

NO. 41537-2 –II (cons.)
NO. 41547-0-II

COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

FILED
NOV 17 2010
BY 

In re: the Matter of CAROLYN K. PLOTKE
YVONNE POLKOW, Guardian
Respondent

LEO K. PLOTKE
Appellant

In re: the Guardianship of CAROLYN K. PLOTKE
YVONNE POLKOW, Guardian
Respondent

LEO K. PLOTKE
Appellant

Appeal from
Clark County Superior Court
Case Nos: 08-2-04996-9
09-4-00624-8

APPELLANT'S REPLY BRIEF

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Washington Statutes

RCW 11.88.120

RCW 11.88.05

I. ARGUMENT

A. STANDARD OF REVIEW.

Pursuant to RAP 10.3 (b) Brief of Respondent,

“the brief of respondent should conform to section (a) and answer the brief of appellant or petitioner.....” RAP 10.3, Appendix A

Appellant’s brief does not raise the issue of standard of review. Likewise RAP 10.3 (a) does not list standard of review as a section that should be contained within the Appellant’s brief.

This argument of the Respondent is irrelevant and should be disregarded.

B. RESPONDENT IS NOT ENTITLED TO ANOTHER HEARING UNDER THE VUNERABLE ADULT PROTECTION (ACT).

Respondent argues that Mr. Plotke received a full evidentiary hearing on August 15, 2008 and cites RP 1-44, (the entire transcript of the hearing), in support of her contention. However, the record when taken as a whole clearly demonstrates the Court’s reluctance to allow Mr. Plotke to testify on his own behalf during the hearing.

At the conclusion of the hearing the Court clearly indicated that additional proceedings were anticipated wherein the court speaking to Mr. Plotke’s court appointed attorney, Mr. Anderson states,

“You need to stay in touch with your office and you

might want to chat with him about whether or not he wants to testify in these proceedings.”
RP, page 43, lines 13-14

The Petitioner’s attorney Mr. Senescu likewise expresses the opinion that there will likely be further proceedings, when he comments:

“I guess he can – well anybody – any party cite this back to review and just to provide more testimony.”
RP, page 43, lines 16-17.

A review of the entire hearing of August 15, 2008 will demonstrate that the hearing was flawed by confusion created by the Court for the Defendants as to their standing as civil versus criminal defendants and although a permanent order was entered, the Court also indicated that there was the potential for “(the defendant) to testify in these proceedings” RP, page 43, line 144.

It is disingenuous for Respondent to claim that Mr. Plotke had the opportunity to present evidence at the hearing on August 15, 2008 when he was given to believe that he should remain silent and not testify.

The Respondent argues that “the court is aware, an individual is not entitled to an attorney in a civil matter”. Page 7, line 17-18 Respondent’s Brief.

The Appellant argues in response that it is axiomatic that citizens have a right to retain an attorney of their choice in civil or criminal matters. The Court should have indicated to Mr. Plotke that he was not required to represent himself

and could hire an attorney to represent him in the civil matter at hand. Instead, the record indicates that Mr. Plotke believed he was a defendant in a criminal proceeding, as indicated in RP, page 1, line 20-page 2, line 2 as follows:

Judge: Okay. And so you under – have a seat. You understand what was happening today? LP: Well I have to appear in court to find out – because they’re accusing me of Criminal Neglect for my wife. Judge: Okay. So you understand that – that we’re here on a hearing on whether or not I’m going to enter a more permanent Order with regard to you rif – wife? LP: Yes Ma’am.

In summary, when taken as a whole the record of August 15, 2008 demonstrates a flawed hearing and one in which even the Court indicated further testimony would possibly be forthcoming. The Respondent’s argument that Mr. Plotke received a full evidentiary hearing on August 15, 2008 is not supported by the record and should be disregarded by the Court.

C. MR PLOTKE HAD THE HEARING REQUIRED BY THE ABUSE OF VULNERABLE ADULT PROTECTION ACT.

In this section of her argument the Respondent states on page 8, lines 13-17 that,

“...(Mr. Plotke’s) decision to remain silent, not to call witnesses and not to present evidence on his own behalf were decisions made by Mr. Plotke and no one else. Therefore, Mr. Plotke elected not to present a defense at the hearing required under the Abuse of Vulnerable Adult Protection act and is not entitled to another hearing.

In response the Appellant refers the court to the response in section A. above and would add only that even if the hearing on August 15, 2008 constituted a fair and impartial hearing, the trial Court subsequently ruled on July 1, 2009 that Mr. Plotke could schedule a hearing on his motion to terminate the VAPO, as soon as he placed \$20,000.00 into Ms. Greenen's trust account. ORDER RE: EVIDENTIARY HEARING, reads as follows:

II. Order: 1. Respondent Leo A. Plotke shall tender to Ms. Greenen's trust account the sum of \$20,000.00 to be placed in Ms. Greenen's trust account. Such funds shall be used to pay attorneys' fees incurred by the guardian and by the petitioner for the Vulnerable Adult Protective Order in defending Mr. Plotke's motion to terminate the Vulnerable Adult Protective Order. 2. Attorney for the Respondent Leo A. Plotke will present proof of tender with the Note to Set for Trial that Respondent Leo A. Plotke will be providing to the court's legal assistant Dayle Rae. Ms. Rae will thereafter set this matter for trial, which is estimated by the Attorney for the Guardian to be of two (2) days duration. CP 35, page 270, Appendix B

As noted by the specifics of the order above, even the Guardian acknowledged that Mr. Plotke had a right to have an evidentiary hearing in the matter of the VAPO and did not want to risk defending against him without a guarantee of pre-paid attorney fees.

Respondent's argument that Mr. Plotke had an evidentiary hearing on

August 15, 2008 is significantly undercut by the Court's Order of July 1, 2009 granting Mr. Plotke a hearing on his motion to terminate VAPO upon the tender of attorney fees to opposing counsel.

Mr. Plotke did not have a fair, impartial evidentiary hearing on August 15, 2008; Respondent's arguments to the contrary are not supported by the record and should be disregarded by the Court.

D. THE TRIAL COURT'S ORDER DENYING MR. PLOTKE A HEARING DOES NOT VIOLATE RCW 74.34.110, *et. seq.*

In this argument the Respondent again argues that Mr. Plotke had an evidentiary hearing on August 15, 2008 and therefore the Court was correct in denying his motion for evidentiary hearing entered on November 17, 2010. The Respondent again fails to mention or to explain that the Court had already entered an Order allowing for an evidentiary hearing on July 1, 2009, requiring only that Mr. Plotke pre pay attorney fees for opposing counsel. Again Respondent's argument fails because the Court acknowledged by the July 1, 2009 order that Mr. Plotke had a right to a hearing.

However, Mr. Plotke did not tender \$20,000.00 to Ms. Greenen as a result of the July 1, 2009 order because Mr. Plotke alleges that his right to a hearing was fatally compromised by the section in the Court's order requiring him to pre pay opposing counsel's attorney fees. Mr. Plotke delineates his objection to this

aspect of the Court's July 1, 2009 Order in RESPONDENT PLOTKE'S MOTION TO TERMINATE ORDER FOR PROTECTION-VULNERABLE ADULT (PTMD), filed October 29, 2010, as follows:

Respondent Leo Plotke respectfully moves the Court to enter an order terminating the terms and conditions of the Order for Protection filed on August 15, 2008 and modified October 9, 2009 and July 7, 2010.

This motion is based on new evidence in this matter which shows that an ongoing protection order is unnecessary and unwarranted; to wit, on January 8, 2010 the Department of Social and Health Services modified their previous finding of neglect to a finding of inconclusive as to both Respondents herein.

The Vulnerable Adult Protection Order was previously modified as to Respondent Plotke on October 9, 2009 wherein Respondent Plotke was allowed contact with the Vulnerable Adult and was modified as to Respondent Vanderpool on July 7, 2010 wherein Respondent Vanderpool was granted unsupervised visitation between Respondent Vanderpool and the vulnerable adult.

These modifications combined with the new evidence of the revised finding from the Department of Social and Health Services in this matter render the Vulnerable Protection Order unnecessary and unwarranted.

In the alternative, Respondent Plotke requests that the Court re-open the record in this matter and schedule a date for a hearing where the Respondents herein can provide additional evidence and

testimony.

In the event that this Court denies Respondent's motion to vacate but does elect to re=open this matter, Respondent Leo Plotke, pursuant to CR60 (5) requests that this court vacate its ORDER RE: EVIDENTIARY HEARING of July 1, 2009 on the basis that said order violates his due process rights and right to a fair hearing and is thereby void.....CP 60, page 366, Appendix C

E. THE TRAIL COURT PROVIDED MR. PLOTKE WITH DUE PROCESS IN A FAIR AND IMPARTIAL EVIDENTIARY HEARING.

Although the Respondent claims that Mr. Plotke is basing his claim for bias on the fact that the Court consistently and without exception ruled against him on every motion, Mr. Plotke does not cite those facts as evidence of bias. It is axiomatic that simply holding against a litigant is not grounds to claim bias.

However there is at least one instance in this matter where the Appellant can point to a negative ruling as evidence of bias.

On July 6, 2009, Mr. Plotke's attorney served upon Ms. Greenen attorney for the Guardian, based upon Ms. Greenen's specific request, NOTICE OF SERVICE CR 30 for deposition of Carolyn Plotke in **Administrative Court Docket No. 03-2009-L0919, Client ID # 85616**. See Appendix D, NOTICE OF DEPOSITION and CP, 95 also Appendix E NOTICE OF SERVICE

Apparently in anticipation of being served said notice, the Guardian set on short notice for July 6, 2009 her MOTION TO ENFORCE PROTECTIVE

ORDER, CP 40; page 291 Appendix F. In this Motion the Guardian sought and received an order from the trial Court to extend the protective orders in place in Clark County Superior Court Case No. 08-2-04996-9 and 08-4-00624-8 to include the Administrative Court Case Docket No. 03-2009-L09191 Client ID # 85616. (The Protective Order referred to was entered April 22, 2009, quashing Mr. Plotke's discovery requests in the VAPO action CP 23, page 84).

Over Mr. Plotke's vigorous objection, including briefing on the Court's lack of jurisdiction in the Administrative Court matter, see CP 94, page 786 Appendix G, RESPONSE TO MOTION TO ENFORCE PROTECTIVE ORDER AND MOTION TO DISMISS AND MOTION FOR SANCTIONS, the Court overreached its jurisdiction and entered ORDER ENFORCING PROTECTIVE ORDER, CP 41, page 299 Appendix H.

When Mr. Plotke's attorney did not immediately acquiesce to Ms. Greenen's demand that the deposition set in the Administrative Court matter be cancelled, on July 8, 2009 the Guardian filed MOTION & DECLARATION FOR ORDER RE: CONTEMPT asking the Court to find Mr. Plotke **and his attorney** in contempt for failing to abide by the July 6, 2009 order. See CP 45 page 309 Appendix J.

Hearing on the matter of contempt was held on July 10, 2009. Mr. Plotke's attorney Ms. Grubbs appeared presented Notice of Appearance of

Christopher Hardman to represent Mr. Plotke and his attorney Ms. Grubbs because they were both named in Ms. Greenen's motion and requested a continuance based upon Mr. Hardman's unavailability.

Rather than grant a continuance the Court entered into dialogue with Ms. Greenen and Ms. Grubbs and when Ms. Grubbs opined that the deposition set for July 13, 2009 had been cancelled, entered ORDER ON CONTEMPT RESTATING AND CLARIFYING ORDER ENFORCING PROTECTION ORDER DATED JULY 6, 2009. See RP page 250, line 14- page 256, line 1 and CP 52, page 333 Appendix J.

It is clear that the record shows that Mr. Plotke did not agree with the Court's negative ruling against him and he (and his attorney) were shaken by the potential that the Court would find them in contempt. It is also clear that Mr. Plotke was aware of his right to appeal at this juncture in the case and so the Respondent could argue that because he did not appeal he cannot now claim this set of motions and rulings as evidence of bias on the part of the trial court.

Mr. Plotke is however asking this Court to recognize that based on the outcome of the series of motions noted above, the willingness of the Court to exceed its authority and the potential that Mr. Plotke as well as his attorney could be held in contempt for continuing to raise objection to the ruling, Mr. Plotke had concluded with certainty that the trial Court was biased against him.

However his decision not to appeal was based not so much in his conviction that an appeal would garner little in the way of addressing the Court's bias, but in the very practical necessity to pursue his right to hearing in the Administrative Court case.

The Administrative case set on Mr. Plotke's request to dispute the finding of neglect by DSHS was scheduled to be heard on July 27, 2009. Because the Superior Court had thwarted his discovery undertaking by cutting off access to deposition of Mrs. Plotke, he asked for and received a continuance in the Administrative hearing. See NOTICE OF CONTINUANCE, Appendix K and NOTICE OF CONTINUANCE Appendix L (the second continuance was at the request of the attorney for DSHS).

On January 8, 2010 the Department of Social and Health Services issued correspondence which reads in part:

"Based upon newly discovered information, the finding of neglect shall be modified to inconclusive in DSHS's records. Appendix M.

As a result the hearing set for February 8-12, 2010 to dispute the finding of neglect was dismissed. Appendix N.

In summary, although contrary to the Guardian's allegation, Mr. Plotke did not argue that the Court was bias because all the rulings were against him. He does argue however, that the particular negative ruling above demonstrates bias

because the trial Court reached outside its jurisdiction and made an extraordinary effort to rule against him and to thwart his ability to defend in an administrative hearing outside the jurisdiction of the Superior Court.

F. MR. PLOTKE HAD THE REQUIRED HEARING UNDER RCE 7.21.030 AND IS NOT ENTITLED TO A SECOND HEARING.

The Guardian argues that Mr. Plotke had a hearing under 7.21.030, but does not correctly relate the history of litigation in this matter.

On September 30, 2010 Ms. Greenen filed a Motion to Show Cause; hearing was special set on short notice for October 6, 2010. CP 131, page 977.

On October 6, 2010 Mr. Plotke's motion for continuance was denied and the trial Court proceeded to hear evidence and make a ruling based solely on the Guardian's pleadings and argument from the Guardian's attorney. RP page 261-page line 9 –page 268, line 13. CP 138 page 997.

The Court, over the objection of Mr. Plotke's attorney, heard evidence and entered an order even though Mr. Plotke had no opportunity to defend the Guardian's allegations.

The hearing on October 6, 2010 does not constitute a fair hearing under RCW 7.21.030.

The Guardian argues that the trial Court's Order of October 6, 2010 granted a continuance. The Guardian argument is inaccurate. The Order of

October 6, 2010 found that Mr. Plotke “failed to comply” and basically he was given until October 15, 2010 to purge the contempt. RP page 267, lines 5-12.

The Guardian argues that Mr. Plotke had an opportunity to present evidence at three different hearings, but this is not substantiated by the record. At no time was Mr. Plotke (through his attorney) allowed to call witnesses or present evidence to support his position that he had in fact complied with the memorandum agreement.

The Guardian argues that Mr. Plotke was given the opportunity to testify at the hearing on November 5, 2010, but the record shows only that the Court on its own imitative solicited sworn testimony from Mr. Plotke. His attorney was never given the opportunity to inquire of Mr. Plotke or the Guardian. Immediately after his testimony, the Court ruled that she had previously found Mr. Plotke in contempt and that he was “going to jail”. RP page 289, line 4-23. This circumstance occurred, after the Court freely admitted to the parties that “I have been on vacation and have not thoroughly reviewed the pleadings” RP page 276, line 15-17. Despite the Respondent’s argument to the contrary, the proceeding held on November 5, 2010 did not constitute a hearing under RCW 7.21.030

In the interest of judicial efficiency Appellant has focused on only two (2) examples of where the record disputes and counters Respondent’s argument. There are many others, and Appellant has fully briefed this issue in Appellant’s

Opening Brief.

The Respondent has failed to demonstrate that Mr. Plotke received a fair hearing; her arguments should be disregarded.

G. A TRIAL COURT'S DENIAL OF A MOTION UNDER RCW 11.88.120 WITHOUT A HEARING DOES NOT REQUIRE WRITTEN FINDINGS THAT THE MOTION IS FRIVOLOUS.

The Guardian argues that a reading of the statute as a whole makes it clear that RCW 11.88.120 (3) applies only to persons who are not represented by an attorney.

The Guardian's argument fails for two reasons.

First, the Guardian wrongly argues that the statute should be read as a whole. However, it is axiomatic that the primary principle of statutory construction, as stated in The State of Washington v. Lewis, 937 P. 2d 1325 (Wash. App .Div. 2 1997) at page 1326, is as follows:

Under the principles of statutory construction, a statute is not subject to judicial interpretation where its language is "plain, unambiguous, and well understood according to its natural and ordinary sense and meaning..." State v. Thorne, 921 P2d 514 (1996)

Second even if as the Guardian argues, section (3) is read as a whole it cannot be regarded as applying only to unrepresented persons. The Guardian does

not cite the entire Section (3) in her brief. In its entirety the section clearly refers to all categories of potential litigants as well as **all counsel of record**. RCW 11.88.120 (3) reads in its entirety as follows:

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, **all counsel of record**, (emphasis added) and any other person entitled to receive notice of proceedings in the matter.

When section (3) of RCW 11.88.120 is read as a whole, the statute clearly lists counsel of record as those intended to be included in the implementation of the procedure defined by the statute.

When reading the statute as a whole or when reading the statute with an

understanding of the clear unambiguous language, it is indisputable that the court is required to approach the dismissal of the application of any person (represented or unrepresented), only if the matter is frivolous and then only with written findings and explanation of why the application or petition was frivolous.

The Appellant argues in Appellant's Opening Brief at page 47, line 18- page 48, line 5 that the statute is unambiguous and in the ordinary course of review the Court does not need to proceed further.

In the interest of justice however, Appellant does at this juncture ask the Court to review RCW 11.88.120 in the context of the legislative intent as proscribed in RCW 11.88.05 which reads as follows:

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

In this case Mr. Plotke's motion was filed in part for the purpose of restoring to Mrs. Plotke, certain of her rights of the person, all of which had been terminated at the time the Guardianship was entered. Mr. Plotke's heartfelt

Declaration reads in part:

4. I am asking the court to order a psychological exam because I believe that my wife's mental status has improved from the time the guardianship was first imposed. I am told by family members that have been allowed to visit her that her long term memory is intact and that her short term memory is only slightly impaired. She recognizes all of her family and she often asks about me. I have not been able to visit her because the guardian has placed a restraining order on me and insists that she will not allow any visitation unless it is supervised. Until about eight (8) months ago my wife regularly initiated telephone calls to me. When the guardian learned of this, and despite my wife's requests and desires, she put a stop to my wife making any outgoing phone calls. I believe there is a basis for a modification of the guardianship and I am asking the court to order an exam by a clinical psychologist so that I can show the court that my wife is capable of making her own social decisions and deciding who should provide her care.

5. I am asking the court to set a hearing for fifteen days after the report from the psychologist and guardian ad litem are filed. Appendix O and CP 140, page 1001, paragraphs 4 and 5.

The Appellant has discredited the Respondent's argument that RCW 11.88.120 does not require the court to find a petitioner's application under 11.88.120 frivolous in order to dismiss said application.

Also Appellant has enhanced his argument that 11.88.120 is clear and

unambiguous by demonstrating that his clear reading of the statute would carry out the legislative intent.

The Court should adopt Appellant's arguments relative to RCW 11.88.120 and grant Appellant's prayer for relief as delineated in Appellants Opening Brief at page 48, lines 6-10.

II. REQUEST FOR ATTORNEY FEES

The Appellant objects to Respondent's request for attorney fees and costs to be awarded to Mrs. Plotke's estate on the basis that Mrs. Plotke's estate should not be charged with the duty to defend an action taken on appeal of an order of the Superior Court which such appeal has no direct bearing on the operation of Mrs. Plotke's person or estate.

III. CONCLUSION

The Appellant has shown that the Guardian's arguments alleging that Mr. Plotke had a fair hearing in the VAPO, that Mr. Plotke had a fair hearing under RCW 7.21.030 and that the Court correctly dismissed his petition under RCW 11.88.120 are not supported by the facts or the law of this case.

The Court should disregard the arguments of the Guardian, adopt the arguments of the Appellant and find in favor of the Appellant, granting the relieve requested in Appellant's Opening Brief at page 48, line 12- page 49, line 7.

Respectfully Submitted this 17th day of September 2011

Dee Ellen Grubbs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September 2011, a copy of the foregoing APPELLANT'S REPLY BRIEF was served by the method indicated below, and addressed to the following:

Jeffrey C. Simpson
Greenen & Greenen, PLLC
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1104 Main Street, Suite 400
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- FIRST-CLASS MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- FAX TRANSMISSION 360-694-1572



Dee Ellen Grubbs
Dee Ellen Grubbs

APPENDIX

APPELLANT'S REPLY BRIEF

- A. Rule 10.3 CONTENT OF BRIEF
- B. ORDER RE: EVIDENTIARY HEARING, July 1, 2009
- C. RESPONDENT PLOTKE'S MOTION TO TERMINATE ORDER FOR PROTECTION – VULNERABLE ADULT (PTMD)
- D. OFFICE OF ADMINISTRATIVE HEARINGS Docket No. 03-2009-L0919, Client ID # 85616, NOTICE OF DEPOSITION, July 6, 2009
- E. OFFICE OF ADMINISTRATIVE HEARINGS Docket No. 03-2009-L0919, Client ID # 85616, NOTICE OF SERVICE, July 6, 2009
- F. MOTION TO ENFORCE PROTECTIVE ORDER
- G. RESPONSE TO MOTION TO ENFORCE PROTECTIVE ORDER AND MOTION TO DISMISS AND MOTION FOR SANCTIONS
- H. ORDER ENFORCING PROTECTIVE ORDER, July 6, 2009
- I. MOTION & DECLARATION FOR ORDER RE: CONTEMPT
- J. ORDER ON CONTEMPT RESTATING AND CLARIFYING ORDER ENFORCING PROTECTIN ORDER DATED JULY 6, 2009
- K. OFFICE OF ADMINISTRATIVE HEARINGS Docket No. 03-2009-L0919, Client ID # 85616, NOTICE OF CONTINUANCE, September 23, 2009
- L. OFFICE OF ADMINISTRATIVE HEARINGS Docket No. 03-2009-L0919, Client ID # 85616, NOTICE OF CONTINUANCE, October 26, 2009
- M. January 8, 2010 Correspondence DEPARTMENT OF SOCIAL AND HEALTH SERVICES
- N. OFFICE OF ADMINISTRATIVE HEARINGS Docket No. 03-2009-L0919, Client ID # 85616, ORDER OF DISMISSAL, January 14, 2010
- O. MOTION/DECLARATION FOR ORDER TO SHOW CAUSE AND ORDER APPOINTING GUARDIAN AD LITEM RCW 11.88.120

APPENDIX A



RULE 10.3
CONTENT OF BRIEF

(a) Brief of Appellant or Petitioner. The brief of the appellant or petitioner should contain under appropriate headings and in the order here indicated:

(1) Title Page. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where cited.

(3) Introduction. A concise introduction. This section is optional. The introduction need not contain citations to the record of authority.

(4) Assignments of Error. A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.

(5) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

(6) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The court ordinarily encourages a concise statement of the standard of review as to each issue.

(7) Conclusion. A short conclusion stating the precise relief sought.

(8) Appendix. An appendix to the brief if deemed appropriate by the party submitting the brief. An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c).

(b) Brief of Respondent. The brief of respondent should conform to section (a) and answer the brief of appellant or petitioner. A statement of the issues and a statement of the case need not be made if respondent is satisfied with the statement in the brief of appellant or petitioner. If a respondent is also seeking review, the brief of respondent must state the assignments of error and the issues pertaining to those assignments of error presented for review by respondent and include argument of those issues.

(c) Reply Brief. A reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed.

(d) [Reserved; see rule 10.10]

' (e) * Amicus Curiae Brief. The brief of amicus curiae should conform to section (a), except assignments of error are not required and the brief should set forth a separate section regarding the identity and interest of amicus and be limited to the issues of concern to amicus. Amicus must review all briefs on file and avoid repetition of matters in other briefs.

(f) Answer to Brief of Amicus Curiae. The brief in answer to a brief of amicus curiae should be limited solely to the new matters raised in the brief of amicus curiae.

(g) Special Provision for Assignments of Error. A separate assignment of error for each instruction which a party contends was improperly given or refused must be included with reference to each instruction or proposed instruction by number. A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.

(h) Assignments of Error on Review of Certain Administrative Orders. In addition to the assignments of error required by rule 10.3(a)(3) and 10.3(g), the brief of an appellant or respondent who is challenging an administrative adjudicative order under RCW 34.05 or a final order under RCW 41.64 shall set forth a separate concise statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error.

[Amended December 5, 2002; September 1, 2006; amended effective September 1, 2010]

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APPENDIX B

SCANNED

FILED

2009 JUL 1 PM 3:17
Sherry W. Parker, Clerk
Clark County

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In Re the Matter of:

Case No: 08-2-04996-9

CAROLYN K. PLOTKE
(DOB: 06/17/1933) A Vulnerable Adult
(Person to be Protected)

ORDER RE: EVIDENTIARY HEARING

LEO A. PLOTKE (DOB: 01/03/1930),
Respondent,

KATHLEEN LAURA VANDERPOOL
(DOB: 04/19/1959), Respondent.

I. Findings

This matter having come before the court on June 19, 2009 on the motion of Co-Respondent's Leo A. Plotke by and through his attorney of record Dee Ellen Grubbs, Attorney & Counselor at Law and Kathleen Laura Vanderpool, by and through her attorney of record Juliet Laycoe, Laycoe & Bogdon PC, to terminate the Vulnerable Adult Protection Order and in the alternative to set an evidentiary hearing.

Co-Respondent's were present as were their respective attorneys. The Guardian of the Person and Estate of the Vulnerable Adult, Yvonne Polkow, was present and appeared through her attorney, Therese Greenen.

The Court considered the pleadings filed and the arguments of counsel and an in court motion by Counsel for the Guardian re: advancement of attorney fees. Therefore, based on the forgoing, with regard to Respondent Leo A. Plotke:

ORDER RE: EVIDENTIARY HEARING

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360-695-5432; facsimile 360-694-5945
deellengrubbs@Comcast.net

II. Order

1 1. Respondent Leo A. Plotke shall tender to Ms. Greenen's trust account the sum of
2 \$20,000.00 to be placed in Ms. Greenen's trust account. Such funds shall be used to
3 pay attorneys' fees incurred by the guardian and by the petitioner for the Vulnerable
4 Adult Protective Order in defending Mr. Plotke's motion to terminate the Vulnerable
5 Adult Protective Order.

6 2. Attorney for the Respondent Leo A. Plotke will present proof of tender with the
7 Note to Set for Trial that Respondent Leo A. Plotke will be providing to the court's legal
8 assistant Dayle Rae. Ms Rae will thereafter set this matter for trial, which is estimated
9 by the Attorney for the Guardian to be of two (2) days duration.

10 Dated this 1 day of July 2009.

11 
12 JUDGE DIANE M. WOOLARD

13 Approved as to form:

Presented by:

14 See Attached
15 Juliet C. Laycoe, WSB#28275
16 Attorney for Kathleen Vanderpool

14 Dee Ellen Grubbs
15 Dee Ellen Grubbs, WSB#26381
16 Attorney for Leo Plotke

17 Consent to entry granted:

18 See Attached
19 Teresa Greenen
20 Attorney for Yvonne Polkow

21 Consent to entry granted:

22 See Attached
23 James Senescu WSBA# 27137
24 Attorney for Petitioner Kevin Harper

25 ORDER RE: EVIDENTIARY HEARING

Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432; facsimile 360-694-5945
deellengrubbs@Comcast.net

II. Order

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5 Adult Protective Order.

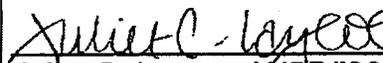
6 2. Attorney for the Respondent Leo A. Plotke will present proof of tender with the
7 Note to Set for Trial that Respondent Leo A. Plotke will be providing to the court's legal
8 assistant Dayle Rae. Ms Rae will thereafter set this matter for trial, which is estimated
9 by the Attorney for the Guardian to be of two (2) days duration.

10 Dated this ____ day of June 2009.

11 _____
JUDGE DIANE M. WOOLARD

12
13 Approved as to form:

Presented by:

14 
15 Juliet C. Laycoe, WSB#28275
Attorney for Kathleen Vanderpool

16 _____
Dee Ellen Grubbs, WSB#26381
Attorney for Leo Plotke

17 Consent to entry granted:

18 _____
19 Teresa Greenen
Attorney for Yvonne Polkow

20 Consent to entry granted:

21 _____
22 James Senescu WSB# 27137
23 Attorney for Petitioner Kevin Harper

24
25 ORDER RE: EVIDENTIARY HEARING

Dee Ellen Grubbs WSB# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432; facsimile 360-694-5945
deeellengrubbs@Comcast.net

II. Order

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9 by the Attorney for the Guardian to be of two (2) days duration.

10 Dated this ____ day of June 2009.

11 _____
12 JUDGE DIANE M. WOOLARD

13 Approved as to form:

Presented by:

14 _____
15 Juliet C. Laycoe, WSB#28275
16 Attorney for Kathleen Vanderpool

Dee Ellen Grubbs, WSB#26381
Attorney for Leo Plotke

17 Consent to entry granted:

18 
19 _____
20 Therese Greenen
21 Attorney for Yvonne Polkow

22 Consent to entry granted:

23 _____
24 James Senescu WSBA# 27137
25 Attorney for Petitioner Kevin Harper

ORDER RE: EVIDENTIARY HEARING

Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432; facsimile 360-694-5945
deellengrubbs@Comcast.net

II. Order

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5 Adult Protective Order.

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7 Note to Set for Trial that Respondent Leo A. Plotke will be providing to the court's legal
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9 by the Attorney for the Guardian to be of two (2) days duration.

10 Dated this ____ day of June 2009.

11 _____
12 JUDGE DIANE M. WOOLARD

13 Approved as to form:

Presented by:

14 _____
15 Juliet C. Laycoe, WSB#28275
16 Attorney for Kathleen Vanderpool

17 _____
18 Dee Ellen Grubbs, WSB#26381
19 Attorney for Leo Plotke

20 Consent to entry granted:

21 _____
22 Therese Greenen
23 Attorney for Yvonne Polkow

24 Consent to entry granted:

25 _____
26 James Senescu WSBA# 27137
27 Attorney for Petitioner Kevin Harper

ORDER RE: EVIDENTIARY HEARING

Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360.896.5432 • facsimile 360.604.5046

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CERTIFICATE OF SERVICE

I served a copy of the foregoing document on the ___ day of July, 2009 by the method and on each attorney or party identified below.

Method of Service

___ by faxing the document to each attorney or party at the fax number stated below.

___ by delivering the document by courier to each attorney or party at the address stated below.

___ by mailing the document by first class mail, postage prepaid, to each attorney or party at the address stated below.

Person or Persons Served

Therese Greenen
Attorney for Yvonne Polkow (Guardian of Carolyn Plotke)
1104 Main Street, Suite 400
Vancouver, WA 98660

James Senescu
Attorney for Petitioner, Detective Kevin Harper
1409 Franklin Street, Suite 207
Vancouver, WA 98660

Sheila Lee
Department of Social and Health Services
Home & Community Services S53-4
5411 E. Mill Plain Blvd, Suite 25
Vancouver, WA 98661

Juliet Laycoe
Laycoe & Bogdon
1112 Daniels Street, Suite 100
Vancouver, WA 98660

Clark County Prosecuting Attorney's Office
1013 Franklin Street
P.O. Box 5000/98666-5000
Vancouver, WA 98660

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct on _____, 2009 at Vancouver, Washington.


Dee Ellen Grubbs

ORDER RE: EVIDENTIARY HEARING

**Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432; facsimile 360-694-5945
deeellengrubbs@Comcast.net**

APPENDIX C

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FILED
2010 OCT 29 PM 2:53
Sherry W. Parker, Clerk
Clark County

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In Re the Matter of:

Case No: 08-2-04996-9

CAROLYN K. PLOTKE
(DOB: 06/17/1933) A Vulnerable Adult
(Person to be Protected)

RESPONDENT PLOTKE'S MOTION TO
TERMINATE ORDER FOR PROTECTION -
VULNERABLE ADULT (PTMD)

LEO K. PLOTKE (DOB: 01/03/1930),
Respondent,

KATHLEEN LAURA VANDERPOOL
(DOB: 04/19/1959), Respondent.

Respondent Leo Plotke respectfully moves the Court to enter an order **terminating** the terms and conditions of the Order for Protection filed on August 15, 2008 and modified October 9, 2009 and July 7, 2010.

This motion is based on new evidence in this matter which shows that an ongoing protection order is unnecessary and unwarranted; to wit, on January 8, 2010 the Department of Social and Health Services modified their previous finding of neglect to a finding of inconclusive as to both Respondents herein.

The Vulnerable Adult Protection Order was previously modified as to Respondent Plotke on October 9, 2009 wherein Respondent Plotke was allowed contact with the Vulnerable Adult

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ORIGINAL

1 and was modified as to Respondent Vanderpool on July 7, 2010 wherein Respondent Vanderpool
2 was granted unsupervised visitation between Respondent Vanderpool and the vulnerable adult.

3 These modifications combined with the new evidence of the revised finding from the
4 Department of Social and Health Services in this matter render the Vulnerable Protection Order
5 unnecessary and unwarranted.

6 In the alternative, Respondent Plotke requests that the Court re-open the record in this
7 matter and schedule a date for a hearing where the Respondents herein can provide additional
8 evidence and testimony.

9 In the event that this Court denies Respondent's motion to vacate but does elect to re-
10 open this matter, Respondent Leo Plotke, pursuant to CR60(5) requests that this court vacate its
11 ORDER RE: EVIDENTIARY HEARING of July 1, 2009 on the basis that said order violates his
12 due process rights and right to a fair hearing and is thereby void.

13 Therefore Respondent Plotke requests an order terminating the Vulnerable Adult
14 Protection Order of August 15, 2008 or in the alternative

15 Respondent Plotke requests a hearing on the merits and

16 Respondent Plotke requests that the court vacate its ORDER RE: EVIDENTIARY
17 HEARING of July 1, 2009.

18 This motion is supported by the evidence of the action of the Department of Social and
19 Health Services attached hereto as Exhibit A and the documents and pleadings of record herein.

20
21 Dated this 29th day of October 2010

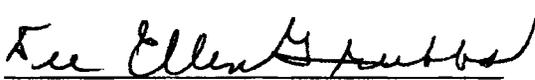
22 
23 Dee Ellen Grubbs, WSBA#26381
24 Attorney for Leo Plotke

EXHIBIT A



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
6737 Capital Boulevard PO Box 45610
Tumwater Washington, 98504-5610
Certified and Regular Mail

January 8, 2010

Mr. Leo Plotke
c/o Dee Ellen Grubbs
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661

Re: Leo Plotke
Docket No. 03-2009-L-0919

Dear Mr. Plotke:

On February 20, 2009 the Department of Social and Health Services' (DSHS) Adult Protective Services (APS) program sent a letter informing you that an APS investigation had determined that you neglected a vulnerable adult as defined in chapter 74.34 RCW. An amended letter was also sent on December 11, 2009 addressing the same allegation of neglect.

Based on newly discovered information, the finding of neglect shall be modified to inconclusive in DSHS's records.

You do not have a right to request a hearing to challenge this revised finding. Only those with a substantiated initial finding can make that request. Therefore, it is requested that you contact the Office of Administrative Hearings and withdraw your request for an administrative hearing. If you do not make the request, the department will request the Office of Administrative Hearings dismiss your hearing to challenge the original substantiated initial finding.

If you have questions about this notice you may call me at 360-664-7584.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Wagner".

Mike Wagner, Program Manager
Region 6, Home and Community Services
Adult Protective Services
Office: 360-664-7584
Fax: 360-664-7603

cc: Office of Administrative Hearings

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY THAT ON THIS 29th DAY OF OCTOBER 2010, A COPY FO THE FOREGOING,
3 RESPONDENT PLOTKE'S MOTION TO TERMINATE ORDER FOR PROTECTION - VULNERABLE
4 ADULT WAS SERVED BY THE METHOD INDICATED BELOW, AND ADDRESSED TO THE
5 FOLLOWING:

6 Therese A. Greenen
7 Greenen & Greenen PLLC
8 Attorneys and Counselors at Law
9 1104 Main Street, Suite 400
10 Vancouver, WA 98660

11 _____ FIRST-CLASS MAIL
12 _____ HAND DELIVERED
13 _____ OVERNIGHT MAIL
14 _____ FAX TRANSMISSION 360-694-1572

15 Juliet Laycoe
16 Laycoe & Bogdon PC
17 Attorneys at Law
18 1112 Daniels, Suite 100
19 Vancouver, WA 98660

20 _____ FIRST-CLASS MAIL
21 _____ HAND DELIVERED
22 _____ OVERNIGHT MAIL
23 _____ FAX TRANSMISSION 360-693-2030

24 Sheila Lee
25 Department of Social and Health Services
Home & Community Services S53-4
5411 E. Mill Plain Blvd, Suite 25
Vancouver, WA 98661

_____ FIRST-CLASS MAIL
_____ HAND DELIVERED
_____ OVERNIGHT MAIL
_____ FAX TRANSMISSION 866-684-6635

Clark County Prosecuting Attorney's Office
1013 Franklin Street
PO Box 5000/98666-5000
Vancouver, WA 98660

_____ FIRST-CLASS MAIL
_____ HAND DELIVERED
_____ OVERNIGHT MAIL
_____ FAX TRANSMISSION 360-397-2230

24 
25 Dee Ellen Grubbs

APPENDIX D

OFFICE OF ADMINISTRATIVE HEARINGS
5300 MACARTHUR BLVD STE 100
VANCOUVER, WA 98661
(360) 690-7189 or (800) 243-3451
FAX (360) 696-6255

In re:

Leo A. Plotke

Appellant

Docket No 03-2009-L-0919

Client ID# 85616

NOTICE OF DEPOSITION

**THE STATE OF WASHINGTON TO: CAROLYN PLOTKE, by and through her
Guardian YVONNE POLKOW and to Therese Greenen, Attorney for Yvonne Polkow**

You are hereby commanded to appear for stenographic deposition at Fort Vancouver
Convalescent Care Center, room of Carolyn Plotke on Monday July 13, 2009 at 10:00 a.m.

You are further notified that if you fail to appear at the place and time specified above,
that you may be held in contempt of court and that the aggrieved party may recover from you the
sum of \$100.00 and all damages which the party may sustain by your failure to attend as a
witness

Dated the 6th day of July 2009


Dee Ellen Grubbs, WSBA # 26381
Attorney and Counselor at Law
Attorney for Appellant Leo A. Plotke

CERTIFICATE OF SERVICE

I hereby certify on the 6th day of July 2009 a true and correct copy of the foregoing instrument was delivered to the following person via the following method:

Juliet Laycoe
1112 Daniels Street, Suite 100
Vancouver, WA 98660

Mailed
 Faxed 360-693-2030
 Hand delivered
 Overnight

Markley Court Reporting
5503 NE 44th Street
Vancouver, WA 98661

Mailed
 Faxed 360-693-6713
 Hand delivered
 Overnight

Therese A. Greenen
Greenen & Greenen, PLLC
1104 Main Street, Suite 400
Vancouver, WA 98660

Mailed
 Faxed
 Hand delivered *original*
 Overnight

Evelyn Cantrell
DSHS
PO Box 45610
Olympia, WA 98504-5610

Mailed
 Faxed
 Hand delivered
 Overnight


Dee Ellen Grubbs

APPENDIX E

SCANNED

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COPY

08-4-00624-8

FILED

2009 JUL 26 PM 4:44
Sherry W. Parker, Clerk
Clark County

OFFICE OF ADMINISTRATIVE HEARINGS
5300 MACARTHUR BLVD STE 100
VANCOUVER, WA 98661
(360) 690-7189 or (800) 243-3451
FAX (360) 696-6255

In Re:

Leo A. Plotke

Appellant

Docket No. 03-2009-L0919
Client ID # 85616

NOTICE OF SERVICE
CR 30

TO: THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN pursuant to *Washington Rules of Civil Procedure 30* that on the 6th day of July 2009 the Appellant, Leo K. Plotke, by and through his attorney of record Dee Ellen Grubbs, *Attorney & Counselor at Law* served by hand delivery NOTICE OF DEPOSITION on **Therese Greenen, Attorney for Yvonne Polkow Guardian of Carolyn Plotke.** Service was made upon Ms. Polkow's attorney by specific request of Ms. Greenen even though she has not to date made a notice of appearance in the above entitled case.

DATED this 6th day of July 2009

Dee Ellen Grubbs
Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
Attorney for Leo K. Plotke

NOTICE OF SERVICE
CR. 30
Page 1

Dee Ellen Grubbs WSBA# 26381
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432
facsimile: 360-694-5945
decellengrubbs@comcast.net

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gn

CERTIFICATE OF SERVICE

I hereby certify on the 6th day of July 2009 a true and correct copy of the foregoing instrument was delivered to the following person via the following method:

Juliet Laycoe
1112 Daniels Street, Suite 100
Vancouver, WA 98660

Mailed
 Faxed
 Hand delivered
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Evelyn Cantrell
DSHS
PO Box 45610
Olympia, WA 98504-5610

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Markley Court Reporting
5503 NE 44th Street
Vancouver, WA 98661

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 Faxed 360-693-6713
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Therese A. Greenen
Greenen & Greenen, PLLC
1104 Main Street, Suite 400
Vancouver, WA 98660

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Dee Ellen Grubbs

APPENDIX F

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SCANNED

FILED

JUL - 6 2009

Sherry W. Parker, Clerk, Clark Co.

9:31 am

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

In Re the matter of:)

CAROLYN K. PLOTKE (DOB: 06/17/33))
A Vulnerable Adult (Person to be Protected))

NO. 08-2-04996-9

LEO K. PLOTKE (DOB: 01/03/30))

MOTION TO ENFORCE
PROTECTIVE ORDER

Respondent (Restrained Person))

Amended (as to Section 1.2 only)

KATHLEEN LAURA VANDERPOOL,)
(DOB: 09/19/1959))

In re the Guardianship of:)

NO. 08-4-00624-8 ✓

CAROLYN K. PLOTKE,)

Incapacitated.)

COMES NOW, YVONNE POLKOW, Guardian of the Person and Estate of
Carolyn K. Plotke, by and through her attorney, THERÉSE A. GREENEN, hereby moves
the Court for an order enforcing the protective orders which are currently in place in both
of the above entitled matters with regards to Carolyn Plotke, the vulnerable adult and
incapacitated person, herein.

MOTION TO ENFORCE
PROTECTIVE ORDER (AMENDED) - 1

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

93
[Signature]

1 This motion is supported by the records and files herein and the following
2 Declaration of Therése A. Greenen.
3

4 DATED this 2nd day of July, 2009.
5
6

7 GREENEN & GREENEN, PLLC
8

9
10 
11 THERESE A. GREENEN, WSB #22243
12 Of Attorneys for Guardian
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14
15 **DECLARATION**
16

17 As the court and all parties are well aware, there are several protective
18 orders currently in place with regards to Carolyn Plotke. These orders are as follows:
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23 **I.**
24

25 **EXISTING PROTECTION ORDERS**
26 **PREVENTING CONTACT BY LEO PLOTKE**
27

28
29
30 1.1 Vulnerable Adult Protection Order. (Cause No. 08-2-04996-9)
31

32 This Order was entered in Clark County Superior Court on August 15, 2008.
33

34 This Order was later modified October 9, 2008, prohibiting all contact between Kathleen
35 Vanderpool and Carolyn K. Plotke, whether directly or indirectly, and by any means
36 whatsoever. This same protective order was further modified on October 9, 2008 as to
37 Leo Plotke and permitted contact between Leo Plotke and Carolyn pursuant to the terms
38 as set forth by Fort Vancouver Convalescent Center, where Carolyn Plotke resides.
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48 MOTION TO ENFORCE PROTECTION
49 ORDER (AMENDED) - 2
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GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

1.2 Guardianship Protective Order (Cause No. 08-4-00624-8).

1
2 This Order was entered on January 3, 2009. This order prohibits all contact between Leo
3
4 Plotke and Carolyn Plotke until further order of the court. Because this order was
5
6 entered in the guardianship subsequent to the Vulnerable Adult Protection Order, this
7
8 order supersedes the limited contact provision in the Vulnerable Adult Protection Order.
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12 **II.**

13
14 **LOE PLOTKE'S VIOLATION OF NO CONTACT ORDER**

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16 2.1 Despite the no contact orders that are currently in place, Leo Plotke, and
17
18 his attorney, Dee Ellen Grubbs are continuing to make attempts to have contact with
19
20 Carolyn Plotke.
21

22
23 2.2 Currently, there is an administrative proceeding pending against Leo
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25 Plotke for neglect of his wife, Carolyn Plotke. This action was initiated by Adult
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27 Protective Services as a result of the horrendous condition Mrs. Plotke was found to be in
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29 while under Mr. Plotke's care. The administrative court previously made a finding of
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31 neglect against Mr. Plotke and he is currently appealing that finding. The administrative
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33 trial is apparently set for July 27th, 2009. Mr. Plotke is represented by Dee Ellen Grubbs
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35 in this administrative matter as well.
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39 2.3 Ms. Grubbs, as attorney for Leo Plotke in the administrative action, is
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41 attempting to back door this Court's existing no contact orders by using this pending
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1 administrative matter to attempt to have contact with Carolyn Plotke by means of taking
2 her deposition.
3

4
5 2.4 The Court has been very clear in its rulings that Leo Plotke is to have no
6 contact with Carolyn Plotke. This includes contact by Leo Plotke, his attorney, agents,
7 employees and any other persons acting on their behalf.
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12 2.5 Mrs. Plotke's medical condition and emotional status have been made well
13 known to the Court and she is in no condition to be giving testimony through a
14 deposition. Mrs. Plotke is in very fragile health and the fact that she suffers from
15 dementia and has been declared incompetent should be reason enough to not force her to
16 endure the physical and emotional stress of a deposition. RCW 5.60.050 states that the
17 following persons shall not be competent to testify:
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26 (1) Those who are of unsound mind, or intoxicated at the time of their
27 production for examination, and
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29
30 (2) Those who appear incapable of receiving just impressions of the
31 facts, respecting which they are examined, or of relating them truly.
32

33 Mrs. Plotke has been declared incompetent by this Court and is currently under a
34 guardianship proceeding over her person and estate within this Court's jurisdiction. Her
35 competence should not have to be proven in every other court of law or administrative
36 jurisdiction each time a action arises in connection with her victimization by her husband.
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III.

RCW 5.60.030
DEADMAN'S STATUTE APPLICATION

3.1 RCW 5.60.030 further supports the Guardian's objection to forcing Mrs. Plotke to give a deposition or testimony on any legal matter. RCW 5.60.030 states as follows:

No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility: PROVIDED, HOWEVER, That **in an action or proceeding where the adverse party sues or defends** as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, or **as the guardian or limited guardian of the estate or person of any incompetent or disabled person**, or of any minor under the age of fourteen years, then a party in interest or to the record, **shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased, incompetent or disabled person**, or by any such minor under the age of fourteen years... (Emphasis Added)

IV.

MARITAL PRIVILEGE

4.1 Mr. and Mrs. Plotke are currently married (although separate and a dissolution action is pending) and an examination of Mrs. Plotke is privileged and she is disqualified from testifying unless the testimony is made with her consent. RCW 5.60.060, states as follows:

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(1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, **without the consent of the spouse or domestic partner**; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness. (Emphasis added)

Mr. and Mrs. Plotke are still married to each other and because Mrs. Plotke has been declared incompetent by this Court and a guardian has been appointed to make all decisions on her behalf, both for her person and for her estate, she does not have the ability to give consent to her examination in any legal matter. Yvonne Polkow, as her court appointed legal guardian, and with full legal authority, objects to forcing Mrs. Plotke into giving a deposition or exposing her to any other form of legal proceeding.

V.

JURISDICTION

5.1 Clark County Superior Court has jurisdiction over Carolyn Plotke in the dissolution action, the Vulnerable Adult action and the Guardianship action and this

1 Court has the authority to enforce the protective orders and protect Carolyn Plotke from
2 having to participate in this deposition pursuant to CR 26 (c), which states:
3

4 (c) Protective Orders. Upon motion by a party or by the person from
5 whom discovery is sought, and for good cause shown, the court in which the
6 action is pending or **alternatively, on matters relating to a deposition,**
7 **the court in the county where the deposition is to be taken may make any**
8 **order which justice requires to protect a party or person from annoyance,**
9 **embarrassment, oppression, or undue burden** or expense, including one or
10

11 more of the following: (1) that the discovery not be had; (2) that the
12 discovery may be had only on specified terms and conditions, including a
13 designation of the time or place; (3) that the discovery may be had only by
14 a method of discovery other than that selected by the party seeking
15 discovery; (4) that certain matters not be inquired into, or that the scope
16 of the discovery be limited to certain matters; (5) that discovery be
17 conducted with no one present except persons designated by the court; (6)
18 that the contents of a deposition not be disclosed or be disclosed only in
19 a designated way; (7) that a trade secret or other confidential research,
20 development, or commercial information not be disclosed or be disclosed
21 only in a designated way; (8) that the parties simultaneously file
22 specified documents or information enclosed in sealed envelopes to be
23 opened as directed by the court. (Emphasis added)
24

25 Because Carolyn Plotke resides in a care facility located in Clark County and
26 cannot travel due to her current health and mental conditions, any deposition of Mrs.
27 Plotke would have to take place at the care facility here in Clark County, thereby giving
28 Clark County Superior Court the authority to make an order to protect Mrs. Plotke from
29 this form of contact by her husband, Leo Plotke and his attorney.
30

31 //

VI.

CONCLUSION

Based on the above, the Guardian is requesting that the Court enforce the protective orders currently in place and deny Leo Plotke and his attorney, agents, employees, and the like, from having any form of contact with Carolyn Plotke, by means of a deposition or otherwise, and that attorney's fees be awarded to the Guardian in the amount of \$1,777.50 against Leo Plotke for having to bring this matter before the court. These fees represent 4.9 hours of attorney time at \$225.00 per hour (\$1,102.50) and 4.5 hours of legal assistant time at \$150.00 (\$657.00) for a total of \$1,777.50.

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

Dated this 2nd day of July, 2009.



THERESE A. GREENEN

APPENDIX G

SCANNED

FILED

2009 JUL 26 PM 4:34
Sherry W. Parker, Clerk
Clark County

**Superior Court of Washington
County of Clark**

In Re the matter of:

CAROLYN K. PLOTKE (dob:06/17/33)
A Vulnerable Adult (person to be protected)
LEO K. PLOTKE (dob: 01/03/30)
Respondent
KATHLEEN LAURA VANDERPOOL
(dob: 09/19/1959)
Respondent

In the Mater of the Guardianship of:
CAROLYN K. PLOTKE
An Alleged Incapacitated Person

No. 008-2-04996-9

No. 08-4-00624-8

RESPONSE TO MOTION TO
ENFORCE PROTECTIVE ORDER
AND MOTION TO DISMISS AND
MOTION FOR SANCTIONS

COMES NOW the Attorney of Record for Leo Plotke with her Response to the Guardian's

Motion to Enforce Protective Order, Motion to Dismiss and Motion for Sanctions as follows:

RESPONSE

There is no protective order in Case No. 08-2-04996-9; therefore this case is irrelevant to the motion at issue.

RESPONSE TO MOTION page 1

Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432
facsimile: 360-694-5945
deeellengrubbs@Comcast.net

There is an order that Leo Plotke will have no contact with Carolyn Plotke in Case No. 08-4-00624-8. Mr. Plotke has followed that order and will continue to do so. This order is personal to Mr. Plotke and does not include any other person.

The Guardian's claims that Leo Plotke and Dee Ellen Grubbs are continuing to make attempts to have contact with Carolyn Plotke are unsubstantiated; they are false and can only be offered as an attempt to harass Mr. Plotke and his attorney

The Guardian's claim regarding the pending deposition in Mr. Plotke's administrative hearing, apparently assumes that Mr. Plotke would be present during this deposition. Her assumption is false. Evelyn Cantrell is the attorney for the Department in this matter. Arrangements and agreements regarding this deposition have been made between counsel of record in this matter to include that Mr. Plotke will not be present during the deposition.

Paragraphs III. and IV. in the Guardian's motion are moot because this Court does not have jurisdiction over a pending deposition in the Administrative Court.

The Guardian's claim that this court has jurisdiction over a deposition in Administrative Court is based on a misinterpretation of CR (26). CR(26) only gives jurisdiction to a court in the county in which the deposition is pending when the person to be deposed does not reside in the county in which the action is pending. This provision is in place because a witness can only be deposed in the county in which that person resides. This portion of the rule is not applicable to Mrs. Plotke. The Administrative action is in Clark County and Mrs. Plotke resides in Clark County. Jurisdiction regarding all matters that pertain to the administrative hearing resides with
RESPONSE TO MOTION page 2

Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432
facsimile: 360-694-5945
deeellengrubbs@Comcast.net

Judge Emmel, Judge in the Court for Administrative Hearings. Clark County Superior Court does not have jurisdiction over matters in Administrative Court.

The Guardian's request that this court enforce a protective order that has not been violated is without a basis in law. If in fact a protective order had been violated the Guardian's remedy is to request an order to show cause. If the Guardian wishes to seek a protective order in the Administrative Court she is required to put in a notice of appearance before that Court. The Guardian's request before this court has no basis in law and can only have been made for the purpose of harassment.

MOTION TO DISMISS

THEREFORE, the attorney for Leo Plotke, prays that this court will dismiss the Guardian's motion because it is without any basis in law or in fact and find that said motion was made solely for the purpose of harassment and thereby dismiss the Guardian's motion for attorney fees and order that the Guardian be personally responsible for her attorney fees and costs.

MOTION FOR SANCTIONS

COMES NOW the attorney of record for Leo Plotke with her motion for sanctions against the Guardian and her attorney of record for violation of CR 11. CR 11 reads in part ". . .The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith

RESPONSE TO MOTION page 3

Dee Ellen Grubbs WSBA# 26381
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
360-695-5432
facsimile: 360-694-5945
deeellengrubbs@Comcast.net

argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; . . . "

In this case the Guardian has alleged facts that she knows to be false, to wit, " Mr. Plotke, and his attorney, Dee Ellen Grubbs are continuing to make attempts to have contact with Carolyn Plotke."

Further the Guardian through her attorney, in attempting to obtain a protective order over a deposition which has yet to be Noticed in Mr. Plotke's administrative hearing has brought before this court a matter over which this court has no jurisdiction.

This action is in violation of CR 11 and subject to sanctions there under. The attorney for Leo Plotke is therefore requesting that she be granted attorney fees necessitated in the defense of this action in the amount of \$600.00 to be paid in equal portions by the guardian and her attorney of record.

Dated: July 6, 2009 _____
Dee Ellen Grubbs
Dee Ellen Grubbs WSBA# 26381
Attorney for Leo A. Plotke

II. Declaration

1. I am the attorney of record in the above entitled matters for Leo Plotke. I have responded on my own behalf as well as on behalf of my client, to the Guardian's motion because it appears that said motion is for the purpose of restricting me personally as well as to restrict my practice of law.

2. It is my opinion that the Guardian's motion is without basis in fact or in law, it should be dismissed and the court should enter sanctions based on violation of CR 11.

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

Signed at Amboy, WA on July 6, 2009



Dee Ellen Grubbs
Attorney & Counselor at Law
Attorney for Leo Plotke

CERTIFICATE OF SERVICE

I served a copy of the foregoing document on the 6th day of July, 2009 by the method and on each attorney or party identified below.

Method of Service

by delivering the document by courier to each attorney or party at the address stated below.

Person or Persons Served

Therese Greenen
Attorney for Yvonne Polkow (Guardian of Carolyn Plotke)
1104 Main Street, Suite 400
Vancouver, WA 98660

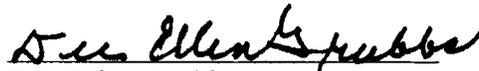
James Senescu
Attorney for Petitioner, Detective Kevin Harper
1409 Franklin Street, Suite 207
Vancouver, WA 98660

Sheila Lee
Department of Social and Health Services
Home & Community Services S53-4
5411 E. Mill Plain Blvd, Suite 25
Vancouver, WA 98661

Clark County Prosecuting Attorney's Office
1013 Franklin Street
P.O. Box 5000/98666-5000
Vancouver, WA 98660

Margaret Madison Phelan
Attorney at Law
502 E. McLoughlin Blvd.
Vancouver, WA 98663

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct on July 6, 2009 at Vancouver, Washington.


Dee Ellen Grubbs

APPENDIX H

SCANNED

FILED

JUL - 6 2009

Sherry W. Parker, Clark, Clark Co.

9:31am

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

In Re the matter of:)
)
CAROLYN K. PLOTKE (DOB: 06/17/33))
A Vulnerable Adult (Person to be Protected))
)
LEO K. PLOTKE (DOB: 01/03/30))
Respondent (Restrained Person))
)
KATHLEEN LAURA VANDERPOOL,)
(DOB: 09/19/1959))
)
_____)

NO. 08-2-04996-9 ✓
ORDER ENFORCING
PROTECTIVE ORDER

In Re the Guardianship of:)
)
CAROLYN K. PLOTKE,)
)
Incapacitated Person.)
)
_____)

NO. 08-4-00624-8

THIS MATTER coming on for hearing before the Court upon the Motion of
THERÉSE A. GREENEN, of the law firm of Greenen and Greenen, PLLC, attorney for
YVONNE POLKOW, Guardian of the Person and Estate of CAROLYN K. PLOTKE, for

ORDER ENFORCING PROTECTION
ORDER -1
7/2/09 2-1398-000jc/guardian

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

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5 an order enforcing the protection orders currently in place in the above-entitled matters,
6 and the Court being fully advised in the premises, it is hereby

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ORDERED, ADJUDGED AND DECREED:

1. This Court has Jurisdiction over
MRS Plotke for ~~everything~~ ^{any legal proceeding} ~~at every~~
matter that is out there
2. Attorneys fees are granted as
requested in the amount of \$ 1777.50
3. MRS Plotke is not competent to assert
marital privilege and therefore the Court
must honor the guardians request

DATED this 6 day of July, 2009.


JUDGE

Presented by:


THERESE A. GREENEN, WSB#22243
of Attorneys for Guardian

ORDER ENFORCING PROTECTION
ORDER -2

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

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Approved for entry:

Dee Ellen Grubbs

DEE ELLEN GRUBBS, WSB#26381
Attorney for Mr. Leo Plotke

Approved for entry:

JAMES D. SENESCU, WSB#27137
Attorney for Kevin Harper

Approved for entry:

MARGARET M. PHELAN, WSB#22659
Court Appointed Legal Counsel

ORDER ENFORCING PROTECTION
ORDER -3

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

APPENDIX I

SCANNED

FILED

2009 JUL -8 PM 3: 14

Sherry W. Parker, Clerk
Clark County

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

In Re the matter of:)	
)	
CAROLYN K. PLOTKE (DOB: 06/17/33)	)	NO. 08-2-04996-9
A Vulnerable Adult (Person to be Protected)))	
	)	MOTION & DECLARATION
LEO K. PLOTKE (DOB: 01/03/30)	)	FOR ORDER RE: CONTEMPT
)	
Respondent (Restrained Person))	
)	
KATHLEEN LAURA VANDERPOOL,)	
(DOB: 09/19/1959))	
_____)	
)	
In re the Guardianship of:	)	NO. 08-4-00624-8
)	
CAROLYN K. PLOTKE,)	
)	
Incapacitated.)	
_____)	

COMES NOW, YVONNE POLKOW, Guardian of the Person and Estate of Carolyn K. Plotke, by and through her attorney, THERÉSE A. GREENEN, and hereby moves the Court for an order directing LEO PLOTKE, by and through his attorney of record, DEE ELLEN GRUBBS, to appear personally before the court and show cause why

MOTION & DECLARATION FOR
ORDER RE: CONTEMPT - 1

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

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an order should not be entered finding contempt for failure to comply with the Order of the Court entered in this matter on July 6, 2009.

This motion is supported by the records and files herein and the following Declaration of Therése A. Greenen.

DATED this 8th day of July, 2009.

GREENEN & GREENEN, PLLC



THERESE A. GREENEN, WSB #22243
Of Attorneys for Guardian

DECLARATION

1. I am the attorney for Yvonne Polkow, guardian of the person and estate of Carolyn Plotke.

2. On July 6, 2009, a hearing was held at 9:00 a.m. in Clark County Superior Court before the Honorable Diane Woolard wherein the Court entered an Order Enforcing the Protective Orders currently in place in this matter and reiterating to Leo Plotke and his counsel, Dee Ellen Grubbs, that the court has jurisdiction over Mrs. Plotke for every legal proceeding that affects her.

3. The Court further ordered that because Mrs. Plotke is not competent to assert marital privilege, the Court will honor the guardian's assertion of such privilege on

MOTION & DECLARATION FOR
RE: ORDER OF CONTEMPT - 2

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

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behalf of Mrs. Plotke, thereby preventing Mrs. Plotke from giving testimony in any court proceeding involving her husband, Leo Plotke.

4. Notwithstanding these facts, following entry of the Court's order on July 6, 2009, Leo Plotke, through his attorney, Dee Ellen Grubbs, served my office with a Notice of Deposition signed by Dee Ellen Grubbs and citing Carolyn Plotke for a deposition by and through her guardian, Yvonne Polkow, to be held in Carolyn Plotke's room at the nursing facility where she resides. A copy of the Notice of Deposition is attached hereto as **Exhibit "A"**.

5. Upon receipt of the Notice of Deposition, I emailed Ms. Grubbs and inquired as to why she was continuing to attempt to proceed with the deposition of Carolyn Plotke based on the fact that the Court had prohibited her from proceeding with the deposition of Carolyn Plotke.

6. Attached hereto as **Exhibit "B"** is a thread of emails between Ms. Grubbs and myself occurring between 5:00 p.m. on July 6, 2009 through 5:01 p.m. on July 7, 2009. Pursuant to the content of this communication, Ms. Grubbs states that the court Order entered on July 6, 2009 does not specifically prohibit the taking of Mrs. Plotke's deposition and further states that the protection order does not apply to the Administrative Court.

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7. It is the guardian's position that the Order entered on July 6, 2008 prohibits the taking of Mrs. Plotke's deposition based on the guardian's claim of marital privilege (pursuant to RCW 5.60.060) and also because there has been a finding that Mrs. Plotke is not competent to assert such privilege herself.

8. The Order further states that Judge Woolard and Clark County Superior Court have jurisdiction over Mrs. Plotke for all legal proceedings, which would include the Administrative Hearing currently pending against Leo Plotke.

9. Based on the Court's rulings on July 6, 2009, the guardian will not be attending the deposition as noted by Ms. Grubbs and requests that the Court permanently restrain Ms. Grubbs from entering the premises of Mrs. Plotke's residence or from having any contact, directly or indirectly, with Mrs. Plotke.

10. The guardian further requests that pursuant to RCW 11.21, that Ms. Grubbs be found in contempt of court for failing to following the Court's order entered on July 6, 2009 and that this shall serve as notice to Ms. Grubbs that the guardian is requesting that the Court impose remedial sanctions pursuant to RCW 7.21.030.

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11. The guardian further requests that an additional award of attorney's fees be entered against Leo Plotke in favor of the guardianship estate in the amount of \$1,437.50, representing 5 hours of attorney time at the rate of \$225 per hour and 2.5 hours of assistant time at the rate of \$125 per hour.

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

Dated this 8th day of July, 2009.



THERESE A. GREENEN

OFFICE OF ADMINISTRATIVE HEARINGS
5300 MACARTHUR BLVD STE 100
VANCOUVER, WA 98661
(360) 690-7189 or (800) 243-3451
FAX (360) 696-6255

In re:

Leo A. Plotke

Appellant

Docket No 03-2009-L-0919
Client ID# 85616

NOTICE OF DEPOSITION

**THE STATE OF WASHINGTON TO: CAROLYN PLOTKE, by and through her
Guardian YVONNE POLKOW and to Therese Greenen, Attorney for Yvonne Polkow**

You are hereby commanded to appear for stenographic deposition at Fort Vancouver
Convalescent Care Center, room of Carolyn Plotke on Monday July 13, 2009 at 10:00 a.m.

You are further notified that if you fail to appear at the place and time specified above,
that you may be held in contempt of court and that the aggrieved party may recover from you the
sum of \$100.00 and all damages which the party may sustain by your failure to attend as a
witness

Dated the 6th day of July 2009



Dee Ellen Grubbs, WSBA # 26381
Attorney and Counselor at Law
Attorney for Appellant Leo A. Plotke

EXHIBIT " A "

CERTIFICATE OF SERVICE

I hereby certify on the 6th day of July 2009 a true and correct copy of the foregoing instrument was delivered to the following person via the following method:

Juliet Laycoe
1112 Daniels Street, Suite 100
Vancouver, WA 98660

- Mailed
- Faxed 360-693-2030
- Hand delivered
- Overnight

Evelyn Cantrell
DSHS
PO Box 45610
Olympia, WA 98504-5610

- Mailed
- Faxed
- Hand delivered
- Overnight

Markley Court Reporting
5503 NE 44th Street
Vancouver, WA 98661

- Mailed
- Faxed 360-693-6713
- Hand delivered
- Overnight

Therese A. Greenen
Greenen & Greenen, PLLC
1104 Main Street, Suite 400
Vancouver, WA 98660

- Mailed
- Faxed
- Hand delivered *original*
- Overnight

Dee Ellen Grubbs
Dee Ellen Grubbs

Terry

From: Dee Ellen Grubbs [deeellengrubbs@comcast.net]
Sent: Tuesday, July 07, 2009 5:01 PM
To: Terry
Cc: 'Juliet Laycoe'; 'Cantrell, Evelyn (DSHS/HCS)'
Subject: RE: Plotke deposition

Terry: The order does not specifically prohibit the taking of Mrs. Plotke's deposition. If you insist it does you should do a show cause order for contempt for the issuance of the Notice of Deposition. Again if you want a protective order you should approach the Administrative Court. Unless I have a protective order from the Administrative Court I will expect to take Mrs. Plotke's deposition on Monday. Of course, I will not depose her if her Guardian or representative for her Guardian is not present. If Yvonne or her representative does not appear I will ask the Administrative Court for sanctions.
Dee

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

From: Terry [mailto:terry@greenenpllc.com]
Sent: Tuesday, July 07, 2009 4:36 PM
To: Dee Ellen Grubbs
Subject: RE: Plotke deposition

Dee,

Please review the Order Enforcing the Protective Order signed yesterday by Judge Woolard. The Order granted my motion to prohibit the taking of Mrs. Plotke's deposition based on the guardian's claim of marital privilege pursuant to RCW 5.60.060. This claim was asserted by the guardian because there has been a finding that Mrs. Plotke is not competent to assert it herself.

The order also states that Judge Woolard has jurisdiction over Mrs Plotke for all legal proceedings and this includes the Administrative Hearing.

Based on the court's rulings the guardian is not making Mrs. Plotke available for deposition.

Terry

From: Dee Ellen Grubbs [mailto:deeellengrubbs@comcast.net]
Sent: Tuesday, July 07, 2009 2:01 PM
To: Terry
Subject: RE: Plotke deposition

Terry: The deposition is noted for Carolyn Plotke (by and through her guardian Yvonne Polkow). Dee

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

From: Terry [mailto:terry@greenenpllc.com]
Sent: Tuesday, July 07, 2009 11:35 AM
To: Dee Ellen Grubbs
Subject: RE: Plotke deposition

Please tell me whose deposition you are trying to take. Yvonne? Carolyn?

From: Dee Ellen Grubbs [mailto:deeellengrubbs@comcast.net]
Sent: Tuesday, July 07, 2009 11:25 AM

EXHIBIT "B"

To: Terry
Subject: RE: Plotke deposition

Terry: The notice is sent for Carolyn Plotke through her Guardian Yvonne Polkow. If you want a protective order you need to put in a notice of appearance in the administrative court and file a motion. I sent Judge Emmal a copy of yesterday's order from Judge Woolard as a footnote to a scheduleing request that I had, so she is aware of that order. Dee

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

From: Terry [mailto:terry@greenenpllc.com]
Sent: Tuesday, July 07, 2009 10:35 AM
To: Dee Ellen Grubbs
Subject: RE: Plotke deposition

If you are requesting to depose Yvonne then you need to do an amended notice as to name and also to place. It will not occur in Carolyn's room. It will occur at my office. You can serve it on me.

From: Dee Ellen Grubbs [mailto:deellengrubbs@comcast.net]
Sent: Tuesday, July 07, 2009 10:17 AM
To: Terry
Subject: RE: Plotke deposition

Because you asked me to; it is directed to Yvonne. Do you want me to serve Yvonne? Dee

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

From: Terry [mailto:terry@greenenpllc.com]
Sent: Monday, July 06, 2009 5:18 PM
To: Dee Ellen Grubbs
Subject: Plotke deposition

Why did you just serve our office with a notice of deposition on Carolyn Plotke?

Terry

Therese A. Greenen
Attorney at Law
Greenen & Greenen, PLLC
1104 Main St., Suite 400
Vancouver, WA 98660
Tel: (360) 694-1571
Fax: (360) 694-1572

For additional information regarding our firm and services visit our website at www.greenenpllc.com.

The information contained in this e-mail message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any review, dissemination, use, distribution or copying of this communication, or its contents, is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail or telephone and delete the message from your e-mail and permanently delete the message from your computer. Thank you.

APPENDIX J

SCANNED

FILED

2009 JUL 15 AM 9:19

Sherry W. Parker, Clerk
Clark County

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

In Re the matter of:)	
)	
CAROLYN K. PLOTKE (DOB: 06/17/33)	)	NO. 08-2-04996-9
A Vulnerable Adult (Person to be Protected))	
	)	ORDER ON CONTEMPT
LEO K. PLOTKE (DOB: 01/03/30)	)	RESTATING AND CLARIFYING
Respondent (Restrained Person)	)	ORDER ENFORCING
	)	PROTECTION ORDER DATED
KATHLEEN LAURA VANDERPOOL,	)	JULY 6, 2009
(DOB: 09/19/1959))	
)	
)	

In Re the Guardianship of:)	
)	
CAROLYN K. PLOTKE,	)	NO. 08-4-00624-8
)	
Incapacitated Person.)	
)	
)	

THIS MATTER coming on for hearing before the Court upon the Motion of
THERÉSE A. GREENEN, of the law firm of Greenen and Greenen, PLLC, attorney for

ORDER ON CONTEMPT RESTATING
AND CLARIFYING ORDER ENFORCING
PROTECTION ORDER DATED 7/6/2009 - 1

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

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4. That pursuant to CR 11(a), the court imposes sanctions against Leo Plotke through his attorney, Dee Grubbs, in the amount of \$1,437.50 for attorney's fees.

NUNC PRO TUNC July 10, 2009.



JUDGE

Presented by:



THERESE A. GREENEN, WSB#22243
of Attorneys for Guardian

Approved for entry:

See attached
DEE ELLEN GRUBBS, WSB#26381
Attorney for Mr. Leo Plotke

ORDER ON CONTEMPT RESTATING
AND CLARIFYING ORDER ENFORCING
PROTECTION ORDER DATED 7/6/2009 - 3

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

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4. That pursuant to CR 11(a), the court imposes sanctions against Leo Plotke through his attorney, Dee Grubbs, in the amount of \$1,437.50 for attorney's fees.

NUNC PRO TUNC July 10, 2009.

JUDGE

Presented by:

THERÉSE A. GREENEN, WSB#22243
of Attorneys for Guardian

as to form
Approved for entry:

Dee Ellen Grubbs
DEE ELLEN GRUBBS, WSB#26381
Attorney for Mr. Leo Plotke

ORDER ON CONTEMPT RESTATING
AND CLARIFYING ORDER ENFORCING
PROTECTION ORDER DATED 7/6/2009 - 3

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

In Re the matter of:)	
)	
CAROLYN K. PLOTKE (DOB: 06/17/33)	)	NO. 08-2-04996-9
A Vulnerable Adult (Person to be Protected))	
)	
LEO K. PLOTKE (DOB: 01/03/30))	
Respondent (Restrained Person))	
)	
KATHLEEN LAURA VANDERPOOL,)	
(DOB: 09/19/1959))	
)	
_____)	
)	
In Re the Guardianship of:	)	NO. 08-4-00624-8
)	
CAROLYN K. PLOTKE,)	
)	
Incapacitated Person.	)	GR 17(2) FAX SIGNATURE
	)	FILING AFFIDAVIT
)	
_____)	

STATE OF WASHINGTON)
) ss.
County of Clark)

I, THERÉSE A. GREENEN, do hereby swear that:

- I am the attorney for the Yvonne Polkow, Guardian of the Person and Estate of Carolyn Plotke.

GR 17(2) FAX SIGNATURE
FILING AFFIDAVIT - Page 1
7/13/2009 2-1398-000jc/guardianship

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
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2. Document to be filed: Order on Contempt Restating and Clarifying Order Enforcing Protective Order Dated 7/6/2009.
3. I have examined the document and have determined that it consists of 3 pages and that the document is complete and legible.



THERÈSE A. GREENEN, WSB#22243
1104 Main Street, Suite 400
Vancouver, WA 98660
(360) 694-1571

APPENDIX K

File
Plotke DSAHQ

OFFICE OF ADMINISTRATIVE HEARINGS
5300 MACARTHUR BLVD STE 100
VANCOUVER, WA 98661
(360) 690-7189 or (800) 243-3451
FAX (360) 696-6255

MAILED

SEP 23 2009

VANCOUVER OFFICE OF
ADMINISTRATIVE HEARINGS

In Re:

Docket No. 03-2009-L-0919
Client ID# 85616

Leo A. Plotke

NOTICE OF CONTINUANCE

Appellant

Adult Protective Services

A hearing was scheduled to convene on July 27, 2009. A continuance was requested for good cause and was granted.

IT IS ORDERED that the hearing will be held as follows:

DATE: January 25-29, 2010

TIME: 9:00 a.m. (PST) or as soon as an ALJ is available.

LOCATION: Office of Administrative Hearings
5300 MacArthur Boulevard, Suite 100
Vancouver, Washington 98661

Your hearing will be held in person. You should be at the hearing location 10 minutes early. You may bring an attorney or other person qualified to assist you. You may present evidence and witnesses. If you fail to appear or participate in the prehearing conference, hearing, or any other scheduled stage of these proceedings, you may lose your right to a hearing as described in RCW 34.05.440.

The parties shall file witness lists, stipulations, prehearing briefs and shall exchange proposed exhibits no later than **5:00 pm** on **January 11, 2010**. Copies shall be filed with the ALJ. The witness list shall include a brief description of each witness's anticipated testimony along with the names, addresses and telephone numbers of the witnesses.

NOTE: FAILURE TO COMPLY MAY RESULT IN EXCLUSION OF TESTIMONY AND/OR EXHIBITS.

APPENDIX L

OFFICE OF ADMINISTRATIVE HEARINGS
5300 MACARTHUR BLVD STE 100
VANCOUVER, WA 98661
(360) 690-7189 or (800) 243-3451
FAX (360) 696-6255

MAILED

OCT 26 2009

VANCOUVER OFFICE OF
ADMINISTRATIVE HEARINGS

In Re:

Docket No. 03-2009-L-0919

Client ID# 85616

Leo A. Plotke

SECOND NOTICE OF CONTINUANCE

Appellant

Adult Protective Services

A hearing was scheduled to convene on January 25, 2010. A continuance was requested for good cause and was granted.

IT IS ORDERED that the hearing will be held as follows:

DATE: February 8-12, 2010

TIME: 9:00 a.m. (PST) or as soon as an ALJ is available.

LOCATION: Office of Administrative Hearings
5300 MacArthur Boulevard, Suite 100
Vancouver, Washington 98661

Your hearing will be held in person. You should be at the hearing location 10 minutes early. You may bring an attorney or other person qualified to assist you. You may present evidence and witnesses. If you fail to appear or participate in the prehearing conference, hearing, or any other scheduled stage of these proceedings, you may lose your right to a hearing as described in RCW 34.05.440.

The parties shall file witness lists, stipulations, prehearing briefs and shall exchange proposed exhibits no later than **5:00 pm on January 25, 2010**. Copies shall be filed with the ALJ. The witness list shall include a brief description of each witness's anticipated testimony along with the names, addresses and telephone numbers of the witnesses.

NOTE: FAILURE TO COMPLY MAY RESULT IN EXCLUSION OF TESTIMONY AND/OR EXHIBITS.

APPENDIX M



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
6737 Capital Boulevard PO Box 45610
Tumwater Washington, 98504-5610
Certified and Regular Mail

January 8, 2010

Mr. Leo Plotke
c/o Dee Ellen Grubbs
Attorney & Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661

Re: Leo Plotke
Docket No. 03-2009-L-0919

Dear Mr. Plotke:

On February 20, 2009 the Department of Social and Health Services' (DSHS) Adult Protective Services (APS) program sent a letter informing you that an APS investigation had determined that you neglected a vulnerable adult as defined in chapter 74.34 RCW. An amended letter was also sent on December 11, 2009 addressing the same allegation of neglect.

Based on newly discovered information, the finding of neglect shall be modified to inconclusive in DSHS's records.

You do not have a right to request a hearing to challenge this revised finding. Only those with a substantiated initial finding can make that request. Therefore, it is requested that you contact the Office of Administrative Hearings and withdraw your request for an administrative hearing. If you do not make the request, the department will request the Office of Administrative Hearings dismiss your hearing to challenge the original substantiated initial finding.

If you have questions about this notice you may call me at 360-664-7584.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Wagner".

Mike Wagner, Program Manager
Region 6, Home and Community Services
Adult Protective Services
Office: 360-664-7584
Fax: 360-664-7603

cc: Office of Administrative Hearings

APPENDIX N

OFFICE OF ADMINISTRATIVE HEARINGS
5300 MACARTHUR BLVD STE 100
VANCOUVER, WA 98661
(360) 690-7189 or (800) 243-3451
FAX (360) 696-6255

MAILED
JAN 14 2010
VANCOUVER OFFICE OF
ADMINISTRATIVE HEARINGS

In Re:

Leo A. Plotke,

Appellant.

Docket No.: 03-2009-L-0919

Client ID No.: 85616

ORDER OF DISMISSAL

Adult Protective Services

The Appellant has withdrawn his request for a hearing. IT IS ORDERED that the above proceedings are **DISMISSED**. WAC 388-02-0285 and RCW 34.05.440(2).

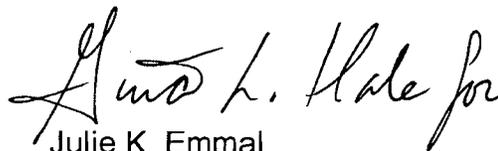
NOTICE TO APPELLANT: If you want your hearing reinstated, you must write the DSHS Board of Appeals at PO Box 45803, Olympia, WA 98504-5803. Your request must be received within **21 calendar days** of the date this order was mailed. You must state the reasons why you had good cause for not appearing for your hearing. WAC 388-02-0285 through WAC 388-02-0305. You may use the "Petition to Reinstate Appeal" form below to ask to have your hearing reinstated.

You may make a late request to vacate the order of dismissal **up to one year** from the date it was mailed to you but you must show good cause according to WAC 388-02-0020 for the late request to be accepted and the dismissal vacated.

If you ask to vacate **more than one year** after the order was mailed, the ALJ may vacate the order of dismissal if the DSHS representative and any other party waive the deadline.

General information about the hearing process can be found on the Office of Administrative Hearings web site at www.oah.wa.gov.

SERVED on the date of mailing.



Julie K. Emmal
Administrative Law Judge

cc: Leo A Plotke, Appellant
Evelyn Cantrell, Department Rep
Vicky Gawlik, Program Admin
Dee E Grubbs, Appellant Rep

APPENDIX O

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FILED

2010 OCT 13 PM 4: 54

Sherry W. Parker, Clerk
Clark County

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF CLARK**

In re: the Guardianship of	)	Case No. 08-4-00624-8
	)	MOTION/DECLARATION FOR
CAROLYN PLOTKE	)	ORDER TO SHOW CAUSE AND
	)	ORDER APPOINTING GUARDIAN
	)	AD LITEM RCW 11.88.120
An Incapacitated Person)	
_____)		

I. MOTION

COMES NOW LEO PLOTKE, by and through his attorney of record, Dee Ellen Grubbs, Attorney & Counselor at Law, and pursuant to RCW 11.88.120 moves the court for an Order to Show Cause why the Guardianship herein should not be modified as follows:

1.1 Replacing the current Guardian of the Person and Estate to wit Yvonne M. Polkow with an alternate Certified Professional Guardian for the purpose of addressing the issues noted hereinafter wherein the Guardian has failed to act in the best interest of the Incapacitated Person and the Incapacitated Person's estate AND by restoring Carolyn Plotke's right to make social decisions and her right to decide who shall provide care and assistance.

1.2 Appointing an independent attorney Guardian Ad Litem to investigate the issues of concern outlined in DECLARATION OF LEO PLOTKE noted hereinafter.

MOTION ORDER TO SHOW CAUSE

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: decellengrubbs@Comcast.net

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1.3 Ordering a psychological exam to determine if Carolyn Plotke has the capacity to make her own social decisions and to decide who shall provide care and assistance.

1.3 Setting a hearing wherein the declarant herein may present his case as to why the relief requested should be granted.

This Motion is based upon the following Declaration and the records and files herein.

II. DECLARATION

I LEO PLOTKE declare as follows:

1. I am the husband of CAROLYN PLOTKE, the Incapacitated Person. I am eighty (80) years old. I have several chronic illnesses which limits my ability to leave home for long periods of time as I tire quickly. I am also still recovering from cataract surgery and a lens implant. I have blurry vision and must now have all written documents read to me. I am of sound mind; my memory is intact. Please see NEURO/PSYCH portion of physical exam filed herein on October 5, 2010 under confidential seal. I am making this declaration from my own personal knowledge of the facts and circumstances noted herein.

2. I am asking the court to order the Guardian of the Person and the Estate Yvonne M. Polkow to show cause why she should not be replaced because:

a. Ms. Polkow has breached her fiduciary duty to my wife by forcing me to agree to pay guardian fees at the private pay rate even after my wife qualified for Medicaid.

b. Ms. Polkow created an artificial need for a guardian of the estate by failing to inform me or my attorney of a past due notice by the care facility and by having the care facility direct all information to her as guardian of the person.

c. Ms. Polkow has isolated my wife away from family and friends and has not allowed her to use the telephone against my wife's express wishes to the contrary.

d. Ms. Polkow has not properly applied substitute decision making because she has ignored the wishes of my wife's son and daughter, has not kept them informed has never
MOTION ORDER TO SHOW CAUSE

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net

communicated with me and has not followed the advanced directive that my wife executed years prior to the entry of the guardianship.

3. I am asking the court to appoint a guardian ad litem that has not previously been aware of the facts of this case and also a guardian ad litem that is an attorney because many of the issues that I am raising herein require a fresh perspective and experience in financial matters and Medicaid regulations and requirements.

4. I am asking the court to order a psychological exam because I believe that my wife's mental status has improved from the time the guardianship was first imposed. I am told by family members that have been allowed to visit her that her long term memory is intact and that her short term memory is only slightly impaired. She recognizes all of her family and she often asks about me. I have not been able to visit her because the guardian has placed a restraining order on me and insists that she will not allow any visitation unless it is supervised. Until about eight (8) months ago my wife regularly initiated telephone calls to me. When the guardian learned of this, and despite my wife's requests and desires, she put a stop to my wife making any outgoing phone calls. I believe there is a basis for a modification of the guardianship and I am asking the court to order an exam by a clinical psychologist so that I can show the court that my wife is capable of making her own social decisions and deciding who should provide her care.

5. I am asking the court to set a hearing for fifteen days after the report from the psychologist and guardian ad litem are filed.

MOTION ORDER TO SHOW CAUSE

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net

Dated: 10-11-10



LEO PLOTKE
Husband of Carolyn Plotke

MOTION ORDER TO SHOW CAUSE

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: decellengrubbs@Comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October 2010, a copy of the foregoing MOTION FOR ORDER TO SHOW CAUSE/MODIFICATION GUARDIANSHIP, was served by the method indicated below, and addressed to the following:

Therese A. Greenen, WSBA #22243
Greenen & Greenen, PLLC
Attorneys and Counselors at Law
1104 Main Street, Suite 400
Vancouver, WA 98660

FIRST-CLASS MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 FAX TRANSMISSION 360-694-1572


Dee Ellen Grubbs

MOTION ORDER TO SHOW CAUSE

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net