

No. 45098-4-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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In the Matter of the Estate of:

MICHAEL K. HARDER,

Deceased.

CHRIS HARDER and DAVID HARDER  
Appellants,

V.

PHILIP HARDER  
Respondent.

FILED  
COURT OF APPEALS  
DIVISION II  
2014 FEB 24 AM 9:13  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

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**BRIEF OF RESPONDENT**

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Steven E. Turner  
Attorney for Respondent  
1409 Franklin Street, Suite 216  
Vancouver, WA 98660  
Telephone: (971) 563-4696  
WSBA No. 33840

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## **I. Introduction**

This appeal raises two issues, either one of which is dispositive.

**1. Statutory Construction.** Under Washington’s probate laws, once the personal representative of a nonintervention estate serves notice that the probate has been completed, the trial court’s jurisdiction can only be invoked if a party with standing timely files a “petition ... requesting the court to approve the reasonableness” of the personal representative’s fees.<sup>1</sup> No timely petition was filed in this case. Instead, one heir filed a “Notice of Mediation” under the Trust and Estates Dispute Resolution Act (commonly referred to as “TEDRA”). When the Legislature enacted TEDRA, however, it specifically provided that TEDRA “shall not supersede, but shall supplement” the other probate and trust laws.<sup>2</sup> Can a “Notice of Mediation” filed under TEDRA supersede the other probate law’s petition requirement?

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<sup>1</sup> RCW 11.68.110(2).

<sup>2</sup> RCW 11.96A.080(2).

**2. Deficient “Notice of Mediation.”** Under TEDRA, a “party may cause the matter to be subject to mediation,” but only if the party serves notice of mediation “in substantially the ... form” set forth in RCW 11.96A.300. The notice served in this case, however, omitted substantial portions of the proscribed form—it did not inform the recipient of how or when to challenge the notice of mediation, and it did not inform the recipient of how or when to propose acceptable mediators. Even if a proper “Notice of Mediation” under TEDRA could have invoked the trial court’s jurisdiction, was the notice served in this case insufficient to do so?

## **II. Statement of the Case**

The decedent, Michael Harder, died in November 2007.<sup>3</sup> He left behind a will naming his four children as his sole heirs to “share and share alike” in his estate.<sup>4</sup> The will also appointed the decedent’s brother, Phillip Harder, to act as the

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<sup>3</sup> CP 15, lines 22-25.

<sup>4</sup> CP 12, paragraph 3.

personal representative, and it provided that the “personal representative shall act ... with ... nonintervention powers ...”<sup>5</sup>

In December 2007, the trial court entered an order admitting the will to probate.<sup>6</sup> The order confirmed Phillip Harder as the personal representative of the estate, it declared the estate to be “fully solvent,” and it directed that the estate be administered “in accordance with the laws of the State of Washington pertaining to the settlement of estates without the further intervention of any court.”<sup>7</sup>

The assets of the estate were substantial and complex. The estate owned various interests in seventeen parcels of commercial and residential property, with an estimated value exceeding \$6,700,000.<sup>8</sup> The estate also owned multiple vehicles, boats, artworks, investments, and other personal

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<sup>5</sup> CP 11, paragraph 2.

<sup>6</sup> CP 15-17.

<sup>7</sup> CP 17, lines 1-7.

<sup>8</sup> CP 25-29.

property, bringing the estimated total value to more than \$7,500,000.<sup>9</sup>

Due to the estate's complexity, it took the personal representative nearly five years to administer the estate. During that time, he satisfied the claims of creditors, he settled a difficult and time-consuming claim relating to an alleged meretricious relationship, he liquidated the assets needed to pay all state and federal estate taxes, and—except for a small reserve of roughly \$50,000 to handle any remaining liabilities—he distributed all the remaining assets to the heirs.<sup>10</sup>

On August 13, 2012, the personal representative filed and served a Declaration of Completion of Probate, which complied with RCW 11.68.110.<sup>11</sup> That same day, the personal representative served on all the heirs a Notice of Filing Declaration of Completion of Probate.<sup>12</sup> As required by RCW 11.68.110, the notice informed the heirs that the acts of the

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<sup>9</sup> CP 24, 30.

<sup>10</sup> CP 44-45.

<sup>11</sup> CP 31-33.

<sup>12</sup> CP 34-35.

personal representative would be deemed approved, that all fees would be deemed reasonable, and that the Declaration would be deemed equivalent to a final Decree of Distribution, “unless you shall file a Petition in the above-entitled Court requesting the Court to approve the reasonableness of the fees, or for an accounting, or both ... within 30 days after the date of said filing.”<sup>13</sup>

None of the heirs filed a petition requesting the court to approve the reasonableness of the fees, or for an accounting, or both, within 30 days. Instead, one of the heirs—Janet Harder—filed a “Notice of Mediation Under RCW 11.96A.300.”<sup>14</sup> This notice did not ask the trial court to rule on the reasonableness of the personal representative’s fees. Instead, this pleading stated that the personal representative’s fees would be “resolved by mediation” under TEDRA.<sup>15</sup>

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<sup>13</sup> CP 34, lines 16-19.

<sup>14</sup> CP 4.

<sup>15</sup> CP 4, lines 14-16.

The trial court took no action in response to this pleading. Six months later, in March 2013, all four heirs filed and served a “Notice of Arbitration Under RCW 11.96A.310.”<sup>16</sup> In response, the personal representative timely filed a petition objecting to arbitration.<sup>17</sup> In his petition, the personal representative stated his “ongoing position ... that this Court does not have jurisdiction to hear any issues in this non-intervention estate”<sup>18</sup> because the trial court’s jurisdiction had not been properly invoked by the “Notice of Mediation” filed back in September 2012.<sup>19</sup>

The personal representative noticed a hearing on his objection.<sup>20</sup> Shortly thereafter, however, the heirs’ counsel gave notice of his intent to withdraw.<sup>21</sup> Accordingly, the personal representative postponed the hearing for seven

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<sup>16</sup> CP 6.

<sup>17</sup> CP 36-38.

<sup>18</sup> CP 37, lines 4-5.

<sup>19</sup> CP 37, lines 6-15.

<sup>20</sup> CP 39.

<sup>21</sup> CP 40.

weeks.<sup>22</sup> After counsel withdrew, two of the heirs—David and Christopher Harder (who are the sole appellants and are hereinafter referred to as the “Heirs”)—continued to pursue the matter, *pro se*. The Heirs argued that Janet Harder had properly invoked the trial court’s jurisdiction when she filed her “Notice of Mediation.”

After reviewing the relevant pleadings and hearing the arguments of both sides, the trial court found that a “Notice of Mediation is not a Petition invoking the Court’s jurisdiction.” Accordingly, the trial court ruled it had “no jurisdiction to hear this matter on the reasonableness of the Personal Representative’s fees ... as the Court’s jurisdiction was not properly invoked within the required time limit.”<sup>23</sup>

This appeal ensued.

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<sup>22</sup> CP 42.

<sup>23</sup> The trial court’s order is attached to the Heirs’ Notice of Appeal.

### **III. Standard of Review**

The Heirs appeal the trial court's finding that it lacked subject matter jurisdiction. The determination of subject matter jurisdiction is a question of law reviewed *de novo*.<sup>24</sup>

### **IV. Argument**

#### **A. The Nonintervention Statutes Strictly Limit the Superior Court's Jurisdiction**

Chapter 11.68 of the Revised Code of Washington governs the "Settlement of Estates without Administration." This chapter strictly limits the trial court's jurisdiction when dealing with so-called "nonintervention" estates. As this Court noted in *Estate of Bobbitt*: "Plainly, the Superior Court's jurisdiction over nonintervention probate proceedings depends wholly on the legislative scheme."<sup>25</sup> To illustrate the limited nature of the Superior Court's jurisdiction over nonintervention

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<sup>24</sup> *In re Marriage of Kastanas*, 78 Wn. App. 193, 197, 896 P.2d 726 (1995).

<sup>25</sup> *In re Estate of Bobbitt*, 60 Wn. App. 630, 632, 806 P.2d 254 (1991) (citations omitted).

estates, this Court quoted at length from the Washington

Supreme Court's opinion *In re the Estate of Peabody*:

To make this clear, let us illustrate:

(a) Mr. Peabody in his lifetime made a nonintervention will, but no court then had jurisdiction of his estate.

(b) Mr. Peabody died. Still no court had jurisdiction of his estate until, after his death, by proper petition setting up the jurisdictional facts, filed in the superior court of the proper county, that court, by reason of that application to it, obtained jurisdiction of the estate.

(c) When the order of solvency was properly entered, the further administration of the estate was by the statute relegated exclusively to the executors, and the probate court, which had before had jurisdiction, then lost its jurisdiction of the estate.

(d) Thereafter, ***in order for the court to regain jurisdiction of the estate, its jurisdiction must be again invoked by a proper application made by someone authorized by the statute so to do ...***<sup>26</sup>

More recently, the Supreme Court cited favorably to this Court's opinion in *Bobbitt* for the proposition that: "Superior court jurisdiction over nonintervention probate is statutorily

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<sup>26</sup> *Id.* at 70 (emphasis added).

limited.”<sup>27</sup> Following the example of the *Peabody* case, the

Supreme Court explained:

[O]nce the decedent dies, the personal representative applies for an order of solvency, and the court has jurisdiction to grant or deny the order. However, once an order of solvency is entered the court loses jurisdiction. ***The court may regain jurisdiction only if the executor or another person with statutorily conferred authority invokes jurisdiction.***<sup>28</sup>

In the case at bar, the decedent’s will clearly specified that it should be administered without intervention by the Superior Court. Moreover, the estate was worth millions of dollars. As a result, the Superior Court properly entered an order declaring that the estate was solvent and that it should be administered without court intervention. Once this order was entered, the trial court lost jurisdiction over the matter. “Once an order of solvency is entered and the court has granted nonintervention powers, the personal representative is entitled

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<sup>27</sup> *In re Estate of Jones*, 152 Wn.2d 1, 9, 193 P.3d 147 (2004) (emphasis added).

<sup>28</sup> *Ibid.* (citations omitted)(emphasis added).

to administer and close an estate without further court intervention or supervision.”<sup>29</sup>

After the trial court entered its order, the personal representative completed his administration of the estate. When he was finished, he filed a “Declaration of Completion of Probate” pursuant to RCW 11.68.110. Unless the Superior Court’s jurisdiction is properly invoked, this filing has the effect of closing the estate and discharging the personal representative. “Under RCW 11.68.110, a nonintervention estate is closed and the personal representative discharged automatically upon the filing of the declaration of completion *unless* an heir, devisee or legatee has petitioned the court to approve the fees or for an accounting.”<sup>30</sup>

At this point, there was only one way to invoke the Superior Court’s jurisdiction. Unless an “heir, devisee, or legatee ... petitions the court either for an order requiring the personal representative to obtain court approval of the amount

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<sup>29</sup> *In re Estate of Ardell*, 96 Wn. App. 708, 715-16, 980 P.2d 771 (1999).

<sup>30</sup> *Id.* at 714.

of fees paid ..., or for an order requiring an accounting, ... the personal representative will be automatically discharged ... and the declaration of completion of probate shall ... be the equivalent of the entry of a decree of distribution ....”<sup>31</sup>

Proper notice was provided to the heirs. The personal representative timely filed and served a “Notice of Filing of Declaration of Completion of Probate,” pursuant to RCW 11.68.110(3). This notice warned all the heirs that:

[U]nless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, within thirty days after the date of the filing, ***the amount of fees paid or to be paid will be deemed reasonable***, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, and the Declaration of Completion of Probate will be final and ***deemed the equivalent of a Decree of Distribution*** entered under chapter 11.76 RCW.<sup>32</sup>

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<sup>31</sup> RCW 11.68.110(2).

<sup>32</sup> CP 34 (emphasis added).

Despite the clear language of this notice, no petition was filed by any of the heirs. As a result, the fees paid to the personal representative were deemed reasonable, the personal representative was discharged, and the declaration of completion became tantamount to a Decree of Distribution.

Entry of a Decree of Distribution has several legal consequences. First, the heirs lose their ability to challenge the actions of the personal representative.<sup>33</sup> Second, all issues relating to the probate of the estate become *res judicata*.<sup>34</sup> Finally, except for certain matters relating to absentee beneficiaries, the court loses jurisdiction over the matter.<sup>35</sup> Accordingly, when the Heirs asked the trial court to reduce the personal representative's fees more than six months later, the trial court correctly ruled that it had no jurisdiction to consider the Heirs' request.

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<sup>33</sup> *Meryhew v. Gillingham*, 77 Wn. App. 752, 753-54, 893 P.2d 692 (1995).

<sup>34</sup> *Norris v. Norris*, 95 Wn.2d 124, 130-31, 622 P.2d 816 (1980).

<sup>35</sup> RCW 11.76.247.

**B. The “Notice of Mediation” Did Not Invoke the Superior Court’s Jurisdiction**

As explained above, the statutes governing nonintervention estates strictly limited the Superior Court’s jurisdiction in this matter. Once it entered the order of solvency, the court had no jurisdiction over the administration of the estate. And once the personal representative served proper notice that he had filed a Declaration of Completion of Probate, the heirs could invoke the court’s jurisdiction only through a timely petition under RCW 11.68.110 requesting the court to approve the personal representative’s fees and/or to order an accounting. The Heirs argue that the court’s jurisdiction was invoked when Janet Harder filed a “Notice of Mediation” under TEDRA. But this argument ignores the plain language of the statutes.

Under TEDRA, “[a] party may cause the matter to be subject to mediation by service of written notice of mediation

....”<sup>36</sup> This is the procedure that Janet Harder sought to initiate by her notice, which cited RCW 11.96A.300 and copied some of the language set forth in this statute. For example, the notice stated that “the following matter shall be resolved by mediation under RCW 11.96A.300 ....” Similarly, the notice stated that “[t]his matter must be resolved using the mediation procedures of RCW 11.96A.300 ....” Nowhere in the notice did Janet Harder petition the trial court either to approve the personal representative’s fees or to order an accounting. In fact, the notice does not request the trial court to take any action. And that is exactly what the trial court did in response to her notice—nothing.

Washington’s statutes governing probate and trusts are set forth in Title 11 of the Revised Code. The handling of nonintervention estates is governed by Chapter 11.68, and TEDRA is found Chapter 11.96A. When the Legislature enacted TEDRA, it established the hierarchy between TEDRA

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<sup>36</sup> RCW 11.96A.300.

and the other provisions of Title 11. The Legislature specifically declared that “[t]he provisions of [TEDRA] *shall not supersede, but shall supplement*, any otherwise applicable provisions and procedures contained in this title ....”<sup>37</sup> It follows, therefore, that the “Notice of Mediation” procedure under TEDRA cannot supersede the provisions of Chapter 11.68, including the requirement to file the petition mandated by RCW 11.68.110.

There is no published decision in Washington addressing the issue of whether TEDRA trumps the need to file the petition required by RCW 11.68.110 to invoke the Superior Court’s jurisdiction. But in a closely analogous case, *In re Estate of Kordon*,<sup>38</sup> the Supreme Court recently addressed the issue of whether TEDRA trumped the need to file and serve a citation required by RCW 11.24.020 to invoke the Superior Court’s jurisdiction.

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<sup>37</sup> RCW 11.96A.080(2) (emphasis added).

<sup>38</sup> 157 Wn.2d 206, 137 P.3d 16 (2006).

In *Kordon*, the trial court “issued an order admitting the will to probate, declaring the estate solvent, and appointing [the] personal representative to act without intervention of the court.”<sup>39</sup> One of the heirs filed a petition challenging the validity of the will. Chapter 11.24 governs will contests. But the heir did not issue a “citation” as required by RCW 11.24.020; instead, she simply served her petition on the personal representative. Two years later, the personal representative filed a motion to dismiss the will contest, arguing that the court lacked jurisdiction because of the heir’s failure to issue a citation. In response, the heir belatedly issued a citation, but it was untimely, and the trial court dismissed the will contest for lack of jurisdiction.

On appeal, the heir argued that “TEDRA eliminates the requirement for a party contesting a will to issue citations to parties to the existing probate proceeding.”<sup>40</sup> The Supreme Court agreed that TEDRA does generally apply to all will

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<sup>39</sup> *Id.* at 208

<sup>40</sup> *Id.* at 210.

contests. Moreover, the Supreme Court acknowledged that—under TEDRA—a summons was required “only with respect to those parties who were not already parties to the existing judicial proceedings.”<sup>41</sup> The personal representative was already a party to the judicial proceeding, so he required no summons under TEDRA.

Nevertheless, the Supreme Court upheld the Superior Court’s dismissal for lack of jurisdiction because “the plain language of TEDRA indicates RCW 11.96A.100(2) does not affect the RCW 11.24.020 citation requirement.”<sup>42</sup> As the Supreme Court observed: “While TEDRA applies to will contests, it ‘shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title ...’”<sup>43</sup> The Supreme Court reasoned that TEDRA could not trump the requirement of serving a citation—even on

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Id.* at 211 (quoting RCW 11.96A.080).

<sup>43</sup> *Id.* at 212.

those who were already a party to the action—“without superseding RCW 11.24.020.”<sup>44</sup>

The same reasoning applies to the case at bar, with the same result. TEDRA applies to probate actions, including those involving nonintervention estates. And TEDRA generally allows a party to initiate a mediation simply by filing a “Notice of Mediation.” But in order to invoke the trial court’s jurisdiction, RCW 11.68.110 specifically requires a petition seeking court approval of fees and/or an accounting. TEDRA cannot eliminate this jurisdictional requirement without superseding the plain language of RCW 11.68.110. Accordingly, filing a “Notice of Mediation” under TEDRA did not invoke the trial court’s jurisdiction in this case.

**C. The “Notice of Mediation” Did Not Comply with the Governing Statute**

Even if TEDRA superseded the provisions of Chapter 11.68, the trial court’s ruling should still be affirmed on an

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<sup>44</sup> *Ibid.*

alternative basis. TEDRA provides that a “party may cause the matter to be subject to mediation by service of written notice of mediation ... in substantially the following form ...”<sup>45</sup> The form provided by TEDRA advises the recipient that the matter “must be resolved using the mediation procedures of RCW 11.96A.300 *unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice.*”<sup>46</sup> But the notice filed in the trial court below failed to include the emphasized language. Instead, the notice erroneously replaced the emphasized language with the phrase “unless the Court determines otherwise upon objection for good cause shown.”<sup>47</sup> Thus, this notice did not advise the recipients of the time or the manner for objecting to the notice of mediation.

Similarly, the notice set forth in TEDRA further advises the recipient that: “If a petition objecting to mediation is not

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<sup>45</sup> RCW 11.96A.300

<sup>46</sup> RCW 11.96A.300(1)(a) (emphasis added).

<sup>47</sup> CP 4, lines 17-18.

filed within the twenty-day period, RCW 11.96A.300(4) requires you to furnish to all other parties or their virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.”<sup>48</sup> This entire provision was omitted from the notice.<sup>49</sup> Thus, the recipients were not advised of the time or manner for proposing their preferred mediators for consideration by the court, which selects the mediator should the parties be unable to agree.<sup>50</sup>

Due to these deficiencies, the notice filed and served in this case did not comply with RCW 11.96A.300(1)(a). The Heirs may argue that the notice “substantially complied” with the statute, but this argument would fly in the face of Washington’s jurisprudence regarding substantial compliance. There is no published decision addressing substantial compliance in the context of a Notice of Mediation under TEDRA. But the courts have generally held, in similar

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<sup>48</sup> *Ibid.*

<sup>49</sup> CP 4-5.

<sup>50</sup> RCW 11.96A.300(4).

contexts, that when a mandated notice fails to inform the recipient of the “time and manner” of a proper response, then the notice fails to invoke the Superior Court’s jurisdiction.

For example, in one recently published case, a landlord served an unlawful detainer summons on a tenant, but the summons failed to include certain language—while the response could properly be served by personal delivery, mailing, or facsimile, the landlord’s summons mentioned only the personal-delivery method.<sup>51</sup> The landlord argued that the summons substantially complied with the statute and, therefore, the trial court had jurisdiction to hear the matter.

The Court of Appeals disagreed, following a line of decisions requiring “strict compliance” with such “time and manner” provisions. The court further reasoned that if it allowed the summons to leave out material portions provided by the statute, it would render those portions of the statute meaningless and superfluous. Thus, the appellate court

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<sup>51</sup> *Truly v. Heuft*, 138 Wn. App. 913, 158 P.3d 1276 (2007).

affirmed the trial court's dismissal of the matter for lack of jurisdiction.

The same is true here. The notice failed to include four very important portions of the statute. It failed to advise the recipients of: (1) the manner for objecting to the notice, (2) the deadline for objecting to the notice, (3) the manner of nominating proposed mediators, and (4) the deadline for nominating proposed mediators. Consequently, the notice did not strictly comply—nor did it substantially comply—with TEDRA. Thus, even if a Notice of Mediation under TEDRA could trump the petition required by Chapter 11.68, the notice served in this case was too deficient to do so.

#### **V. Request for Attorney's Fees**

Under RAP 18.1, attorney's fees must be sought in the requesting party's opening brief. The personal representative hereby requests an award ordering the appellant Heirs to pay his attorney's fees on appeal. RCW 11.96A.150 provides that "the

court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party" from "any party to the proceedings ...." This statute further provides that the court "may order the costs to be paid in such amount and in such manner as the court determines to be equitable." Finally, this statute provides that it "applies to all proceedings governed by this title, including but not limited to proceedings involving ... decedent's estates...."<sup>52</sup>

The appellant Heirs have caused further delay and expenditure of resources with their meritless appeal. It would not be fair if the other heirs, who have not pursued this appeal, were required to share in the expense of responding to it. Accordingly, the personal representative requests that the appellant Heirs be ordered to bear the full cost of the personal representative's attorney's fees on this appeal.

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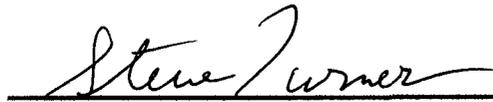
<sup>52</sup> RCW 11.96A.150(2).

## VI. Conclusion

For the foregoing reasons, the personal representative respectfully requests this Court to affirm the trial court's ruling, and he respectfully requests this Court to order the appellant Heirs to pay the personal representative's attorney's fees on this appeal.

Dated: February 20, 2014

Respectfully Submitted,

A handwritten signature in cursive script that reads "Steven E. Turner". The signature is written in black ink and is positioned above a solid horizontal line.

Steven E. Turner  
WSBA #33840  
Attorney for Respondent

## **Appendix to Respondent's Brief**

### **RCW 11.68.110**

**Declaration of completion of probate — Contents — Notice — Discharge of personal representative — Waiver of notice.**

\* \* \*

(2) Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and the representative's powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

### **RCW 11.96A.080**

**Persons entitled to judicial proceedings for declaration of rights or legal relations.**

\* \* \*

(2) The provisions of this chapter apply to disputes arising in connection with estates of incapacitated persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and

procedures contained in this title, including without limitation those contained in chapter 11.20, 11.24, 11.28, 11.40, 11.42, or 11.56 RCW. The provisions of this chapter shall not apply to actions for wrongful death under chapter 4.20 RCW.

**RCW 11.96A.300**  
**Mediation procedure.**

(1) Notice of mediation. A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties' virtual representatives as follows:

(a) If no hearing has been set. If no hearing on the matter has been set, by serving notice in substantially the following form before any petition setting a hearing on the matter is filed with the court:

**NOTICE OF MEDIATION UNDER RCW 11.96A.300**

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, RCW 11.96A.300(4) requires you to furnish to all other parties or their virtual representatives

a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable mediators is as follows:)

DATED: . . . . .

.....

(Party or party's legal representative)

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **Brief of Respondent** on:

David C. Harder  
6107 SE 21st Ave.  
Portland, OR 97202  
Appellant

Christopher S. Harder  
1926 Novato Blvd.  
Novato, CA 94947  
Appellant

FILED  
COURT OF APPEALS  
DIVISION II  
2014 FEB 24 AM 9:15  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

by the following indicated method or methods:

- E-mail.** As required by ORCP 9, all attorneys served by e-mail have agreed in writing to e-mail service.
- Facsimile communication device.**
- First-class mail, postage prepaid.**
- Hand-delivery.**
- Overnight courier, delivery prepaid.**

DATED this 20<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
Steven E. Turner, WSBA No. 33840  
Attorney for Respondent  
Philip Harder