shall each select an arbitrator and the two arbitrators shall select a third arbitrator. A decision shall be rendered by the three arbitrators within sixty days from the time that one Trustee receives notification from the other Trustee that

arbitration is requested. The decision of the majority of the arbitrators shall be final and binding on all parties. In the event a Co-Trustee fails to select an arbitrator within thirty days of receiving a request for arbitration, then the arbitrator appointed by the Co-Trustee requesting such arbitration shall decide the issue. If neither Co-Trustee selects an arbitrator within thirty days of such notification, then the arbitration proceedings must start from the beginning. Notices, instructions, and arbitration decisions provided for in this paragraph shall be in writing.

- 6.11 During the administration of this Trust by more than two Co-Trustees, unless specifically provided otherwise herein, all Trustee powers and duties shall be exercised and all transactions shall be effective upon the acts and signatures of a majority of the Co-Trustees then serving.
- 6.12 A Co-Trustee may at any time, by a notarized statement delivered to the other acting Trustee, delegate the exercise of the Trustee powers to the other acting Trustee, and in like manner at any time revoke such delegation. Any Trustee so delegating her powers shall receive no Trustee fees so long as those powers are delegated.
- 6.13 A Trustee shall not be barred or disqualified from acting in a fiduciary capacity other than and in addition to Trustee of this Trust in matters and decisions hereunder, regardless of whether his or her interest conflicts with those of any beneficiary, or whether he or she is acting alone or with other Trustees. Provided, however, that should a Trustee ever become both the sole Trustee and the sole beneficiary hereunder, he or she may not act alone, but a competent Co-Trustee shall be appointed by the existing Trustee in the manner set forth in Paragraph 6.2 to act with him or her if there is no successor Trustee named to so serve as a Co-Trustee, but this provision shall not apply to the period during which final administration and distribution of this Trust is being made.

6.14 Under any provision established herein where a Trustee is also a potential recipient of discretionary payments from principal, such decision as to principal payments shall be made solely by the Co-Trustee, or next named successor Trustee if there is no Co-Trustee. Such decision shall be made according to the standards set forth in each case, and shall be in writing. However, this shall not apply as long as Trustor is living and capable.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

- 7.1 Any and every action taken in good faith by Trustee in the exercise of any power, authority, judgment or discretion shall be conclusive and binding upon the persons interested in the Trust. The enumeration of certain powers of the Trustee shall not limit the general powers. Trustee, subject always to the discharge of fiduciary obligations, is vested with and has all the rights, powers, and privileges which an absolute owner of the same property would have.
- 7.2 If at any time during which this Trust is in effect and the acting Trustee is a corporate Trustee, the adult beneficiaries of this Trust shall have the right, by unanimous decision, to change to a different corporate Trustee. Such decision shall be made by giving the acting corporate Trustee no less than six months notice of intention to change. The acting Trustee may make the actual transfer as of the end of the calendar quarter in which the six month notification period ended.
- 7.3 If at any time any trust created by this Trust document has a value less than Twenty Thousand Dollars (\$20,000.00) then, anything contained herein to the contrary notwithstanding, Trustee shall have the option of distributing the balance to the beneficiaries, persons responsible for the care of the beneficiaries, or such other persons as the Trustee shall deem proper and in accordance with the objectives of this Trust.

- 7.4 Distributions to any beneficiary entitled thereto under the terms of this Trust or the Schedules may be made by the Trustee by deposit to the credit of such beneficiary in any bank or brokerage account designated by him or her. Evidence of any such deposit by Trustee shall constitute a full acquittance from the money so deposited.
- 7.5 Notwithstanding anything herein contained to the contrary, any trust created by this instrument or its Schedules shall terminate within the period limited by the law of the state which controls said trust, or by the law of any state which controls an asset of that trust. In the event any trust created herein shall exceed such period, it shall be deemed terminated on the date limited by state law, and Trustee shall pay the principal and accumulated income, if any, of such trust to the beneficiaries then receiving distribution; but such termination and distribution shall be only to the extent required by such state law, and all other provisions of the trust shall remain in full effect.
- 7.6 The word "Trustee" as used anywhere herein shall mean and include a male, female, or corporate Trustee or any number or combination of Co-Trustees.
- 7.7 In every case where Trustee is given discretionary power or direction, Trustee's decision shall be in his, her, their, or its sole and absolute discretion.

## **ARTICLE VIII** **CONTROLLING LAW**

- 8.1 This Trust has been accepted by the Trustee in the State of Washington, and its validity, construction and rights shall be governed by the laws of that State. If any provisions of this instrument are unenforceable, the remaining provisions, nevertheless, shall be carried into effect.

IN WITNESS WHEREOF, Trustor has subscribed this Amendment Two to the BERNADYNE E. JACOBY TRUST and its Schedules, as amended, and as Trustee has accepted this Amendment Two December 2, 1999.

  
BERNADYNE E. JACOBY, TRUSTOR-TRUSTEE

**BERNADYNE E. JACOBY TRUST**SCHEDULE AAMENDMENT TWO

Referred to in, and hereby made a part of, the BERNADYNE E. JACOBY TRUST dated February 19, 1985, as amended.

ASSETS

Trustor assigns to the Trust all interest in any and all assets without title documents, personal valuables, art, jewelry, bearer bonds, bearer certificates of any kind, personal effects, household furniture and furnishings, personal vehicles, pleasure boats, and similar articles of personal use which Trustor now has or may acquire in the future.

Cash in the amount of One Hundred Dollars (\$100.00).

All existing and future copyrights, settlements, judgments, undistributed inheritances, and legal claims not yet asserted or finalized.

  
Bernadyn E. Jacoby

**BERNADYNE E. JACOBY TRUST****SCHEDULE B****AMENDMENT TWO****DISTRIBUTIONS FROM THE TRUST ESTATE**

Referred to in, and hereby made a part of, the BERNADYNE E. JACOBY TRUST dated February 19, 1985, as amended.

**SECTION I**  
**TRUSTOR LIVING**

- B.1.1 Trustee shall pay to Trustor so much of the net income and principal of the Trust Estate as Trustor shall direct.
- B.1.2 During any period in which Trustor is incapable of managing or directing her affairs (as defined in Paragraph 3.4 of Article III) Trustee shall pay to, or for Trustor's benefit, so much of the income or principal as Trustee deems proper for the maintenance, care, support, comfort, and other normal activities of Trustor, including any herein described beneficiaries dependent upon her.
- B.1.3 During the period described in Paragraph B.1.2 of this Section, Trustee may discontinue any payments being made under Paragraph B.1.1 of this Section.

**SECTION II**  
**TRUSTOR DECEASED**

- B.2.1 Estate and Death Expenses. Upon the death of Trustor, Trustee may pay all or part of the expenses of the last illness and funeral and any other remaining debts to the extent that

funds are not available from other sources. The Trust Estate shall bear its proportionate share of all taxes assessed by reason of such death, provided that the proceeds from any qualified pension, profit sharing or other retirement plan shall not be used to pay such taxes or any estate obligations. Trustee is authorized to prepare and file all necessary tax returns and to pay all transfer, inheritance, estate, succession or death taxes imposed by any taxing authority by reason of Trustor's death, whether attributable to property subject to probate administration or to outside transfers. Any and all specific distributions provided for in this Trust shall be distributed in full and shall not be subject to any share of the above named taxes. Unless otherwise stated in this Trust, all taxes, costs and expenses relative hereto shall be paid out of the residue of the Trust Estate without apportionment, deduction or reimbursement therefor.

B.2.2 Personal Effects. Upon the death of Trustor, any and all personal effects, household furniture and furnishings, personal vehicles, pleasure boats, and similar articles of personal use, together with any insurance thereon, are to be distributed as Trustor has designated in a written, signed and dated list indicating who is to receive certain items of personal effects. It shall be binding upon Trustee to carry out those directions contained in such list unless the intended recipient is not surviving.

Should there be any remaining personal effects thereafter, or in the event there is no such list in existence at the time of Trustor's death, then such personal effects or the remainder thereof, shall be distributed equally to Trustor's sons, Randal Lee Jacoby and Gary Alan Jacoby, or to the survivor thereof, unless Trustor has provided otherwise in her last Will.

If Trustor's surviving sons do not agree within one hundred twenty days from the date of Trustor's death as to the division of the personal effects, or if a son is unable to make such a choice because of a legal disability, Trustee shall distribute these personal effects to such child, children, organizations, or any other person or persons as Trustee deems appropriate. Such distribution shall be in Trustee's sole and absolute discretion and shall be binding on all parties. Trustee is to have suitable documentation evidencing the fact

that no agreement has been able to be reached between or among the sons described above.

B.2.3 Specific Distribution. The Trust Estate shall continue to be administered up to one year after survivor Trustor's death at which time Trustee shall make the following specific distributions:

B.2.3.1 Church. Five percent (5%) to whichever church Trustor was a member of at the time of Trustor's death. If not a member, then to the church Trustor was most recently and significantly attending at the time of her death.

B.2.3.2 Biblical Foundations International. Five percent (5%) to Biblical Foundations International of Federal Way, Washington, or its successor.

B.2.4 Remainder Trust Estate. Thereafter, Trustee shall divide and allocate the remainder Trust Estate into as many equal shares as there are then surviving sons of Trustor and deceased sons of Trustor who have surviving descendants.

Each share allocated to a surviving son of Trustor shall be distributed to him under the provisions of Paragraph B.2.5.

Each share allocated to a deceased son of Trustor who has surviving descendants shall be divided as follows, and distributed under the provisions of Paragraph B.2.6. Each of the surviving children of a deceased son of Trustor (grandchildren of Trustor) shall receive an equal share, and the surviving children of any deceased grandchild of Trustor (great grandchildren of Trustor) shall divide a share equally.

B.2.5 Distribution to Sons. At the time of allocation, each beneficiary shall receive one-third of the net value of his share. Five years from the date of first distribution of principal, Trustee shall distribute to each beneficiary one-half of the net value of the then remainder of his share; and five years from the date of the second distribution of principal, Trustee shall distribute to each beneficiary the remainder of his share.

Undistributed income shall be accumulated and distributed with the next principal distribution. For the purposes of this paragraph, capital gains and non-income dividends shall not be considered income. In the event of the death of a son of Trustor herein prior to receiving a complete and final distribution, the remainder of his share shall be distributed under the provisions of Paragraph B.2.7.

**B.2.6 Distribution to Grandchildren and Great Grandchildren.** Each share allocated to a surviving grandchild or great grandchild of Trustor shall be distributed to such beneficiary at the time of allocation providing he or she has reached the age of twenty-five years. In the event a beneficiary has not reached the age of twenty-five years, then his or her share shall be held and administered as a sub-trust and Trustee shall use so much of the income or principal from the beneficiary's sub-trust as Trustee deems necessary for the beneficiary's maintenance, education, support and health to the age of twenty-five, considering the availability to the beneficiary of other sources of funds. When the beneficiary shall attain the age of twenty-five years, the remainder of his or her sub-trust shall be distributed to him or her.

**B.2.7 Distribution Upon Death of a Beneficiary.** Unless otherwise indicated, in the event of the death of a beneficiary herein prior to receiving a complete and final distribution of a share he or she has been allocated, the remainder of such share shall be divided and allocated into as many equal shares as there are then surviving children of the deceased beneficiary and deceased children of the deceased beneficiary who have surviving children.

**B.2.7.1** Each share allocated to a surviving child of the deceased beneficiary shall be distributed to him or her under the distributive provisions of Paragraph B.2.6.

**B.2.7.2** Each share allocated to a deceased child of the deceased beneficiary who has surviving children shall be distributed in equal parts to said surviving children, under the distributive provisions of Paragraph B.2.6.

Should the beneficiary not have surviving children, the remainder of his or her share shall be added equally to the shares, distributed or not, of the beneficiary's then surviving brothers and sisters who were herein allocated shares and distributed as those shares have been or will be distributed; and if there be no such brothers or sisters, the said remainder shall be added to the shares allocated to Trustor's sons, surviving and deceased, and distributed as those shares have been or will be distributed, but distributed only to then surviving beneficiaries.

B.2.8 Debts Owed by Beneficiaries. In the event there is a balance owing to Trustor, at the time of division of the remainder Trust Estate, on any note, loan or other financial obligation evidenced by a note or other writing signed by any beneficiary of this Trust or evidenced by any other writing or ledger maintained by Trustor, then such balance shall be considered forgiven and paid in full and not a charge against such beneficiary's distributive share of the Trust Estate.

B.2.9 Beneficiary Emergency Expenses. Unless otherwise indicated, in the event of an emergency arising out of sickness or accident to a son of Trustor prior to division of the remainder Trust Estate, Trustee may pay to such son, or for his benefit, such amounts of income or principal from the Trust Estate as deemed necessary by Trustee, considering the availability to such son of other sources of funds. Such disbursements shall be a charge against the share of the recipient son of Trustor who received the disbursement if and when determined.

After division of the Trust Estate into shares, Trustee may make such emergency distributions from any beneficiary's share being held in trust for that beneficiary.

B.2.10 Beneficiary Death Expenses. Unless otherwise indicated, in the event of the death of a son of Trustor prior to division of the remainder Trust Estate, Trustee may pay from the Trust Estate all or part of the expenses of said son's last illness and funeral and any other remaining debts to the extent that funds are not available from other sources.

Trustee may make such disbursements from any deceased beneficiary's share, including a proportionate share of all taxes assessed by reason of the beneficiary's death, should the Trust be divided in such a manner that a specific share has been allocated to the deceased beneficiary.

B.2.11 Distribution to Beneficiary's Living Trust. Any and all distributions to a beneficiary who has his or her own living Trust may be distributed to the Trustee of such Trust rather than directly to such beneficiary upon written request by such beneficiary. However, any such distributions to a Trust shall be governed by the same terms and conditions as provided in this Trust as to distributions.

B.2.12 None of the Above Beneficiaries Surviving. In the event none of the foregoing beneficiary distribution provisions are applicable at any time prior to a complete and final distribution of the Trust Estate, Trustee shall distribute the Trust Estate, or the remainder thereof as follows:

B.2.12.1 Church. Fifty percent (50%) to whichever church Trustor was a member of at the time of her death. If not a member, then to the church Trustor was most recently and significantly attending at the time of her death.

B.2.12.2 Biblical Foundations International. Fifty percent (50%) to Biblical Foundations International of Federal Way, Washington, or its successor.

### **SECTION III** **GENERAL PROVISIONS**

B.3.1 Children. The term "children" as used in this Trust in reference to Trustor's children shall mean and include Randal Lee Jacoby, born October 9, 1954; and Gary Alan Jacoby, born April 5, 1956. As used elsewhere in this Trust all forms of the terms "children" and "descendants" shall mean and include any and all children born to or legally adopted by

beneficiaries named or described herein; however, a child of a beneficiary legally adopted by a party other than the spouse of the beneficiary, and his or her descendants, shall not be included in the definition of children as used herein, nor shall a person, and his or her descendants, who is eighteen years or older when adopted by any beneficiary herein.

- B.3.2 The meanings of the terms "minor", "legal age" and "legal disability" as used herein shall be those meanings attributed to those terms by the state law controlling this Trust as it exists each time a question arises and not the state law as it existed at the time this Trust was signed, and regardless of the state of residency or domicile of the beneficiary.
- B.3.3 Unless otherwise indicated, the meaning of the term "education" as used in this Schedule B shall include college, university, graduate or vocational school and all other types of general educational training as well as elementary, high school, and preparatory schooling, including such travel and other costs as are necessary.
- B.3.4 Regardless of any distribution provisions set forth in this Trust document, Trustee may retain sufficient assets in the Trust after Trustor's death until taxes and other liabilities have been fully determined and paid. Trustee may also make distributions to beneficiaries of this Trust during the one year administration period set forth in Section II in Trustee's sole and absolute discretion. Such disbursements shall be a charge against the share of the recipient beneficiary who received the disbursement.
- B.3.5 Divisions and distributions of the Trust Estate shall be based on the fair market value of the assets on the date of death, less encumbrances, and need not be an interest in every asset, unless specifically provided otherwise herein, but may be made in money or other assets, or partly in each, as is deemed practicable, in Trustee's sole and absolute discretion, for the carrying out of the objectives stated herein, notwithstanding anything contained herein to the contrary. Special valuations granted by State or Federal authorities may be considered in determining "fair market value" under this paragraph.

For example, state "Open Space" assessment value or I.R.C. §2032A valuation may be considered in determining "fair market value".

- B.3.6 No share or interest in principal or income of this Trust shall be liable for the debts of any beneficiary nor subject to the process of seizure of any court, nor an asset in the bankruptcy of any beneficiary; and no beneficiary hereunder shall have the power to anticipate, alienate, or encumber his or her interest in the Trust Estate or in the income therefrom.
- B.3.7 During the administration of any trust created by this instrument, the undistributed net income shall be added to the principal at intervals convenient to the Trustee but at least annually.
- B.3.8 Generation Skipping. Trustee shall establish separate Trusts for any allocation to persons defined as "skip-persons" under Sections 2613(a) and 2651(d) of the Internal Revenue Code. All such Trusts shall be administered as provided herein and shall bear their proportionate share of expenses and taxes.

If by virtue of the allocation of any federal generation-skipping transfer tax exemption ("GST exemption") to any trust created under this Trust, such trust would have a generation-skipping transfer tax inclusion ratio other than one (1) or zero (0), the Trustee before such allocation shall create or divide such trust into two (2) separate trusts which are fractional shares, known as the "exempt trust" and the "nonexempt trust." The exempt trust is that fractional share of the total trust fund that has a generation-skipping transfer tax inclusion ratio of zero (0), and the nonexempt trust is the remaining fractional share of the trust, with a generation-skipping transfer tax inclusion ratio of one (1). The terms and conditions of the nonexempt trust and the exempt trust will be identical. Any reference to a trust created under this article, without a further specification or limitation shall be deemed to refer to both each exempt trust and each nonexempt trust, in proportionate amounts, where relevant.

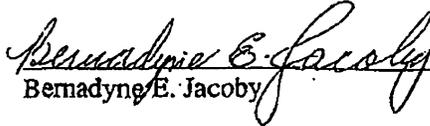
No Trustee or personal representative will in any event be liable to any beneficiary or any other person for any additional death taxes, penalties, or interest, or other losses incurred by any person (including Trustor's estate) on account of having made or refrained from making any election or allocation related to Generation Skipping Transfers, unless it can be established that they acted in bad faith or with gross negligence. No Trustee or personal representative shall be required to make any compensating adjustments between income or principal or between any beneficiaries because of the results of making or refraining from making any election or allocation related to Generation Skipping Transfers.

B.3.9 At any time, any beneficiary of this Trust may waive his or her right to all or part of any distribution that may be or become due to him or her by giving notice to the Trustee in a written notarized statement. The effect of such waiver will be that the distribution or distributions which would have been made to the waiving beneficiary will be made to such beneficiaries as this Trust provides for in the event the waiving beneficiary was deceased.

B.3.10 In any case where the provisions of this Trust call for distributions to beneficiaries, any beneficiary shall have the option of instructing the Trustee to not make one or more distributions to him or her. By doing so the beneficiary does not waive or relinquish his or her right to any other distributions to which he or she is entitled. Instructions to the Trustee shall be in a written notarized statement and shall state the person, persons, or organizations to whom the distribution or distributions shall be made and when (which shall not be prior to the distribution date provided in this Trust Agreement), or shall indicate the beneficiary's irrevocable relinquishment of the distribution or distributions. The beneficiary may modify or revoke the instructions to Trustee at any time prior to the distributions unless the instructions were originally indicated to be irrevocable. Trustee shall have the right to approve or reject any written designations or instructions authorized in this paragraph.

B.3.11 Transfers to Minors. Unless otherwise indicated, all transfers and distributions to minors shall be made to a custodian under the Uniform Transfers to Minors Act as amended, or similar law if applicable. This paragraph may be nullified only if the relevant language specifically states that such transfer or distribution shall be held in Trust. The Trustee making such transfer or distribution may serve as custodian.

B.3.12 No Contest Clause. If any of Trustor's statutory heirs, any beneficiary mentioned or referred to in this Trust or for whom or for whose benefit Trustor has made any provision in this Trust, or any other person shall in any manner contest in any court or before any tribunal, this Trust or the validity thereof, or its due and proper execution, or the provisions applicable to him or her, or any other provision of this Trust, or shall in any way question Trustor's acts in making this Trust or any of its provisions, or file any claim against this Trust exceeding One Hundred Dollars (\$100.00) then, in that event, such beneficiary or heir shall forfeit and cease to have any right, title or interest in or to any portion of the Trust Estate or any property given under this Trust or any income from such property, and any and all provisions of this Trust in favor of or for the benefit of such beneficiary or heir are revoked. However, this shall not be construed as preventing any beneficiary from contesting the reasonableness of compensation paid to Trustee.

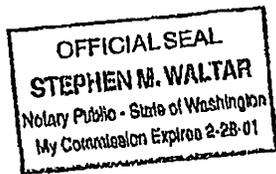
  
Bernadyne E. Jacoby

ACKNOWLEDGMENT

STATE OF WASHINGTON, )  
 ) ss.  
County of King, )

On this day personally appeared before me BERNADYNE E. JACOBY to me known to be the individual described in and who executed the within and foregoing AMENDMENT TWO of the BERNADYNE E. JACOBY TRUST and its SCHEDULES and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal December 2, 1999.



*[Handwritten Signature]*  
NOTARY PUBLIC: Stephen M. Waltar  
State of Washington, residing in Kirkland  
My appointment expires 2-28-01

DUPLICATE ORIGINAL

# BERNADYNE E. JACOBY TRUST

## AMENDMENT THREE

FIRST: ARTICLE IV, PARAGRAPHS 4.3.30 AND 4.3.31  
ADDITIONS TO POWERS AND DUTIES OF THE TRUSTEE

SECOND: ARTICLE VI, PARAGRAPH 6.1  
TRUSTEES AND SUCCESSOR TRUSTEE DESIGNATION

THIRD: SCHEDULE B, SECTION III, PARAGRAPH B.3.1  
CHILDREN

ACKNOWLEDGMENT

CODICIL

ALBERTSON LAW GROUP, P. S.  
333 5<sup>TH</sup> AVENUE SOUTH  
KENT, WASHINGTON 98032-5763  
(253) 852-8772

## BERNADYNE E. JACOBY TRUST

### AMENDMENT THREE

TRUSTOR, BERNADYNE E. JACOBY, pursuant to the rights reserved by Trustor in Article II, Paragraph 2.1 of the BERNADYNE E. JACOBY TRUST dated February 19, 1985, hereby amends and modifies said Trust as follows:

FIRST: The following Paragraphs 4.3.30 and 4.3.31 are hereby added to, and made a part of, ARTICLE IV:

4.3.30 Tax Filings, Elections and Equitable Adjustments. Trustee is authorized to represent the Trust in all tax matters, including but not limited to the preparation, filing and signing of any state or federal income or estate tax returns as well as where appropriate, the request for extension to file returns and/or pay taxes. Trustee may also make all elections and take all other appropriate actions with respect to taxation of every kind applying to the Trust or to the Trustor individually. Unless otherwise provided herein, such power may be exercised regardless of the effect of such exercise upon the comparative values of the distributive provisions made under this Trust, and Trustee shall not be required to make any adjustment in the amount of any distribution in order to compensate for the effect of such exercise.

Unless otherwise provided herein, Trustee may administer the Trust without regard to the income tax basis of specific property allocated to any beneficiary. Further, Trustee may, in its sole and absolute discretion, exercise all elections with respect to allowable deductions on Trustor's estate tax returns or any necessary income tax

returns, all without reimbursement either from or to Trustor's estate or any beneficiaries hereunder for taxes payable in respect of said elections.

However, unless otherwise provided herein, Trustee may also make, in its discretion, any equitable adjustments which may be necessary to permit beneficiaries with different tax brackets to share fairly overall tax savings which may result from any distributions, tax savings elections or decisions which Trustee deems advisable.

4.3.31 For purposes of the basis allocation rules as provided under Internal Revenue Code Section 1022, Trustee shall, to the extent feasible, given the nature and extent of property distributed to the beneficiaries provided for herein, allocate the aggregate basis increase (Internal Revenue Code Section 1022(b)(2)(B)) in reasonably equivalent shares to the beneficiaries.

SECOND: Paragraph 6.1 of ARTICLE VI, is hereby modified and amended in its entirety, to read as follows:

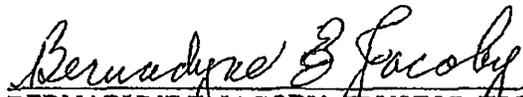
6.1 Acting and Successor Trustees. Acting Trustee is Trustor Bernadyne E. Jacoby. In the event of the death, incapacity (as defined in Paragraph 3.4 hereof), or resignation of Trustor Bernadyne E. Jacoby, Trustor's sons, Randal L. Jacoby and Gary A. Jacoby, shall serve as Co-Trustees. In the event of the death, incapacity, or resignation of either Randal or Gary, the other shall serve as sole Trustee.

Unless stated otherwise, this Article VI shall determine the Trustees of all trusts created by this Trust.

THIRD: Paragraph B.3.1 of SECTION III, Schedule B, is hereby modified and amended in its entirety, to read as follows:

B.3.1 Children. The term "children" as used in this Trust in reference to Trustor's children shall mean and include Randal Lee Jacoby, born October 9, 1954; and Gary A. Jacoby, born April 5, 1956. Trustor specifically excludes Sharda Bowen, and any and all of her descendants, from receiving any benefits or distributions of any kind from this Trust. As used elsewhere in this Trust all forms of the terms "children" and "descendants" shall mean and include any and all children born to or legally adopted by beneficiaries named or described herein; however, a child of a beneficiary legally adopted by a party other than the spouse of the beneficiary, and his or her descendants, shall not be included in the definition of children as used herein, nor shall a person, and his or her descendants, who is eighteen years or older when adopted by any beneficiary herein.

IN WITNESS WHEREOF, Trustor hereby ratifies and confirms this Trust and its Schedules, as amended, and as Trustee hereby assents to this Amendment Three on August 11<sup>th</sup> 2005.

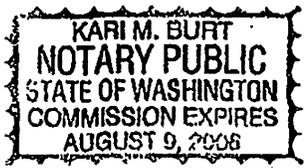
  
BERNADYNE E. JACOBY, TRUSTOR-TRUSTEE

ACKNOWLEDGMENT

STATE OF WASHINGTON, )  
 ) ss.  
County of King, )

On this day personally appeared before me BERNADYNE E. JACOBY to me known to be the individual described in and who executed the within and foregoing AMENDMENT THREE of the BERNADYNE E. JACOBY TRUST and its SCHEDULES and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal August 11<sup>th</sup> 2005



*Kari M. Burt*  
NOTARY PUBLIC: Kari M. Burt  
In and for the State of Washington  
My appointment expires 08-09-08

# BERNADYNE E. JACOBY TRUST

## AMENDMENT FOUR

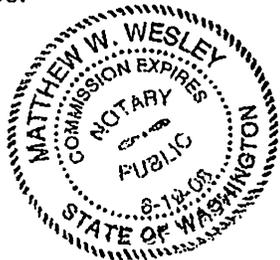
TRUSTOR, BERNADYNE E. JACOBY, pursuant to the rights reserved by Trustor in Article II, Paragraph 2.1 of the BERNADYNE E. JACOBY TRUST dated February 19, 1985, hereby amends and modifies said Trust as follows:

Paragraph 6.1 of ARTICLE VI, is hereby modified and amended in its entirety, to read as follows:

6.1 Acting and Successor Trustees. Acting Trustee is Trustor Bernadyne E. Jacoby. Trustor Bernadyne E. Jacoby has been diagnosed with early stage Alzheimer's and desires to turn over the management of the Trust to Trustor's son, Gary A. Jacoby. To that end, Trustor hereby resigns as Trustee and appoints Gary A. Jacoby as sole trustee. In the event of the death, incapacity, or resignation of Gary, Trustor's son, Randal L. Jacoby, shall be sole Trustee. In the event of the death of Trustor Bernadyne E. Jacoby, Trustor's sons, Gary A. Jacoby and Randal L. Jacoby, shall be Co-Trustees. In the event of the death, incapacity, or resignation of either Gary or Randal, the other shall be sole Trustee.

Unless stated otherwise, this Article VI shall determine the Trustees of all trusts created by this Trust.

IN WITNESS WHEREOF, Trustor hereby ratifies and confirms this Trust and its Schedules, as amended, and as Trustee hereby assents to this Amendment Four on March 14, 2006.



*Bernadyne E. Jacoby*  
BERNADYNE E. JACOBY, TRUSTOR-TRUSTEE

ACKNOWLEDGMENT

STATE OF WASHINGTON, )  
 ) ss.  
County of King, )

On this day personally appeared before me BERNADYNE E. JACOBY to me known to be the individual described in and who executed the within and foregoing AMENDMENT FOUR of the BERNADYNE E. JACOBY TRUST and its SCHEDULES and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal March 14, 2006.



*Matthew Wesley*  
\_\_\_\_\_  
NOTARY PUBLIC: Matthew Wesley  
In and for the State of Washington  
My appointment expires 06-19-2008

## BERNADYNE E. JACOBY TRUST

### AMENDMENT FIVE

TRUSTOR, BERNADYNE E. JACOBY, pursuant to the rights reserved by Trustor in Article II, Paragraph 2.1 of the BERNADYNE E. JACOBY TRUST dated February 19, 1985, hereby amends and modifies said Trust as follows:

Paragraph 6.1 of ARTICLE VI, is hereby modified and amended in its entirety, to read as follows:

6.1 Acting and Successor Trustees. Acting Trustee is Trustor Bernadyne E. Jacoby. Trustor desires to turn over the management of the Trust to Trustor's son, Randal L. Jacoby. To that end, Trustor hereby resigns as Trustee and appoints Randal L. Jacoby as sole trustee. In the event of the death of Trustor Bernadyne E. Jacoby, Trustor's son, Randal L. Jacoby, shall be sole Trustee. In the event of the death, incapacity, or resignation of Randal L. Jacoby, Marie Jurlin of Gig Harbor Wa. shall be sole Trustee. In the event of death, incapacity, or resignation of Marie Jurlin of Gig Harbor, Camille Hutchinson of Gig Harbor Wa. Shall be sole Trustee.

Unless stated otherwise, this Article VI shall determine the Trustees of all trusts created by this Trust.

IN WITNESS WHEREOF, Trustor hereby ratifies and confirms this Trust and its Schedules, as amended, and as Trustee hereby assents to this Amendment Five on

9/16/06

BERNADYNE E. JACOBY, TRUSTOR-TRUSTEE

*Bernadyne E. Jacoby*  
*B E J*

ACKNOWLEDGMENT

STATE OF WASHINGTON, )  
 ) ss.  
County of King, )

On this day personally appeared before me BERNADYNE E. JACOBY to me known to be the individual described in and who executed the within and foregoing AMENDMENT FIVE of the BERNADYNE E. JACOBY TRUST and its SCHEDULES and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal 9/16/06



Amy L. Wishart  
NOTARY PUBLIC: Amy L. Wishart  
In and for the State of Washington  
My appointment expires 7-29-10

LAST WILL  
of  
**BERNADYNE E. JACOBY**

I, BERNADYNE ELEANOR JACOBY, declare this to be my Last Will and revoke all other Wills and Codicils that I have made.

At the time of making this Will I am not married, and have two sons: namely, Randal Lee Jacoby, born October 9, 1954; and Gary Alan Jacoby, born April 5, 1956.

First, realizing the uncertainty of this life I place full confidence and trust in my Lord and Savior Jesus Christ, who promised: "I am the resurrection and the life; he that believeth in Me, though he were dead yet shall he live; and whosoever liveth and believeth in Me shall never die" (John 11:25-26)

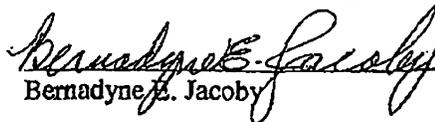
Second, knowing that the wages of sin is death, I believe that Jesus Christ, the only Son of God, suffered and died for the forgiveness of all my sins, which I neither deserve nor merit, but receive as a free gift of God, who is rich in grace and mercy.

Third, I urge my heirs not to set their hopes on uncertain riches, but to take hold of the life which is life indeed through faith in Jesus Christ.

ARTICLE I

DEVICES AND BEQUESTS

- 1.1 Personal Effects. All interest in any and all personal effects, household furniture and furnishings, personal vehicles, pleasure boats and similar articles of personal use I may

  
Bernadyn E. Jacoby

have at the time of my death, together with any insurance thereon, shall be distributed as I have designated in the most recently signed and dated list which indicates who is to receive certain items of personal effects. It shall be binding upon my personal representative to carry out those directions contained in such list unless the intended recipient is not surviving. Should there be any remaining personal effects thereafter, or in the event there is no such list in existence at the time of my death, then such personal effects, or the remainder thereof, shall be distributed as provided in the BERNADYNE E. JACOBY TRUST dated December 2, 1999.

- 1.2 Remainder Estate. All the rest, residue and remainder of my estate, of whatever nature and wherever situated, of which I may own or be entitled at the time of my death, including property over which I may have a power of appointment which I have not otherwise exercised, released, or refused in writing, to exercise, I give, devise and bequeath to the Trustee of the BERNADYNE E. JACOBY TRUST created under a Trust Agreement dated December 2, 1999, by myself as Trustor, which has been signed prior to this Will and is now in full force and effect, as an addition to the principal of said Trust, under the terms, conditions, and provisions contained in said Trust Agreement and any amendments made to said Trust Agreement subsequent to the date of said Trust. If the Trust created by said Agreement shall have terminated prior to my death, then this paragraph of my Will shall be construed to establish a Trust with the same terms and conditions as said BERNADYNE E. JACOBY TRUST, including any amendments made to the date of my death, and all assets provided for in this paragraph shall go to the Trustee therein named.

## ARTICLE II

### GENERAL PROVISIONS

- 2.1 Estate and Death Expenses. All inheritance, estate, transfer, succession or death taxes imposed by any taxing authority by reason of my death, whether attributable to property subject to probate administration or to outside transfers, shall be paid out of the residue of my estate as an expense of the administration thereof, without apportionment, deduction or reimbursement therefor, provided that the proceeds from any qualified pension, profit sharing or other retirement plan shall not be used to pay such taxes or any estate obligations.
- 2.2 Personal Representative. I appoint my sister in-law, Evelyn M. Ramirez, personal representative of my estate. In the event Evelyn is unable or unwilling to so act, I appoint my sons, Randal L. Jacoby and Gary A. Jacoby, co-personal representatives of my estate. In the event either Randal or Gary is unable or unwilling to so act, I appoint the other, to be the next alternate and successor personal representative of my estate.

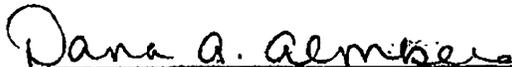
  
Bernadyn E. Jacoby

2.3 Non-intervention Powers. I direct that my estate be settled in the manner provided in this Will without the intervention of any court, except as may be required by law in the case of non-intervention Wills. I, therefore, give my personal representative full power to deal with my estate and to do all acts and exercise all rights with relation to such property. As I wish my personal representative to exercise the broadest discretion possible in dealing with my estate, I direct that no bond of any kind shall be required for the performance of duties in any jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand to each page hereof  
December 2, 1999.

  
BERNADYNE E. JACOBY

The foregoing instrument, consisting of three pages, was subscribed by the TESTATRIX who appeared to be of sound mind and memory and was by her declared to be her last Will, in the presence of us, who at her request and in her presence, and in the presence of each other, have hereunto set our hands as witnesses thereto, on the day and year last before written.

  
Witness  
Residing at Seattle, Washington

  
Witness  
Residing at Seattle, Washington

SELF PROVING CERTIFICATE

STATE OF WASHINGTON, County of King; ss.

Before me this day personally appeared, BERNADYNE E. JACOBY, DANA A. ALMBERG and ANNEKE L. LEE, known to me to be the TESTATRIX and WITNESSES, respectively, whose names are subscribed to the foregoing instrument in their respective capacities, and after being sworn, on oath stated:

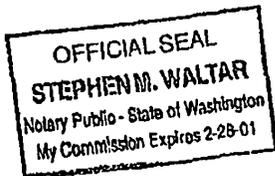
1. That each of them was of legal age at the time of the execution of the attached Will.
2. That immediately prior to the execution of the attached Will the Testatrix declared the document to be her last Will and requested the witnesses to witness and subscribe it.
3. That the Testatrix signed the Will in the presence of the witnesses, and that the witnesses attested the execution of subscribing their names in the presence of the Testatrix and of each other.
4. That the undersigned and parties making this agreement are the same as the parties who signed the foregoing Will.
5. That the Testatrix appeared to be of sound mind and acted freely without any duress or undue influence, as did the witnesses.

*Bernadyn E. Jacoby*  
BERNADYNE E. JACOBY

*Dana A. Almborg*  
WITNESS, DANA A. ALMBERG

*Anneke L. Lee*  
WITNESS, ANNEKE L. LEE

SUBSCRIBED, SWORN, and ACKNOWLEDGED TO before me December 2, 1999.



*Stephen M. Waltar*  
NOTARY PUBLIC: Stephen M. Waltar  
State of Washington, residing in Kirkland  
My appointment expires 2-28-01

DUPLICATE ORIGINAL

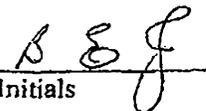
CODICIL TO THE LAST WILL  
of  
**BERNADYNE E. JACOBY**

I, Bernadyne Eleanor Jacoby, declare this to be a Codicil to my last Will dated December 2, 1999. At the time of making this Will I am not married, and have two sons: namely, Randal Lee Jacoby, born October 9, 1954; and Gary Alan Jacoby, born April 5, 1956. I hereby exclude Sharda Bowen and any of her descendants from receiving any benefits of any kind from my Will.

First, Realizing the uncertainty of this life, I place full confidence and trust in my Lord and Savior Jesus Christ, who promised: "I am the resurrection and the life; he that believeth in Me, though he were dead yet shall he live; and whosoever liveth and believeth in Me shall never die" (John 11:25-26)

Second, Knowing that the wages of sin is death, I believe that Jesus Christ, the only Son of God, suffered and died for the forgiveness of all my sins, which I neither deserve nor merit, but receive as a free gift of God, who is rich in grace and mercy.

Third, I urge my heirs not to set their hopes on uncertain riches, but to take hold of the life which is life indeed through faith in Jesus Christ.

  
Initials

Paragraph 2.2 of ARTICLE II is hereby amended in its entirety to read as follows:

2.2 Personal Representative. I appoint my sons, Randal L. Jacoby and Gary A. Jacoby, co-personal representatives of my estate. If either Randal or Gary is unable or unwilling to so act, I appoint the other as sole personal representative of my estate.

I hereby ratify and confirm my said last Will in all other respects.

IN WITNESS WHEREOF, I have subscribed hereunto on August 11, 2005.

Bernadyne E. Jacoby  
Bernadyne E. Jacoby

The foregoing instrument, consisting of three pages, including the following page, was subscribed by the TESTATRIX, BERNADYNE E. JACOBY, who appeared to be of sound mind and memory and was by her declared to be her last Will, in the presence of us, who at her request and in her presence, and in the presence of each other, have hereunto set our hands as witnesses thereto, on the day and year last before written.

Bonnie Buchanan  
Witness, Bonnie Buchanan  
Residing at Auburn, Washington

Jeri Phillips  
Witness, Jeri Phillips  
Residing at Kent, Washington

SELF PROVING CERTIFICATE

STATE OF WASHINGTON, County of King; ss.

Before me this day personally appeared, BERNADYNE E. JACOBY, Bonnie Buchanan and Teri Phillips, known to me to be the TESTATRIX and WITNESSES, respectively, whose names are subscribed to the foregoing instrument in their respective capacities, and after being sworn, on oath stated:

1. That each of them was of legal age at the time of the execution of the attached Codicil.
2. That immediately prior to the execution of the attached Codicil the TESTATRIX declared the document to be her Codicil and requested the witnesses to witness and subscribe it.
3. That the TESTATRIX signed the Codicil in the presence of the witnesses, and that the witnesses attested the execution of subscribing their names in the presence of the TESTATRIX and of each other.
4. That the undersigned and parties making this agreement are the same as the parties who signed the foregoing Codicil.
5. That the TESTATRIX appeared to be of sound mind and acted freely without any duress or undue influence, as did the witnesses.

Bernadyn E Jacoby  
TESTATRIX, BERNADYNE E. JACOBY

Bonnie Buchanan  
WITNESS, Bonnie Buchanan

Teri Phillips  
WITNESS, Teri Phillips

SUBSCRIBED, SWORN, and ACKNOWLEDGED TO before me on August 11<sup>th</sup> 2005

Kari M. Burt  
NOTARY PUBLIC: Kari M. Burt  
In and for the State of Washington  
My appointment expires 08-09-06



## DURABLE POWER OF ATTORNEY FOR HEALTH CARE

### 1. DESIGNATION OF HEALTH CARE AGENT.

I, BERNADYNE ELEANOR JACOBY, (or "Principal") of Auburn, Washington, hereby revoke any prior powers of attorney for health care and I hereby appoint my son, GARY ALAN JACOBY, whose current city and state are Oceanside, California, as my attorney-in-fact (or "Agent" or "Personal Representative") to make health and personal care decisions for me as authorized in this document.

### 2. EFFECTIVE DATE AND DURABILITY.

By this document I intend to create a durable power of attorney effective upon, and only during, any period of incapacity in which, in the opinion of my Agent and attending physician, I am unable to make or communicate a choice regarding a particular health care decision.

Notwithstanding the foregoing, this power of attorney shall be immediately effective for the sole purpose of authorizing my Agent to direct my Attending Physician to conduct an examination to determine my capacity. My Attending Physician shall be released from any and all liability that might attach under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164 for conducting such examination and communicating its results to my Agent.

This power of attorney may be revoked, suspended or terminated by the principal at any time the principal is not disabled or incapacitated, if the principal sends written notice to the designated attorney-in-fact. Unless otherwise revoked, suspended or terminated, the death of the principal shall be deemed to terminate this power of attorney upon actual knowledge or actual notice being received by the attorney-in-fact.

### 3. AGENT'S POWERS.

I grant to my Agent full authority to make decisions for me regarding my health care. In exercising this authority, my Agent shall follow my desires as stated in this document or otherwise known to my Agent. In making any decisions, my Agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my Agent cannot determine the choice I would want made, then my Agent shall make a choice for me based upon what my Agent believes to be in my best interests. My Agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below. Accordingly, unless specifically limited by Section 4, below, my Agent is authorized as follows:

A. To provide informed consent for health care decisions on my behalf;

B. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including (but not limited to) artificial respiration,

ALBERTSON LAW GROUP, P. S.  
124 4<sup>TH</sup> AVENUE SOUTH, SUITE 200  
KENT, WASHINGTON 98032  
(253) 852-8772

Power of Attorney for Health Care  
Page 2 of 4

nutritional support and hydration, and cardiopulmonary resuscitation, and other life-sustaining treatment;

C. To have access to medical records and information to the same extent that I am entitled to, including the right to disclose the contents to others. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164;

D. To authorize my admission to or discharge (even against medical advice) from any hospital, nursing home, residential care, assisted living or similar facility or service;

E. To contract on my behalf for any health care related service or facility for my benefit, without my Agent incurring personal financial liability for such contracts;

F. To hire and fire medical, social service, and other support personnel responsible for my care;

G. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of (but not intentionally cause) my death;

H. To authorize an autopsy, and direct the disposition of my remains, to the extent permitted by law, or to make anatomical gifts of part or all of my body for medical purposes;

I. To take any other action necessary to do what I authorize here, including (but not limited to) granting any waiver or release from liability required by any hospital, physician, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice; and pursuing any legal action in my name and at the expense of my estate to force compliance with my wishes as determined by my Agent, or to seek actual or punitive damages for the failure to comply.

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.

A. With respect to any life-sustaining treatment, I specifically direct my Agent to follow any Directive to Physicians Living Will or other health care declaration executed by me.

B. With respect to nutrition and hydration provided by means of a nasogastric tube, enteric tubes or tube into the stomach, intestines, or veins, I wish to make clear that if I should suffer from a terminal condition, I do not want to be provided with hydration and nutrition.

C. I intend the term "life-sustaining treatment" as used in this Durable Power of Attorney for Health Care to mean any medical or surgical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore or supplant a vital function, which, when applied to me, would serve only to artificially prolong the moment of my death, regardless of

Power of Attorney for Health Care  
Page 3 of 4

whether death is imminent when such procedure is utilized. Life sustaining procedures include, but are not limited to, cardiopulmonary resuscitation, defibrillation, the use of cardiac drugs, the use of a respirator and endotracheal intubation. Life sustaining procedures shall not include the administration of nutrition and hydration, or medication or the performance of any medical procedure deemed necessary to alleviate pain or provide comfort care.

5. SUCCESSORS.

In the event GARY ALAN JACOBY is unable or unwilling to serve as my Agent, I appoint my son, RANDAL LEE JACOBY, as my alternate Agent.

6. PROTECTION OF THIRD PARTIES WHO RELY ON MY AGENT.

No person who relies in good faith upon any representations by my Agent or Successor Agent shall be liable to me, my estate, my heirs or assigns, for recognizing the Agent's authority.

7. ADMINISTRATIVE PROVISIONS.

A. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

B. My Agent shall not be entitled to compensation for services performed under this power of attorney, but he or she shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this power of attorney.

C. The powers delegated under this power of attorney are separable, so that the invalidity of one or more powers shall not affect any others.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Durable Power of Attorney for Health Care on March 14, 2006.

Signature:

  
BERNADYNE ELEANOR JACOBY

Power of Attorney for Health Care  
Page 4 of 4

STATE OF WASHINGTON,        )  
  ) ss.  
County of King,                )

On this day personally appeared before me BERNADYNE ELEANOR JACOBY, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the foregoing instrument was signed as a free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal March 14, 2006.



*Matthew Wesley*  
\_\_\_\_\_  
NOTARY PUBLIC: Matthew Wesley  
In and for the State of Washington  
My appointment expires 06-19-2008

Filed for Record at the Request of

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

**DURABLE GENERAL POWER OF ATTORNEY**

A. Designation: I, BERNADYNE ELEANOR JACOBY, of Auburn, State of Washington, County of King, do hereby constitute and appoint my son, GARY ALAN JACOBY, of Oceanside, California, to be my true and lawful attorney with full power in my name and stead and on my behalf, and with full power to substitute at any time or times, for any of the purposes described below, one or more attorneys, and to revoke the appointment of any attorney so substituted.

B. Purpose: The primary purpose in granting this Durable General Power of Attorney is to provide for my needs now and should I become incompetent. As such, my attorney-in-fact shall have all powers as are necessary or desirable to provide for my support, maintenance, health, emergencies and urgent necessities.

C. Powers: My attorney-in-fact, as fiduciary, shall have the following powers:

1. To manage my affairs, handle my investments, and take any actions necessary or desirable in connection with any financial institution in which I have an account or an interest in an account, including, without limitation, the power to continue, modify, or terminate existing accounts; open new accounts; draw, endorse, and deposit checks, drafts, and other negotiable instruments; prepare, receive, and deliver financial statements; establish, maintain, or close safe deposit boxes; borrow money; apply for and receive travelers checks and letters of credit; extend payment periods with respect to commercial paper; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this paragraph, the term "financial institution" includes, but is not limited to, banks, trust companies, savings banks, commercial banks, building and loan associations, savings and loan companies or associations, credit unions, industrial loan companies, thrift companies, and brokerage firms;

2. To take any action necessary or desirable with respect to any securities that I own including, without limitation, the power to purchase and sell securities; exercise voting rights with respect to securities; collect dividends, interest, and any other proceeds generated by securities; transfer title to securities; and perform any other acts authorized in RCW Chapter 11.94, except those acts that

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124 4<sup>TH</sup> AVENUE SOUTH, SUITE 200  
KENT, WASHINGTON 98032  
(253) 852-8772

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## Durable Power of Attorney

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conflict with or are limited by a more specific provision in this Power. For the purposes of this paragraph, the term "securities" includes stocks, bonds, mutual funds, and all other types of securities and financial instruments, except commodity futures contracts and call and put options on stocks and stock indexes, except with respect to the exercise of employee stock options;

3. To endorse and deliver certificates for transfer of bonds or other securities to be sold for my account and receive the proceeds of such sale;
4. To take any actions necessary or desirable for the management or maintenance of any real or personal property in which I own an interest when this Power is executed, or in which I later acquire an interest, including the power to acquire, sell, and convey ownership of property; control the manner in which property is managed, maintained, and used; change the form of title in which property is held; satisfy and grant security interests and other encumbrances on property; obtain and make claims on insurance policies covering risks of loss or damage to property; accept or remove tenants; collect proceeds generated by property; ensure that any needed repairs are made to property; exercise rights of participation in real estate syndicates or other real estate ventures; make improvements to property; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;
5. To sign, execute, acknowledge and deliver on my behalf any deed of transfer or conveyance covering personal property or real estate wherever situated (including transfer or conveyances to any trust established by me or for my benefit), any discharge or release of mortgage held by me on real estate or any other instrument in writing;
6. To negotiate and execute leases of any property, real or personal, which I may own, for terms that may extend beyond the duration of this power and to provide for the proper care and maintenance of such property and pay expenses incurred in connection therewith;
7. To subdivide, partition, improve, alter, repair, adjust boundaries of, manage, maintain and otherwise deal with any real estate, whether held as trust property or not, including power to demolish any building in whole or in part and to erect buildings;
8. To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
9. To hold securities in bearer form or in the name of a nominee or nominees and to hold real estate in the name of a nominee or nominees;
10. To take any actions necessary or participate in the operation of any business venture, including, without limitation, the power to execute and enforce my obligations and rights as a partner in any general or limited partnership to the extent permitted by law and any applicable partnership agreement; enforce my rights as the holder of a bond or similar instrument issued by

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Durable Power of Attorney  
Page 3 of 7

any business in which I have an interest; discharge my duties and enforce my rights in any sole proprietorship; expand, recapitalize, or reorganize any business to the extent my interest in that business allows; collect proceeds generated by any business in which I have an interest and to which I am entitled; sell or liquidate my interest in a business; and perform any other enterprise acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

11. To borrow money from time to time in my name, and to give promissory notes or other obligations therefore, and to deposit as collateral, pledge as security for the payment thereof or mortgage any or all my securities or other property of whatever nature;

12. To have access to any and all safe deposit boxes of which I am now or may become possessed, and to remove therefrom any securities, papers or other articles;

13. To make and sign all tax returns, and pay all taxes required by law, including federal and state returns, and to file all claims for abatement, refund or other papers relating thereto;

14. To demand, collect, receive and receipt for any money, debts, or property of any kind, now or hereafter payable, due or deliverable to me, to pay or contest claims against me, to settle claims by compromise, arbitration or otherwise and to release claims;

15. To take any actions necessary or desirable with respect to any claim that I may have or that has been asserted against me and with respect to any legal proceeding, including, without limitation, the power to institute, prosecute, and defend legal proceedings and claims on my behalf; file actions to determine adverse claims, intervene in litigation, and act as amicus curiae in any proceedings affecting my interests; seek preliminary, provisional, or intermediate relief on my behalf; apply for the enforcement or satisfaction of judgments that have been rendered in my favor; participate fully in the development of claims and proceedings; submit any dispute in which I have an interest to arbitration; submit and accept settlement offers and participate in settlement negotiations; handle all procedural aspects, such as service of process, filing of appeals, stipulations, verifications, waivers, and all other matters in any way affecting the process of any claim or litigation; fully participate in any voluntary or involuntary bankruptcy proceeding involving me or in which I am a claimant; satisfy judgments that have been rendered against me; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

16. To employ as investment counsel, custodians, brokers, accountants, appraisers, attorneys-at-law or other agents such persons, firms or organizations, including any of my said attorneys and any firm of which my said attorney may be a member or employee, as deemed necessary or desirable, and to pay such persons, firms or organizations such compensation as is deemed reasonable and to determine whether or not to act upon the advice of any such agent without liability for acting or failing to act thereon;

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Durable Power of Attorney  
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17. To expend or distribute income or principal of my estate for the support, education, care or benefit of me and my dependents;

18. To renounce and disclaim any interest otherwise passing to me by testate or intestate succession or by inter vivos transfer;

19. To transfer any interest in any property I may have to the trustees of the most recent revocable living trust I have executed;

20. To surrender life insurance and annuity policies for their cash value;

21. To take any actions with respect to any insurance or annuity contracts, including, without limitation, the power to acquire additional insurance coverage of any type or additional annuities; continue existing insurance or annuity contracts; agree to modifications in the terms of insurance or annuity contracts in which I have an interest; borrow against insurance or annuity contracts in which I have an interest, to the extent allowed under the contract terms; change beneficiaries under existing contracts and name beneficiaries under new contracts to name my spouse or children as the beneficiaries; receive dividends, proceeds, and other benefits generated by the contracts; transfer interests in insurance or annuity contracts to the extent permitted under the terms of those contracts; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

22. To take any actions necessary or desirable in order to effectively conduct my personal affairs and to discharge any and all obligations I may owe to myself and to family members and other third persons who are customarily or legally entitled to my support when this Power is executed, or that are undertaken thereafter, including, without limitation, the power to take steps to ensure that our customary standard of living is maintained; arrange for medical and dental care; continue existing charge accounts, open new charge accounts, and make payments thereon; provide for transportation; maintain correspondence; prepare, maintain, and preserve personal records and documents; maintain membership in any social, religious, or professional organization and make contributions thereto; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

23. I hereby designate that my son, GARY ALAN JACOBY, shall be named as guardian of my person and of my estate in the event such necessity should arise; and

24. To make any gifts of property owned by the principal.

D. Transfer of Assets: My attorney-in-fact shall have the authority to transfer all of my property to my spouse or child(ren) (even if my spouse or child(ren) are acting as my attorney-in-fact) or to revoke any existing community property agreement, for the purpose of qualifying me for medical assistance or the limited casualty program for the medically needy as permitted by law, or to better utilize estate tax planning strategies.

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## Durable Power of Attorney

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E. Taxes: My attorney-in-fact shall have the authority to represent the Principal in all tax matters; to prepare, amend, sign, and file federal, state, and local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns, claims for refunds, abatement, requests for extensions of time to file returns and/or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies of courts, including the tax court, regarding tax matters, and any and all other tax-related documents, including but not limited to consents and agreements under Section 2032A of the Internal Revenue code of 1986, as amended ("Code"); and consents to split gifts, closing agreements, and any Power of Attorney form required by the Internal Revenue Service and any state and local taxing authority with respect to any tax year between the years 1983 and 2025; to pay taxes due, collect and make such disposition of refunds as the attorney-in-fact shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service and any state and local taxing authority; to exercise any elections the Principal may have under federal, state or local tax law; to allocate any generation-skipping tax exemption to which the Principal is entitled; and generally to represent the Principal or obtain professional representation for the Principal in all tax matters and proceedings of all kinds and for all periods between the years 1983 and 2025 before all officers of the Internal Revenue Service and state and local authorities and in any and all courts; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent and assist the Principal in connection with any and all tax matters involving or in any way related to the principal or any property in which the Principal has or may have an interest or responsibility.

F. Reliance Upon This Document: My attorney-in-fact and any person dealing with the attorney-in-fact shall be entitled to rely upon this Power of Attorney so long as such party has not received actual or constructive knowledge or notice of revocation, suspension or termination of the Power of Attorney by death or otherwise. Any action so taken in good faith unless otherwise invalid or unenforceable shall be binding on my heirs, legatees, devisees and personal representatives. I, and my estate, shall hold harmless and indemnify my attorney-in-fact from any and all liability for acts done by my attorney-in-fact in good faith.

1. The length of time which has elapsed from the date of execution of this Power of Attorney shall not prevent a party from reasonably relying on this Power of Attorney.
2. Any person may place reasonable reliance on this Power of Attorney regardless of whether it has been filed for record.
3. I hereby release and agree to indemnify and hold harmless from liability or damages of any kind, including attorney fees and litigation expenses incurred, suffered by any party, including, without limitation, a title insurance or other insurance company, a financial institution, or securities brokerage, which acts in reliance upon this Durable General Power of Attorney (unless revoked as specified herein) with respect to any transaction authorized by me in this Durable General Power of Attorney.

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Page 6 of 7

G. Power to Sue Third Parties Who Fail to Act Pursuant to Power of Attorney: If any third party (including stock transfer agents, title insurance companies, banks, credit unions, and savings and loan associations) with whom my attorney-in-fact seeks to transact refuses to recognize my attorney-in-fact's authority to act on my behalf pursuant to this Power of Attorney, I authorize my attorney-in-fact to sue and recover from such third party all resulting damages, costs, expenses, and attorney's fees incurred because of such failure to act. The costs, expenses, and attorney's fees incurred in bringing such action shall be charged against my general assets, to the extent that they are not recovered from said third party.

H. General: In general I give to my said attorney full power to act in the management and disposition of all my estate, affairs and property of every kind and wherever situated in such manner and with such authority as I myself might exercise if personally present, including transfer of any or all of my assets into my said attorney's name.

I. Binding Authority: This Power of Attorney shall be binding on me and my heirs, executors and administrators and shall remain in force up to the time of my signing a revocation of this Power of Attorney or upon my death.

J. Revocation: This Power of Attorney shall be subject to revocation by the principal by written instrument at any time. Any such revocation shall be effective only upon recording of the written instrument of revocation in the records of the County Recorders office for the principal's county of residence. Until revoked in accordance with the above-mentioned procedure, this Durable General Power of Attorney shall continue to be in effect.

K. Termination.

1. By Guardian of Estate. The appointment of a guardian of the estate of the principal vests in the guardian, with court approval, the power to revoke, suspend or terminate this power of attorney. The appointment of a guardian of the person only does not empower the guardian to revoke, suspend or terminate this power of attorney.

2. By Death of Principal. The death of the principal shall be deemed to revoke this power of attorney upon actual knowledge or actual notice being received by the attorney-in-fact.

L. Governing Law: The laws of the State of Washington shall govern this Power of Attorney.

M. Alternate Attorney. In the event my son, GARY ALAN JACOBY, is unable or unwilling to serve as my attorney-in-fact, I appoint my son, RANDAL LEE JACOBY, of Verdi, Nevada, as my alternate attorney-in-fact.

B E J  
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Durable Power of Attorney  
Page 7 of 7

This Power of Attorney shall not be affected by my subsequent disability or incapacity.

IN WITNESS WHEREOF, I have hereunto set my hand on March 14, 2006.

Bernadyne E. Jacoby  
BERNADYNE ELEANOR JACOBY

STATE OF WASHINGTON,     )  
  ) ss.  
County of King,             )

On this day personally appeared before me BERNADYNE ELEANOR JACOBY, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the foregoing instrument was signed as a free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal March 14, 2006.



Matthew Wesley  
NOTARY PUBLIC: Matthew Wesley  
In and for the State of Washington  
My appointment expires 06-19-2008

DIRECTIVE TO PHYSICIANS AND SUPPLEMENT  
("LIVING WILL")

This Directive to Physicians and Supplement is made December 2, 1999, as follows:

1. Directive to Physicians. I, BERNADYNE E. JACOBY, ("the Declarer"), being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

- 1.1 If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians' written statements, made a permanent part of my medical records, and where the application of life-sustaining treatments, including treatments such as the insertion of a naso-gastric tube, enteric tubes or intravenous nutrition and hydration, would serve only to artificially postpone the moment of my death, and where my physician determines that my death would be imminent were such life-sustaining treatments not utilized, I direct that such treatments be withheld or withdrawn except to the extent necessary to minimize my pain, and that I be permitted to die naturally.
- 1.2 At no time shall I undergo chemotherapy, blood transfusions, or receive any blood products.
- 1.3 In the absence of my ability to give directions regarding the use of such life-sustaining treatments, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment, and I accept the consequences of such refusal.
- 1.4 I understand the full import of this directive, and I am emotionally and mentally competent to make this directive.
- 1.5 Any physician of mine may send a copy of this document to any health care facility caring for me.

2. Supplement to Directive to Physicians. I declare and direct as follows:

- 2.1 I am of sound mind and willfully and voluntarily make this Supplement.
- 2.2 I request care that gives me comfort and support, that facilitates my interactions with those around me, and that relieves my pain and suffering. In case of severe pain, I request that drugs be administered to relieve pain, even if they may hasten the time of my death.
- 2.3 I ask that anyone making decisions regarding:

2.3.1 whether or not I am afflicted with a "terminal condition," and

2.3.2 what constitutes a "life-sustaining treatment"

give consideration to my desire that my life not be prolonged through artificial means, including artificial nutrition and hydration and a respirator/ventilator, if I suffer from:

2.3.3 unconsciousness from which I am not reasonably expected to recover, or

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2800 SOUTH 192ND, STE. 104  
SEATTLE, WASHINGTON 98188-5164  
(206) 246-8772

2.3.4 irreversible physical brain damage or deterioration to the extent that I cannot interact with those around me.

2.4 I intend that my family, my physicians and their medical assistants, my clergyman, my lawyer, and any medical facility caring for me and its personnel, cooperate with me and with each other in carrying out my directions and in allowing me to die with dignity. I have executed the Directive to Physicians and this Supplement in part to relieve them all of any feelings of guilt or of responsibility for my death that they might otherwise have.

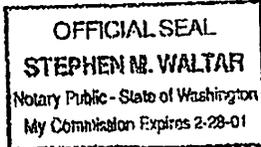
2.5 This Directive to Physicians and Supplement supersedes all prior "Living Wills" or similar instruments I may have signed, and I hereby revoke such prior instruments. It is my wish that every part of this directive be fully implemented. If for any reason any part is held invalid it is my wish that the remainder of my directive be implemented.

*Bernadyne E. Jacoby*  
BERNADYNE E. JACOBY

STATE OF WASHINGTON; County of King; ss.

On this day personally appeared before me BERNADYNE E. JACOBY, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that it was signed as a free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal December 2, 1999.



*Stephen M. Waltar*  
NOTARY PUBLIC: Stephen M. Waltar  
State of Washington, residing in Kirkland  
My appointment expires 2-28-01

WITNESS DECLARATION

Each of the undersigned witnesses declare the following:

I personally know the above Declarer and believe the Declarer to be of sound mind. I am not related to the Declarer by blood or marriage and am not to my knowledge entitled to receive any portion of the Declarer's estate upon the Declarer's death under the Declarer's will, and codicil thereto or by operation of law. I am not an attending physician nor an employee or the attending physician of the Declarer, nor am I an employee of any health facility in which the Declarer is a patient. I have no claim against the Declarer.

The Declarer signed this directive in my presence and in the presence of the other witness on December 2, 1999.

*Dana A. Almborg*  
DANA A. ALMBERG  
2800 South 192nd  
Seattle, WA 98188

*Anneke L. Lee*  
ANNEKE L. LEE  
2800 South 192nd  
Seattle, WA 98188

Filed for Record at the Request of

Name \_\_\_\_\_

Address \_\_\_\_\_

### DURABLE GENERAL POWER OF ATTORNEY

A. Designation: I, BERNADYNE ELEANOR JACOBY, of Auburn, State of Washington, County of King, do hereby constitute and appoint my son, RANDAL L. JACOBY, born October 9, 1954, to be my true and lawful attorney with full power in my name and stead and on my behalf, and with full power to substitute at any time or times, for any of the purposes described below, one or more attorneys, and to revoke the appointment of any attorney so substituted.

B. Purpose: The primary purpose in granting this Durable General Power of Attorney is to provide for my needs now and should I become incompetent. As such, my attorney-in-fact shall have all powers as are necessary or desirable to provide for my support, maintenance, health, emergencies and urgent necessities.

C. Powers: My attorney-in-fact, as fiduciary, shall have the following powers:

1. To manage my affairs, handle my investments, and take any actions necessary or desirable in connection with any financial institution in which I have an account or an interest in an account, including, without limitation, the power to continue, modify, or terminate existing accounts; open new accounts; draw, endorse, and deposit checks, drafts, and other negotiable instruments; prepare, receive, and deliver financial statements; establish, maintain, or close safe deposit boxes; borrow money; apply for and receive travelers checks and letters of credit; extend payment periods with respect to commercial paper; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this paragraph, the term "financial institution" includes, but is not limited to, banks, trust companies, savings banks, commercial banks, building and loan associations, savings and loan companies or associations, credit unions, industrial loan companies, thrift companies, and brokerage firms;

2. To take any action necessary or desirable with respect to any securities that I own including, without limitation, the power to purchase and sell securities; exercise voting rights with respect to securities; collect dividends, interest, and any other proceeds generated by securities; transfer title to securities; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this paragraph, the term "securities" includes stocks, bonds, mutual funds, and all other types of securities and financial instruments, except commodity futures contracts and call and put options on stocks and stock indexes, except with respect to the exercise of employee stock options;

3. To endorse and deliver certificates for transfer of bonds or other securities to be sold for my account and receive the proceeds of such sale;
4. To take any actions necessary or desirable for the management or maintenance of any real or personal property in which I own an interest when this Power is executed, or in which I later acquire an interest, including the power to acquire, sell, and convey ownership of property; control the manner in which property is managed, maintained, and used; change the form of title in which property is held; satisfy and grant security interests and other encumbrances on property; obtain and make claims on insurance policies covering risks of loss or damage to property; accept or remove tenants; collect proceeds generated by property; ensure that any needed repairs are made to property; exercise rights of participation in real estate syndicates or other real estate ventures; make improvements to property; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;
5. To sign, execute, acknowledge and deliver on my behalf any deed of transfer or conveyance covering personal property or real estate wherever situated (including transfer or conveyances to any trust established by me or for my benefit), any discharge or release of mortgage held by me on real estate or any other instrument in writing;
6. To negotiate and execute leases of any property, real or personal, which I may own, for terms that may extend beyond the duration of this power and to provide for the proper care and maintenance of such property and pay expenses incurred in connection therewith;
7. To subdivide, partition, improve, alter, repair, adjust boundaries of, manage, maintain and otherwise deal with any real estate, whether held as trust property or not, including power to demolish any building in whole or in part and to erect buildings;
8. To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
9. To hold securities in bearer form or in the name of a nominee or nominees and to hold real estate in the name of a nominee or nominees;
10. To take any actions necessary or participate in the operation of any business venture, including, without limitation, the power to execute and enforce my obligations and rights as a partner in any general or limited partnership to the extent permitted by law and any applicable partnership agreement; enforce my rights as the holder of a bond or similar instrument issued by any business in which I have an interest; discharge my duties and enforce my rights in any sole proprietorship; expand, recapitalize, or reorganize any business to the extent my interest in that business allows; collect proceeds generated by any business in which I have an interest and to which I am entitled; sell or liquidate my

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interest in a business; and perform any other enterprise acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

11. To borrow money from time to time in my name, and to give promissory notes or other obligations therefore, and to deposit as collateral, pledge as security for the payment thereof or mortgage any or all my securities or other property of whatever nature;

12. To have access to any and all safe deposit boxes of which I am now or may become possessed, and to remove therefrom any securities, papers or other articles;

13. To make and sign all tax returns, and pay all taxes required by law, including federal and state returns, and to file all claims for abatement, refund or other papers relating thereto;

14. To demand, collect, receive and receipt for any money, debts, or property of any kind, now or hereafter payable, due or deliverable to me, to pay or contest claims against me, to settle claims by compromise, arbitration or otherwise and to release claims;

15. To take any actions necessary or desirable with respect to any claim that I may have or that has been asserted against me and with respect to any legal proceeding, including, without limitation, the power to institute, prosecute, and defend legal proceedings and claims on my behalf; file actions to determine adverse claims, intervene in litigation, and act as amicus curiae in any proceedings affecting my interests; seek preliminary, provisional, or intermediate relief on my behalf; apply for the enforcement or satisfaction of judgments that have been rendered in my favor; participate fully in the development of claims and proceedings; submit any dispute in which I have an interest to arbitration; submit and accept settlement offers and participate in settlement negotiations; handle all procedural aspects, such as service of process, filing of appeals, stipulations, verifications, waivers, and all other matters in any way affecting the process of any claim or litigation; fully participate in any voluntary or involuntary bankruptcy proceeding involving me or in which I am a claimant; satisfy judgments that have been rendered against me; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

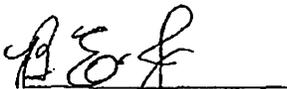
16. To employ as investment counsel, custodians, brokers, accountants, appraisers, attorneys-at-law or other agents such persons, firms or organizations, including any of my said attorneys and any firm of which my said attorney may be a member or employee, as deemed necessary or desirable, and to pay such persons, firms or organizations such compensation as is deemed reasonable and to determine whether or not to act upon the advice of any such agent without liability for acting or failing to act thereon;

17. To expend or distribute income or principal of my estate for the support, education, care or benefit of me and my dependents;

*B. E. S.*

18. To renounce and disclaim any interest otherwise passing to me by testate or intestate succession or by inter vivos transfer;
19. To transfer any interest in any property I may have to the trustees of the most recent revocable living trust I have executed;
20. To surrender life insurance and annuity policies for their cash value;
21. To take any actions with respect to any insurance or annuity contracts, including, without limitation, the power to acquire additional insurance coverage of any type or additional annuities; continue existing insurance or annuity contracts; agree to modifications in the terms of insurance or annuity contracts in which I have an interest; borrow against insurance or annuity contracts in which I have an interest, to the extent allowed under the contract terms; change beneficiaries under existing contracts and name beneficiaries under new contracts to name my spouse or children as the beneficiaries; receive dividends, proceeds, and other benefits generated by the contracts; transfer interests in insurance or annuity contracts to the extent permitted under the terms of those contracts; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;
22. To take any actions necessary or desirable in order to effectively conduct my personal affairs and to discharge any and all obligations I may owe to myself and to family members and other third persons who are customarily or legally entitled to my support when this Power is executed, or that are undertaken thereafter, including, without limitation, the power to take steps to ensure that our customary standard of living is maintained; arrange for medical and dental care; continue existing charge accounts, open new charge accounts, and make payments thereon; provide for transportation; maintain correspondence; prepare, maintain, and preserve personal records and documents; maintain membership in any social, religious, or professional organization and make contributions thereto; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;
23. I hereby designate that my son, RANDAL L. JACOBY, shall be named as guardian of my person and of my estate in the event such necessity should arise; and
24. To make any gifts of property owned by the principal.

D. Transfer of Assets: My attorney-in-fact shall have the authority to transfer all of my property to my spouse or child(ren) (even if my spouse or child(ren) are acting as my attorney-in-fact) or to revoke any existing community property agreement, for the purpose of qualifying me for medical assistance or the limited casualty program for the medically needy as permitted by law, or to better utilize estate tax planning strategies.



E. Taxes: My attorney-in-fact shall have the authority to represent the Principal in all tax matters; to prepare, amend, sign, and file federal, state, and local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns, claims for refunds, abatement, requests for extensions of time to file returns and/or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies of courts, including the tax court, regarding tax matters, and any and all other tax-related documents, including but not limited to consents and agreements under Section 2032A of the Internal Revenue code of 1986, as amended ("Code"), and consents to split gifts, closing agreements, and any Power of Attorney form required by the Internal Revenue Service and any state and local taxing authority with respect to any tax year between the years 1983 and 2025; to pay taxes due, collect and make such disposition of refunds as the attorney-in-fact shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service and any state and local taxing authority; to exercise any elections the Principal may have under federal, state or local tax law; to allocate any generation-skipping tax exemption to which the Principal is entitled; and generally to represent the Principal or obtain professional representation for the Principal in all tax matters and proceedings of all kinds and for all periods between the years 1983 and 2025 before all officers of the Internal Revenue Service and state and local authorities and in any and all courts; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent and assist the Principal in connection with any and all tax matters involving or in any way related to the principal or any property in which the Principal has or may have an interest or responsibility.

F. Reliance Upon This Document: My attorney-in-fact and any person dealing with the attorney-in-fact shall be entitled to rely upon this Power of Attorney so long as such party has not received actual or constructive knowledge or notice of revocation, suspension or termination of the Power of Attorney by death or otherwise. Any action so taken in good faith unless otherwise invalid or unenforceable shall be binding on my heirs, legatees, devisees and personal representatives. I, and my estate, shall hold harmless and indemnify my attorney-in-fact from any and all liability for acts done by my attorney-in-fact in good faith.

1. The length of time which has elapsed from the date of execution of this Power of Attorney shall not prevent a party from reasonably relying on this Power of Attorney.
2. Any person may place reasonable reliance on this Power of Attorney regardless of whether it has been filed for record.
3. I hereby release and agree to indemnify and hold harmless from liability or damages of any kind, including attorney fees and litigation expenses incurred, suffered by any party, including, without limitation, a title insurance or other insurance company, a financial institution, or securities brokerage, which acts in reliance upon this Durable General Power of Attorney (unless revoked as specified herein) with respect to any transaction authorized by me in this Durable General Power of Attorney.

  
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G. Power to Sue Third Parties Who Fail to Act Pursuant to Power of Attorney: If any third party (including stock transfer agents, title insurance companies, banks, credit unions, and savings and loan associations) with whom my attorney-in-fact seeks to transact refuses to recognize my attorney-in-fact's authority to act on my behalf pursuant to this Power of Attorney, I authorize my attorney-in-fact to sue and recover from such third party all resulting damages, costs, expenses, and attorney's fees incurred because of such failure to act. The costs, expenses, and attorney's fees incurred in bringing such action shall be charged against my general assets, to the extent that they are not recovered from said third party.

H. General: In general I give to my said attorney full power to act in the management and disposition of all my estate, affairs and property of every kind and wherever situated in such manner and with such authority as I myself might exercise if personally present, including transfer of any or all of my assets into my said attorney's name.

I. Binding Authority: This Power of Attorney shall be binding on me and my heirs, executors and administrators and shall remain in force up to the time of my signing a revocation of this Power of Attorney or upon my death.

J. Revocation: This Power of Attorney shall be subject to revocation by the principal by written instrument at any time. Any such revocation shall be effective only upon recording of the written instrument of revocation in the records of the County Recorders office for the principal's county of residence. Until revoked in accordance with the above-mentioned procedure, this Durable General Power of Attorney shall continue to be in effect.

K. Termination.

1. By Guardian of Estate. The appointment of a guardian of the estate of the principal vests in the guardian, with court approval, the power to revoke, suspend or terminate this power of attorney. The appointment of a guardian of the person only does not empower the guardian to revoke, suspend or terminate this power of attorney.

2. By Death of Principal. The death of the principal shall be deemed to revoke this power of attorney upon actual knowledge or actual notice being received by the attorney-in-fact.

L. Governing Law: The laws of the State of Washington shall govern this Power of Attorney.

M. Alternate Attorney. In the event my son, RANDAL L. JACOBY, is unable or unwilling to serve as my attorney-in-fact, I appoint MARIE JURLIN, of Gig Harbor, Washington, as my alternate attorney-in-fact.

  
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DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT.

I, BERNADYNE ELEANOR JACOBY, (or "Principal") hereby appoint my son, RANDAL L. JACOBY, born October 9, 1954, as my attorney-in-fact ("Agent") to make health and personal care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY.

By this document I intend to create a durable power of attorney effective upon, and only during, any period of incapacity in which, in the opinion of my Agent and attending physician, I am unable to make or communicate a choice regarding a particular health care decision.

3. AGENT'S POWERS.

I grant to my Agent full authority to make decisions for me regarding my health care. In exercising this authority, my Agent shall follow my desires as stated in this document or otherwise known to my Agent. In making any decisions, my Agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my Agent cannot determine the choice I would want made, then my Agent shall make a choice for me based upon what my Agent believe to be in my best interests. My Agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below. Accordingly, unless specifically limited by Section 4, below, my Agent is authorized as follows:

- A. To provide informed consent for health care decisions on my behalf;
- B. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including (but not limited to) artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;
- C. To have access to medical records and information to the same extent that I am entitled to, including the right to disclose the contents to others. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164;
- D. To authorize my admission to or discharge (even against medical advice) from any hospital, nursing home, residential care, assisted living or similar facility or service;
- E. To contract on my behalf for any health care related service or facility for my benefit, without my Agent incurring personal financial liability for such contracts;

Durable Power of Attorney for Health Care  
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F. To hire and fire medical, social service, and other support personnel responsible for my care;

G. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of (but not intentionally cause) my death;

H. To make anatomical gifts of part or all of my body for medical purposes, authorize an autopsy, and direct the disposition of my remains, to the extent permitted by law;

I. To take any other action necessary to do what I authorize here, including (but not limited to) granting any waiver or release from liability required by any hospital, physician, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my Agent, or to seek actual or punitive damages for the failure to comply.

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.

A. The powers granted above do not include the following powers or are subject to the following rules or limitations:

I hereby exclude Sharda Bowen. I hereby exclude my son, Gary A. Jacoby, whose current city and state is Oceanside, California, from taking any action otherwise authorized by my Agent pursuant to Paragraph 3, or from making decisions for me regarding my health care.

B. With respect to any life-sustaining treatment, I specifically direct my Agent to follow any Directive to Physicians "Living Will" or other health care declaration executed by me.

C. With respect to nutrition and hydration provided by means of a nasogastric tube, enteric tubes or tube into the stomach, intestines, or veins, I wish to make clear that I intend to include these procedures among the "life-sustaining treatment" that may be withheld or withdrawn under the conditions given above.

5. SUCCESSORS.

If my Agent named by me shall die, become legally disabled, resign, refuse to act, be unavailable, or (if any Agent is my spouse) be legally separated or divorced from me, I name the following (each to act alone and successively, in the order named) as successors to my Agent.

Durable Power of Attorney for Health Care  
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1. Marie Jurlin of Gig Harbor

2. Camille Hutchinson

A. Alternate Agent: The survivor of my Agent shall continue to serve.

6. PROTECTION OF THIRD PARTIES WHO RELY ON MY AGENT.

No person who relies in good faith upon any representations by my Agent or Successor Agent shall be liable to me, my estate, my heirs or assigns, for recognizing the Agent's authority.

7. ADMINISTRATIVE PROVISIONS.

A. I revoke any prior power of attorney for health care.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

C. My Agent shall not be entitled to compensation for services performed under this power of attorney, but he or she shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this power of attorney.

D. The powers delegated under this power of attorney are separable, so that the invalidity of one or more powers shall not affect any others.

E. Unless otherwise indicated, the powers, duties and transactions may only be exercised by the act and signatures of my attorney.

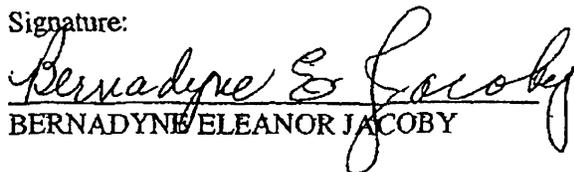
BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Durable Power of Attorney for Health Care on

9/14/06

My current home address is:  
31308 47th Avenue South  
Auburn, WA 98001

Signature:

  
BERNADYNE ELEANOR JACOBY



FILED  
COURT OF APPEALS  
DIVISION II

09 FEB 26 PM 4: 05

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

**In the Court of Appeals for the State of Washington  
Division II**

**In re Guardianship of  
BERNADYNE E. JACOBY,  
an incapacitated person.**

**No. 38301-2-II  
Proof of Service of  
Appellant's Opening Brief**

I declare under penalty of perjury under Washington state law that on February 26, 2009, I mailed by USPS first class mail copies of the Appellant's Opening Brief (filed today) and this Proof of Service to the following persons at the following addresses:

David B. Petrich, Attorney  
Eisenhower & Carlson, PLLC  
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Gig Harbor, WA 98335

Gary Jacoby  
3655 Harvard Drive  
Oceanside, CA 92056

Camille M. Hutchison  
4804 70th Ave. NW  
Gig Harbor, WA 98335

Carol Teodoro  
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Gig Harbor, WA 98335

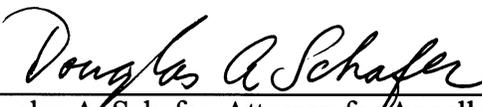
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Seattle, WA 98146-1270

Sharda Bowen  
7731 38th Ave. SW  
Seattle, WA 98126

February 26, 2009

  
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Douglas A. Schafer, Attorney for Appellant.  
WSBA No. 8652