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COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

EARL RUSSELL,
APPELLANT
VS.
MELANIE REYNOLDS,
RESPONDENT

APPELLANT'S REPLY BRIEF

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INTRODUCTION

The Respondent Melanie Reynolds of Anchor Guardianship and Case Management Services, Inc., CPGA ("Guardian") attempts to limit the issues addressed in this appeal to two of the many presented to the Thurston County Superior Court ("Thurston Ct.") in the record in support of the Amended Motion and Declaration for Relief Under CR 60(b). The Guardian attempts to narrow appellate review down to review only "alleged lack of service" and "that the trial court in the guardianship matter did not have subject matter jurisdiction over the trust (the Cheryl Creed Russell Living Trust, "Trust"). (Resp Brief p.2) Having defined away most of the substantive issues addressed in Appellant's Brief, especially violation of the Guardian's duties under RCW 11.88.150 ("Notice Party Statute"), the Guardian complains about "extra work" and delay in being paid. (Brief p.3).

Even at this date, the Guardian doesn't address the issues raised in Appellants Brief and properly before the appellate court.

The 18 issues raised (in chronological order of when they were raised in the trial court) as reason for relief from the 1/6/17 Order Approving Budget, Disbursements, and Initial 90 Day Personal Care Plan and Transfer Matter to Thurston County ("1/6/17 Order") are:

CR 60(b)(1) "mistake, inadvertence, surprise or irregularity in obtaining the Order " (CP 294)

CR 60(b)(11), "lack of jurisdiction, failure to make timely service, failure to provide notice of the correct matter set for hearing on January 2, 2017; and for violations of the requirement in RCW 11.92.(7) to obtain court approval of the specific budget for care of the Incapacitated Person (CP 294)

"The Guardian did not provide notice of the hearing until Mr. Russell received notice of a sort on December 23, 2016" (CP295)

"The Guardian did not provide copies of the Inventory or Personal Care Plan" (CP 295, 300, 596, ROP 7)

"Mr. Russell was unaware of he Guardian's intention to require the… Trust to pay for all living expenses of Cheryl Russell regardless of the amount of that expense…" (CP 295, 301, 649)

"There was no jurisdiction in the court to require Mr. Russell to pay more than the $6500 he offered, stated in section 1.4 of the Petition… (CP296,300, 593, 647, ROP 10)

"The Guardianship court did not have itemized expenses explained beyond that total…" (CP 296)

Nonreporting trust. "The court had no authority to order such expenditures beyond any amount which Earl Russell agreed as Trustee to provide for Cheryl's care, and his consent was not obtained." (CP 297, 592)

The Petition for Approval of the 90 Day Reports was inherently contradictory as to the relief sought regarding the amount of funds the Guardian would be able to expend (CP 649, ROP 7)

The Guardian's Inventory did not disclose the $35,000 received in cash from the sale of the mobile home in November 2016 (CP595)

"When dealing with an unrepresented party the Guardian 's counsel had an obligation to be candid with the other party, and filing a note for hearing incorrectly omitting the topic to be decided… which he would naturally oppose, is reason to vacate the Order on 1/6/17 for procedural irregularities" (CP 299, 649, ROP 7)

Waiver of bond in the 1/6/17 Order although required by RCW 11.88.100 "Because the Court apparently thought there were few liquid assets, it did not require a bond. Unfortunately, more than $100,000 has been spent by the guardian without supervision by the court" (CP 346, 652)

Failure of the guardian "to maintain the bonding, blocking… requirements as may be required by the court" under CPG Standards of Practice 409.3 and the guardian knowingly accessed the blocked funds without leave of court" (CPG 347, 652)

Admission by the Guardian of failure to serve the Inventory, Care Plan and actual Budget to Mr. Russell, made at hearing on 6/17/17 (CP 656)

Order as submitted to the court on 1/6/17 added additional discretionary expenditures beyond what was sought as relief in the petition for Approval, and the Guardian did not disclose this to the court (CP 361-5), when the Lewis Ct. was signing the equivalent of a default order (CP 596, 652, ROP 8)

The 2/6/17 violated RCW 11.88.095(2)(i) and 11.92.040(70 by permitting unlimited discretion in spending by Guardian without specific authorization (CP 367, 592-3)

Cheryl Russell spoke up at the 6/17/17 CR 60(b) Motion hearing to protest that she had not been served with any pleadings or notice of hearings prior to that date, that she hated having 24/7 caregivers in her home and that she wanted the right to participate in her own care decisions (CP 659-62)

No Petition for a TEDRA action was ever initiated, no service of a Summons or hearing occurred to join the Trust into the Guardianship estate, except for the 1/6/17 Order, entered in the absence of the Trustee

RAP 2.5(a)(1) permits the issue of lack of jurisdiction to be raised at any time, but it was asserted from the first CR 60 (b) Amended Motion on 5/17/17..

Additional Issues raised on appeal:

The Conclusion of Law by the Thurston Ct that the Trustee "had notice" interpreted the requirements of RCW 11.92.150 Notice Party Statute to mean that they were satisfied by service of a Notice of Hearing with a correct date but a wrong topic, but not Inventory, Budget and Care Plans, which had not been served..

Cheryl Russell was not served with the Petition personally, and had no counsel participating, yet the 1/6/17 Order removed her right to receive notice of hearings and pleadings, and she stated on

the record at the CR 60(b) Motion hearing on 6/17/17 that she wanted those rights returned.

Cheryl Russell had a right to due process in the loss of her opportunity to participate in her own case, through notice and service of pleadings, which was removed without her opportunity to be heard.

The Inventory (not served on the Trustee) and 1/6/17 Order approving it relegated the Trustee to being only the "Trust Manager" to provide funds from the Trust for IP's use and benefit, as necessary" (Respon. Brief 8);

1. Reply to **"The court did not abuse its discretion in finding that Mr. Russell received adequate notice of the hearing"** (Resp. Brief p.15)

The Standard of Review on this issue is not abuse of discretion, because the Thurston Ct made an interpretation of the Notice Party Statute finding that it had been satisfied. It also made a conclusion of law (that notice was adequate) by applying law to the facts (that the Trustee has received a faulty notice of hearing).

A. INTERPRETATION OF A LAW IS REVIEWED DE NOVO.

The Standard of Review is de novo regarding interpretation of a statute: *State v Karp*, 69 Wash. App. 369, 372 (Wash. App. Div 2 1993). A trial court's interpretation of a statute is a question of law

subject to de novo review on appeal. *Ellensburg Cement Prods., Inc. v. Kittitas County*, 179 Wn.2d 737,743 (2014).

B. APPLICATION OF LAW TO FACTS IN REVIEWED DE NOVO. A statute's application to a fact pattern is "a question of law fully reviewable on appeal". *Ameriquest Mortg. Co. v. Office of Atty. Gen.,* 177 Wn.2d 467,478 (2013)

The specific requirements of the procedure set out in the notice party statute must be literally observed for the matter to be properly before the court. That means that copies of all documents and advance notice of all hearings must be served on Notice Parties. It is particularly the case when a nonreporting trust is being attached as a guardianship asset in contradiction to the finding in the Guardianship Order (CP114) that the trust would remain administered by the Trustee. Notice party statute noncompliance was raised in 60B Motion and on the Motion for Revision.

Procedural irregularities relating to want of adherence to some prescribed rule or mode of proceeding, procedural defects apart from the merits, result in order which may be vacated by CR 60(B)(1). *In re Marriage of Tang* 57 Wash.App. 648 (Wash. App Div 1 1990).

Respondent's argument for evaluation of the notice issue using abuse of discretion criteria is legally incorrect. In addition, the Guardian's counsel controlled access to the facts in the reports at that hearing, withholding accurate information from Cheryl's family,

Cheryl and the court. As a result of noncompliance with the clear language of the statute, the Guardian gained access to the assets of a Trust (which Cheryl had established as nonreporting) to spend at will, the court never knew that large sums of money remained unblocked as of the 1/6/17 hearing, and Cheryl lost her rights to participate in hearing about her own life.

C. ABSENCE OF FINDING REGARDING NOTICE PARTY LAW. The Thurston Ct made no Finding of Fact that the Guardian's compliance with the procedural requirements of the Notice Party Statute were met, and there is no evidence in the record of service of 90 day Reports; in fact, the Guardian admitted that service was not made. Failure of a trial court to make a finding as to a material fact is considered a negative finding, held against the party having the burden of proof of the material fact. *Golberg v. Sanglier*, 96 Wash. 2d 874, 880, (1982), opinion amended, 96 Wash. 2d 874 (1982).

In this case, that burden is the Guardian, who provided an Order to the Court for signature on 1/6/17 which represented (CP 8, Section 1.2) that "notice has been properly provided to persons entitled to notice of this presentation" and (CP8, Section 1.2) that "all acts required of the Guardian to date have been performed". On Revision, the Thurston Ct did not find compliance occurred. In fact, the Guardian even recited in the section of the Petition to Approve the 90 Day Reports, requesting to remove Cheryl's access to

pleadings in her case (CP13, line 16). The Guardian added the following: "**The Guardian is required to send copies of documents to the Trustee of the IP's trust and to notice parties"** while the at the time the Guardian did not send the crucial Budget specifics, Inventory and Care Plans to anyone. The Guardian argues (Resp Brief p19) that the Petition was the same as the 90 Day Reports. Copies of all of these documents are appended to this Reply, for the Court to judge the veracity of the assertion that the Petition provided all the pertinent information.

CR 60(b)(11) is appropriate for procedural irregularities which occurred outside the action of the court at the time of entry of the order sought to be vacated.

F. ALL ISSUES IN THE RECORD WERE BEFORE THE COURT ON REVISION MOTION AND ARE NOW BEFORE THE APPELLATE COURT. This case is not just an issue of notice of hearing: "But this is a motion to vacate an order based on a lack of notice, not on a technical violation of the statue." (Resp. Brief, p 18). RCW 4.24.050 states that Revision is on "records of the case" before the court, not just the initial pleading. Many pleadings in the case were available for review of the Court Commissioner on 6/16/17 at the Motion hearing argument, and on Revision before J. Schaller on 11/17/17, and they all should be reviewed on appeal.

G. STRICT COMPLIANCE WITH THE NOTICE PARTY STATUTE WAS REQUIRED. Clear statutory language must be

followed exactly, not "substantial compliance" (case cited by Respondent is for a zoning notice, not a substantive right) or "actual notice" (case is contempt notice of hearing). Notice that a hearing will occur is not adequate notice under specifics of RCW 11.92.150, since it contained no actual notice of what was at stake:

The case law in Respondent's Brief (p 19) is not adequate to demonstrate that substantial compliance is the appropriate standard. *Burlingame v. Consolidated Mines* supports the idea that in a contempt action notice about time and place of hearing is sufficient to contemnor but facts and the legal concept behind that case are not analogous to this appeal. Even less apposite is the *Crosby v. Spokane County* in p 19 of Respondent's Brief because it addresses substantial compliance with notice regarding a plat subdivision, not protection of the assets and rights of an Incapacitated Person

"Substantial compliance" with Notice Party statute is not the standard of review, and it did not occur when the Guardian withheld from adverse party both access to the data (actual budget, Inventory and Care Plan) to be reviewed/approved at the hearing and also withheld notice of the topic of the hearing. This cannot be permissible in derogation of statute's demands. Both actions by Guardian were withholding material specifically affecting Cheryl's liberty interest,. Under Civil Rules (CR5 and LCR 11) all copies of what is filed in a case must be served on the opposing party. Guardian's argument in (Respond. Brief p 19) that "The additional

supporting documentation was accessible in the court file" is preposterous, when the Guardian had an affirmative duty by statute to supply the information to the notice party to be served.

In addition, the 1/6/17 Order approved/exonerated the actions already taken by the Guardian and the proposed actions to occur over the next year; the Guardian cannot hide behind the idea the Trustee could go look it up! The court relies on CPGs to provide professional reports, and the only one with the knowledge to challenge those 90 day reports (the Trustee) never saw them. The Guardian's counsel was an officer of the court and had a duty to provide correct reports and proper notice. The 1/6/17 Order exonerates the Guardian's undisclosed spending and the Guardian's nonfeasance (CP 339-347).

Judge Brosey relied on the accuracy of the CPG's reports. It is wrong to continue to argue that they are a "mere formality". Those 90 day reports, i.e. the Inventory, Care Plan and Budget are required to be approved three months into the Guardianship (RCW 11.92.040 and 11.88.043) because they are the roadmap of care for the person and a snapshot of the assets taken under the Guardian's control.

In this case, they were being misused. Inventory (CP 53) states the liquid assets in detail (incorrectly, alleging only $10,000 in unblocked accounts when the bank assets in the guardian's account were $55,048.98 on 1/5/17 (Confid. CP 866) and the Inventory contains an assertion that is oddly phrased: for the first

time it refers to the Trustee as "Trust Manager" an (indirect) effort to assert jurisdiction in contradiction to the 9/2/16 Order appointing Guardian (CP 114) No wonder it was NOT SERVED on Trustee.

a. The important issue of bond/blocking for $600,000+ was to be decided at the 1/6/17 hearing on 90 days report; the Order waived all bond on false information that there was little in liquid assets, when at the same time, the $35,000 cash proceeds of the sale of the mobile home has been taken into the accounts in November 2016.

b. The Care Plan (CP 42-50) is extensive (9 pgs) and contains great detail including intention of Guardian to work with the Trustee. It seeks court approval as the Guardianship statute requires because the court holds the ultimate responsibility for protection of IP and her estate. The Guardian operates at all times under the direction and control of the Court (RCW 11.92.0101). The care plan actually implemented was deeply offensive to Cheryl Russell (CP 666, 668)

c. CPG Guardianship Program Rules lay out a Certified Professional Guardian's duties, not a 10 year old Lay Guardian's Handbook (quoted in Respon. Brief p 33). Rule 401.2 requires that the Guardian shall not act outside the authority granted by the court. Rule 401.5 requires the Guardian to provide timely and accurate reports, but the Inventory filed was completely incorrect at the time it was approved. Rule 403.1 requires that the civil rights and liberties of the incapacitated person shall be protected; but in

Cheryl's case by means of the 1/6/17 Order, the Guardian sought to remove her rights to pleadings and to attend hearing without notifying her of this request. Rule 403.5 required the Guardian to "provide copies of all material filed with the court" to the IP, but the guardian chose not to provide anything to Cheryl and only the Petition to her former counsel. Rule 409.3 states that the Guardian shall maintain all bonding and blocking requirements of the court. This was never done.

H. Constitutional Rights. The Guardian should not benefit from the omissions of data it was her duty to provide, when the omission was for the convenience of the Guardian. Most specifically, her living arrangements of 24/7 caregivers offended Cheryl Russell, but the Guardian repeatedly refused to permit Care Assessment. All this power was permitted by the 1/6/17 Order granting all financial control to the guardian.

The Guardian still minimizes the importance of her actions in withholding the 90 day Reports (Respond. Brief p 19). The Guardian owed a duty to Cheryl and to the court and signed an oath to obey the law and fulfill her duties (CP 113), which she violated by withholding information from the court, the Trustee (and Holly Russell, the other child and notice party) and Cheryl Russell herself, including the participation in decision about whether Cheryl would get further pleadings and notices in her case. This denial of participation is a violation of a party's constitutional right to notice and participation in a case involving them. In *Esmieu v. Schrag,* 88

Wn.2d 490, 496 (Wash 1977), when a Trustee violated a party's constitutional right to due process (by setting a hearing and providing evidence at a time when the opposing party was not present and that party never got the chance to correct the record), the Supreme Court ruled that relief under CR 60(b) was appropriate. Entry of the order violated the constitutional right to due process (Const. art. 1, Section 3) "although this issue was not raised at the trial court" and because of this violation, the order was void. The Supreme Court also noted that the fiduciary duty which the Trustee owed to the other party under the trust instrument provided an additional reason why the order should be vacated, beyond the violation of constitutional right to due process. *Esmieu* at 498.

The factual basis of *Esmieu* is close to this one: not only did the Guardian owe a duty to Cheryl Russell, the Guardian owed a duty of candor to the court under RCW 11.92.040(5), duty to supply correct reports of the total amount of assets under the Guardian's control (RCW 11.92.040(1), and to verify the existence of blocked accounts to protect them. (RCW 11.88.105). The actions of the Guardian in filing an inaccurate Inventory while also withholding copies of it from Cheryl and the Trustee (notice party) meant that neither the notice parties nor the court could act to assure that Cheryl's assets were secured. In fact, in contradiction to the Inventory, the Guardianship accounts on 1/5/17 contained not $10,000 in cash (as claimed in the Inventory (CP 53), but

$55,048.98 (Conf CP 866) and the IRA accounts remained unblocked and unsecured for months, although the Inventory said that they were in blocked accounts. (CP 53). The Court had a duty to supervise the Guardian, who acts under its' authority, and the Guardian thwarted that duty.

When the party who obtained judgment participated in the irregularities leading to entry of the order, CR 60(b)(11) may be used to vacate the order.

> "The distinguishing fact of this case is that plaintiff's failure to act was the result of Suburban's counsel's actions and not merely Clarke's counsel's excusable neglect. The presence of the issue as to suburban's counsel's conduct establishes that the relief under subsection (11) would not contravene the policy of CR 6." *Suburban Janitorial Services v. Clarke American* 72 Wn.App. 302, 312 (Wash. AppDiv. 1 1993).

The salient fact in *Suburban* permitting vacation of a default beyond the one year window for relief under CR60(b)(1) was the behavior of Respondent's counsel in not responding to a letter inquiring about the status of the case. The behavior of Respondent's counsel was the material fact that justified granting relief from judgment.

> "The finality of judgments is an important value of the legal system. However, in both civil and criminal cases, circumstances arise when finality must give way to the even more important value that justice be done between the parties. CR 60 is the mechanism to guide the balancing

between finality and fairness." *Suburban Janitorial Services v. Clarke American* at 312.

2. Reply to Respondent Brief's incorrect assertion that **"The trial court had jurisdiction over the Revocable Living Trust of Cheryl Russell of which Ms. Russell was the sole beneficiary**

A. TRUST STATUS NEVER CHANGED. The Trust was created as a non-reporting Trust (Confid. CP 915, 924, 926) to be administered without intervention of a court. Once the Guardianship court found that it was not part of the Guardianship estate it remained so, since no court action was ever taken to change its' status as a separate non-reporting trust. The Order Appointing Guardian (CP 116, lines12-13) reflected the court's finding that it was not a guardianship estate asset and the court's intention to leave it as a separate entity available for the benefit of Cheryl, but to be administered by its' Trustee:

> "**There is a living Trust in place to manage most of Cheryl Russell's financial assets. The trust may remain in place for the named trustee to manage assets pursuant to its terms and directions**." (emphasis supplied).

After that finding, the Trust remained outside the subject matter jurisdiction of the Guardianship case until such time as legal action (by means of a summons, complaint and petition in a TEDRA

action under RCW 11.96A.090 adjudicated a new status for the trust. There is no finding of fact or Order after the 9/2/16 Order establishing Guardianship that the Trust was now part of the guardianship estate: the absence of such a finding creates a legal presumption that the status remained unchanged. The Guardian asserted repeatedly an argument that the mere fact that Cheryl Russell is the primary beneficiary meant that the guardianship could access the discretionary Trust assets without the Trustee's consent, in contradiction to the Trust document, but never explained why. The Guardian provided no case law to justify why this status changed and took no action to obtain a valid court order permitting it, apart from the effort to include the Trust assets in the 1/6/17 Order. That was done without overtly identifying a change of Trust asset status as relief sought in the Petition (CP 36) served on the Trustee, in a process which was procedurally irregular in multiple ways (Notice Party Statue). The absence of such a finding and court order including the Trust as an asset of the Guardianship estate must be held against party with duty to demonstrate that the Thurston Ct correctly asserted jurisdiction over the Trust assets on 1/6/17.

Finding of Fact/Conclusion of Law #7 "The court found that Judge Brosey had jurisdiction to hear the matter and provide relief" has no **facts to support a claim that it is referring to jurisdiction over the nonreporting Trust**. It is unchallenged that Judge Brosey had jurisdiction over the Guardianship, but it is unproven that the

guardianship estate on 1/6/17 included a Trust designated in the Guardianship Order as outside the guardianship estate. The burden of proof that the status of the Trust had changed between 9/2/16 and 1/6/17 is on the Guardian, and the record is absent of any such action.

B. STANDARD OF REVIEW OF CONCLUSION OF LAW #7 that the Trust was within the Guardianship estate. Conclusions of Law made by a superior court applying law to facts are reviewed de novo by the appellate court: for example, the Thurston Ct's implied conclusion that the Guardianship court had subject matter jurisdiction over the nonreporting Trust without directly finding that as fact. *Outsource Services Management v. Nooksack Business Corporation* 181 Wn.2d 272, 333 P.3d 380, 382 (Wash. 2014).

C. FINDING BY GUARDIANSHIP COURT IN ORIGINAL ORDER. RCW 11.88.090(9) means that the Guardianship court had specific mechanisms required before it could change the non-reporting Trust into a guardianship estate's assets, and the process never occurred. The Trust was not adjudicated to include it in Guardianship estate during the decision on the Petition for Guardianship; in the Order Appointing Guardian on 9/2/16 the Lewis specifically found that it was not a guardianship asset. (CP 116)

> RCW 11.88.090(9) provides that "Any alternative arrangements executed prior to the filing of the petition for guardianship remains in effect unless...following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternate arrangement should not remain in effect" .

This required hearing, finding of fact and conclusion of law that the alternate arrangement (nonreporting Trust) should no longer continue is effect didn't happen in Cheryl's case. The absence of a Finding of Fact is considered a negative finding, held against the party asserting that the Thurston Ct was correct.

Courts do not ordinarily have jurisdiction over non-reporting trusts unless the trustee or beneficiary appeals to the court for clarification of the terms or abuse of discretion. Trusts intended to operate without court intervention may not be subject to the court's jurisdiction absent abuse of discretion or request to the court for clarification. "If discretion is conferred on a trustee, the court will not substitute other parties' discretion for that of the trustee unless there is a showing of abuse of discretion". *Monroe v Winn*, 16 Wash.2d 497,508, 133 P.2d 952 (1943). No issue challenging the Trustee's discretionary decision in spending of funds was ever brought in an action before the Thurston or Lewis Ct.

D. TEDRA RCW 11.96A.090 requires a separate "new action" to be initiated, by the terms on the statute. This includes a summons and complaint/petition. None of that was done by the

Guardian. The Guardian seems to argue that the matters overlapped, since all the parties were already present in the guardianship action. **However, the Trust was not in the Guardianship as per the 9/2/16 Order**. Once the Guardianship Order made a finding that the Trust remained outside the Guardianship estate, a new case needed to be initiated to invoke TEDRA's supplemental powers. The Guardian's argument (Respond. Brief p 26) that the Trustee submitted himself and the Trust to the court's jurisdiction when he filed the Petition for Guardianship as the son of Cheryl Russell is provided without legal justification. At all times, Earl Russell acted for his mother's good as an individual and he also supplied $6500/month support for her as the Trustee of the discretionary Trust, repeatedly asserting lack of jurisdiction of the Guardian to access Trust funds, and lack of jurisdiction of the Guardianship Court to issue the 1/6/17 Order.

E. WASHINGTON LAW FAVORS TRUSTOR'S RIGHTS TO DEFINE THEIR TRUST. RCW 11.97.010 recognizes autonomy of Trustor to create language in a trust granting powers in excess of those granted by statute. This shows autonomy of trustor in statutory law. The court's primary duty when interpreting a will or trust is to give effect to the testator/trustor's intent; if the language is unambiguous, the court ascertains the testator's/trustor's intent from the language of the instrument itself without extrinsic evidence. *In re Guardianship of Jensen*, 17 Wash.App.325 (Ct Ap

Div 2, 2015).The primary duty of the court is to ascertaining the intent as the testator, referring to intent at the time of execution of the document. The document's intent must be construed from the four corners of the will. *Estate of Mell*, 105 Wn.2d 518,524 (1986), citing *In re Estate of Riemcke*, 80 Wn.2d 722,728 and *In re Estate of Bergau*, 103 Wn.2d at 436. These rules of construction are effective whether the document is a will or a trust. RCW 11.97.020

3. Reply to "**The trial court did not abuse its discretion by taking judicial notice that Judge Brosey vigorously reviews court files before making rulings**" (Respondent's Brief p 26)

This is Finding of Fact #2 of the 11/17/17 (CP 604). Permissible uses of judicial notice under the Rules of Evidence do not include opinion or reputation. Because it is an inadmissible use of Judicial Notice, there is no adequate evidence in the record to support the finding, so #2 cannot stand on review.

The standard of review of a Conclusion of Law made from that Finding of Fact is de novo. The conclusion of law implicit in #2 and #6, that because Judge Brosey prepares carefully for hearings no procedural irregularity occurred on 1/6/17 to justify relief from the Order is reviewed de novo. #6 cannot be supported on a non-fact from #2. But the irregularity and abuse of procedure were NOT apparent to any judge, in the absence of a party (the Trustee) with contrary information to present.

The irregularities in the 90 Day Reports approved on 1/6/17 were all caught after the date of hearing on 1/6/17 (see Notice party section). All appeared to be in order on the surface. Waiving bond based on the statement of assets based on the facts stated in the Inventory would make sense to a careful reader, but the Inventory was wrong. Signing an order which contained relief altered from the relief sought in the petition might have been caught by careful reading, but CPG's don't typically do this kind of switch. It was all below the radar.

4. Reply to "**The trial court did not abuse its discretion in finding that Mr. Russell could have appealed the ruling**". (Respond. Brief p 28). In actuality, the Thurston Ct found in Finding of Fact #4 that appeal (or discretionary review) was the only remedy available to Mr. Russell, and thereby assumed that no issues had been raised sufficiently to demonstrate irregularity, lack of jurisdiction over the Trust (creating a void order), constitutional due process violations, or violations of RCW 11.92.150 (Notice party statute), which would constitute irregularity justifying relief from judgment under CR60(b). Applying Finding of Fact #4 by the Thurston Ct. led to a Conclusion of Law #6 that no irregularity, or mistake had occurred. The facts in the record on revision demonstrate otherwise.(CP 296, 297, 301) It was abuse of discretion to conclude that no relief was permissible under CR60(b0

in the record replete with procedural and substantive violations of the guardian's duty.

The Thurston Ct. relied on an assumption that an unreasonable amount of time went by before the Trustee raised the issues. First, the Trustee didn't get notice of what occurred until 1/11/17 (CP 351-353, 300-301). On 4/6/17 the first Notice of Change of Circumstances (CP 235-255) was filed by the G, and the situation became clear, well after the appeal date (2/6/17) The notification that "a new budget had been established" provided to the court by the G (without seeking court approval as required by RCW 11.92.040(7) for increased budgets) now was $16,808/month (of which all but approx. $1000 was to come from the Trust).

On 4/11/17 the Trustee immediately filed his objection to the unauthorized spending and attached to bank statements disputing the inaccurate information in the Inventory (Confid. CP 829-841). The Trustee expressed his concern about the amount of money which had slipped off the recordkeeping- neither accounted for in the Guardianship Inventory nor present in the new accounts established by the Guardian. At hearing on 4/14/17, the court entered an Order which denied all participation by the Trustee in Cheryl's living arrangements. (CP 256-257. This was the beginning of Earl Russell's effort to alert the court about the manner in which his mother's assets were disappearing and how Cheryl hated having 24/7 caregivers in her home. The Trustee filed Declarations objecting to G's spending on 3/10/17 (CP 247-250), on 4/11/17 (CP

247-250), on 6/15/17 (CP 354-356), on 5/16/17 (CP300-301), on 5/17/17, the Amended Motion for relief under CR 60(b) (CP 313-315), on 7/19/17 (CP 461-475) and on 9/27/17 (CP 781-784). His continuing objections were always met with refusal to negotiate by the Guardian and negative responses by the court. CPGs are accorded great deference in local Guardianship courts.

5. Reply to "**Mr. Russell lacks standing to make arguments on behalf of his mother. Additionally, those arguments are unpreserved and lack merit**".

Earl Russell can assert Cheryl's constitutional rights. RAP 2.5(a)(3) permits the appellate court to review any claimed manifest error affecting a constitutional right. Earl is Cheryl's son, preserving Cheryl's rights on appeal, after Cheryl asserted them at hearing on the CR 60(b) Motion. The Guardian was supposed to assert Cheryl's rights but did not do so RCW 11.92.043(1)(e)

Cheryl individually and with counsel asserted lack of notice and service of all pleadings at the hearing on the CR 60(b) Motion for Relief (CP 659, line 10 and 23, CP 660, line 16,and 25, CP 661, lines 2 and 19, CP 663, line 16, CP 664, lines 15-23) and through her counsel CP 661, lines 23 through p 662, line 9). It is preserved in the record. The appellate court can take note of the Incapacitated Person's assertion of her rights to fundamental liberty issues, such as due process rights to receive pleadings

The legislative findings 2005 c 236 regarding Section 2 of RCW 11.88.010, when discussing the removal of the right to vote finds: "When the state chooses to use guardianship proceedings as the basis for denial of a fundamental liberty, as individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include a clear notice and a meaningful opportunity to be heard". Who else but Earl Russell could raise the issue of Cheryl's rights to participate when Cheryl's own Guardian, the one trusted to protect her interests, is also the one violating her rights?

6. **ATTORNEY FEES**

There is a Benefit to Estate by declaring 1/8/17 Order void now. Extraordinary expenses were accumulated during the Guardian's less than 2 years' term of service. Prospective application of 1/6/17 Order is still an injustice to the Trust and Guardianship estate, because the 1/6/17 Order authorized spending at the sole discretion of the guardian, and she freely expended hours in the case without any limits. Limiting fees to theory of equitable concept of quantum merit would be much more appropriate than the mechanical calculation which the Guardian has filed in her accounting, relying on the open check authority of the (highly irregular) language of the 1/6/17 Order. The Report of proceedings (p 10) identifies that there are still another $50,000 in fees claimed by the Guardian and counsel from the Trust for actions which were without the consent of the Trustee or Cheryl. The Order presented

by the Guardian to the court on 1/6/17 stated that P1.1 "All acts required of the Guardian to date have been performed", but RCW requires posting of bond or proof of blocked account BEFORE Letters of G are issued, and at the time neither bond nor verification from bank that blocked account agreements were in place; continued failure to block the accounts and actual use of the account funds shows bad faith. (CP 476).

A lodestar analysis is not the standard for awarding attorney's fees in Guardianship cases (and by analogy, to appeal). The benefit to Estate may be considered by the court in considering award of fees (RCW 11.96A.150(1), in addition to who is prevailing party. In re *Guardianship of Decker* 188 Wash.App.429,449, 353 P.3d 669 (Ct Ap Div 2, 2015). Records of this case show extraordinary amounts of money being spent without further hearing or approval (relying on the 1/6/17 Order). Mediation was attempted to work through issues, but Show Cause to enforce the CR2(a) Agreement had to be brought by the Trustee. (CP 494)

"The court in overseeing guardianships, must weight the compelling concerns of individual autonomy and protection of incapacitated persons. RCW 11.88.005. *In the Matter of Guardianship of Decker*, 188 Wn. App. 429, 447 (Wash. App. Div 2 2015)

Respectfully Submitted,

Virginia Clifford, Attorney for Petitioner WSBA # 32354

#1 ORDER ON REVISION ENTERED NOVEMBER 17, 2017

17-4-00036-34
ORFR 173
Order on Motion for Revision of Court Commiss
2110871

4

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

2017 NOV 17 PM 4:44

Linda Myhre Enlow
Thurston County Clerk

☐ Expedite
☐ Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____
☐ No hearing Set

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON
FAMILY & JUVENILE COURT

IN RE THE GUARDIANSHIP OF: CHERYL RUSSELL AN INCAPACITATED PERSON	NO. 17-4-00036-34 ORDER RE: MOTION FOR REVISION OF DENIAL OF RELIEF UNDER CR 60(b) (OPTIONAL USE) (OR) [ ] CLERK'S ACTION REQUIRED

The Trustee, Earl Russell, by and through his attorney of record, Virginia A. Clifford presented an Amended Motion and Declaration For Relief Under CR 60(b) on May 17, 2017. This Motion for Relief came on for hearing on June 16, 2017 before the Honorable Rebekah Zinn. The Court Commissioner entered an Order denying relief on

Law Office of Virginia A. Clifford, PLLC
2952 Limited Lane NW, Suite A
Olympia, WA 98502
360-357-3007
Fax: 360-357-3071

June 16, 2017. A Motion for Revision was filed by the Trustee Earl Russell on June 26, 2017, and an Amended Motion for Revision was filed on 5/17/17. The Former Guardian responded in opposition to the motion on or about 5/24/17. A transcript on the hearing held on 6/16/17 before C.C. Zinn was filed in lieu of Findings of Fact, Conclusions of Law

Hearing on the Trustee's Amended for Revision was held on November 17, 2017 before the Honorable Judge C. Schaller, with argument in open court. Present were Virginia A. Clifford, attorney for the moving party, Earl Russell, the Trustee of the Cheryl Creed Russell Living Trust (hereinafter "Trustee"); the former Guardian, Melanie Reynolds, of Anchor Guardianship and Case Management Services, Inc (hereinafter "Guardian"); and Melanie Hantze, attorney for Melanie Reynolds, former Guardian. and Cheryl Russell, IP.

On October 13, 2017 the Guardian moved to dismiss the Revision Motion and the Former Guardian filed Objections to the Revision on ~~11/12/17~~ 11/9/17; the Trustee filed a Reply on 11/16/17

I. Findings of Fact

The Court finds the following facts:

1. Review of the CR 60(b) motion is de novo on revision

2. The Court takes judicial notice of the carefulness of Judge Brosey in matters appearing before him and he vigorously reviews the files before the hearings.

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3 The Court finds that the Trustee had notice of the hearing on 1/6/17

4 The Court finds that the appropriate remedy for the 1/6/17 Order was appeal or request for discretionary review

5. The Court finds that the 60(B) motion was timely

6. The Court finds that no procedural irregularity occurred and no extraordinary circumstances exist to justify CR 60(b)(11) relief

7. The Court found Judge Brosey had jurisdiction to hear the matter and provide relief.

Order

It is ordered:

1. The Trustee's Amended Motion for Revision is ☐ granted ☒ denied.

2. The Court ☐ does ☒ does not vacate the Order entered in this matter in Lewis Superior County Court on January 6, 2017

3. ~~The Order dated January 6, 2017 is ☐ is not modified to adopt the budget approved from Paragraph 1.4 of the Petition.~~

4. The Order dated January 6, 2017 is not vacated ~~but is modified to delete all~~ references to permitting the Guardian to use or access any funds of the Cheryl Creed Russell Trust except as specifically agreed to in advance by the Trustee of that Trust.

~~5. The Court ☐ requires ☒ does not require a hearing to review expenditures made by the Guardian in excess of the budget stated in P. 1.4 for Ms. Cheryl Russell.~~

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Fax: 360-357-3071

6: **OTHER**:

Dated: 11-17-17

Judge/commissioner

Presented by:

Virginia A. Clifford, WSBA #32354
Attorney for Trustee, Earl Russell

Approved for entry:

Melanie Hantze, WSBA # 27673
Attorney for former Guardian
Melanie Reynolds, of Anchor
Guardianship and Case Management
Services, Inc

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#2 SAMPLE ORDER APPROVING BUDGET, DISBURSEMENTS AND INITIAL PERSONAL CARE PLAN

Superior Court of Washington
County of

In the Guardianship of: _____, Incapacitated Person	**No.** **Order Approving Budget, Disbursements, and Initial Personal Care Plan (ORAPRT)** **[ ] Clerk's Action Required**

Clerk's Information Summary

[X] Due Date for Next Report and Accounting: _____
[ ] Other (Date and Purpose): _____

Based upon the petition of the Guardian of the Estate and the documents filed with the petition, ***the court makes the following findings of fact:***

I. Findings of Fact

1.1 Acts of Guardian

All acts required of the Guardian to date have been performed.

1.2 Notice

Notice has been properly provided to persons entitled to notice of this presentation.

1.3 Budget and Care Plan

The proposed Budget and Care Plan of the Guardian are reasonable and appropriate to the needs of the Incapacitated Person and should be approved.

II. Orders

2.1 Approval of Initial Personal Care Plan

The Initial Personal Care Plan is approved.

2.2 Budget

The Guardian is authorized to continue to receive the Incapacitated Person's income and to apply the income and other resources toward the Incapacitated Person's expenses:

Room and Board	$
Medical	$
Rent/Mortgage	$
Personal and Incidental Expenses	$
Food and Household Expenses	$
Utilities	$
Guardian Fees	$
Other	$
Total Monthly Expenditures	$

2.3 Outstanding Obligations of the Estate

The Guardian shall be authorized to arrange payment schedules with the creditors of the guardianship estate for delinquent and past due payments.

2.4 Medical and Dental Expenses

The Guardian is authorized to incur and pay reasonable and necessary medical and dental expenses that the Guardian determines to be in the best interest of the Incapacitated Person.

2.5 Income Tax Payments/Accounting Fees

The Guardian is authorized to make payments for income tax due as required, and to pay fees for accounting services required in connection with the preparation of income tax returns.

2.6 Miscellaneous Expenses

The Guardian is authorized to pay all expenses incurred by way of fees of the Clerk of the Court, together with additional expenses incurred up to the amount of **$50.00** per month in connection with this guardianship.

2.7 Accounting Due Date

The Report and Accounting of the Guardian shall be filed and submitted to the Court for approval not later than _____ (90 days after the first anniversary of the appointment of the Guardian).

2.8 Bond

Bond is currently set in the amount of $ _____. The amount of the bond [ ] shall not be changed [ ] shall be changed to $ _____.

2.9 Guardian Fees

The Guardian is allowed to advance a monthly fee up to $ _____. This advance is approved for the next 12 months and 90 days thereafter, from the date of appointment of the Guardian to _____. Such fees are subject to review and approval by the Court at the next regular accounting. No presumption that these fees will be approved as reasonable is created by this authorization for advance. Amounts shall be advanced only for actual services provided, and costs actually incurred. Interim Guardian fees in the amount of $ _____ for services rendered and administrative costs (DSHS cases only) of $ _____ between _____ and _____ are reasonable and approved.

[ ] DSHS cases. The above fees and costs are approved for payment as a monthly deduction from the incapacitated person's participation in the DSHS cost of care per WAC 388.79.030.

[ ] Non-DSHS cases. The above fees are approved for payment from the guardianship estate assets.

2.10 Attorney Fees and Costs

Attorney fees in the amount of $_____and costs in the amount of $ _____ are hereby approved as reasonable. They shall be paid from the guardianship assets of the Incapacitated Person, from the participation of the Incapacitated Person as an exception to policy, or other: _____.

2.11 Other

_____
_____
_____.

Dated _____.

_____
Judge/Court Commissioner

_____	_____	_____
Signature of Guardian/Attorney	Print Name of Guardian/Attorney	[ ]WSBA [ ]CPG#
_____	_____	
Address	City, State, Zip Code	
_____	_____	
*Telephone/Fax Number	Email Address	

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

#3 ORDER APROVING BUDGET, DISBURSEMENTS AND INITIAL 90 DAY PERSONAL CARE PLAN AND TRANSFER MATTER TO THURSTON COUNTY ENTERED JANUARY 6, 2017

CERTIFIED

Due Date for First Annual Report: December 1, 2017
Hearing on Approval of First Annual Report: January 5, 2018
Reporting Period for Annual Report: September 2, 2016 to September 1, 2017

Received & Filed
LEWIS COUNTY, WASH
Superior Court
JAN 06 2017

Thurston Co:
17-4-00036-34

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNY OF LEWIS

In The Matter of the Guardianship of CHERYL RUSSELL, An Incapacitated Person.	NO. 16-4-00152-21 ORDER APPROVING BUDGET, DISBURSEMENTS AND INITIAL 90 DAY PERSONAL CARE PLAN AND TRANSFER MATTER TO THURSTON COUNTY **GDN 05.0500** **(CLERK'S ACTION REQUIRED)**

ORIGINAL

GUARDIANSHIP SUMMARY

DATE GUARDIAN APPOINTED:	**SEPTEMBER 2, 2016**
DATE OF NEXT REPORTING PERIOD:	**SEPTEMBER 2, 2016 - SEPTEMBER 1, 2017**
DUE DATE FOR REPORT & ACCOUNT:	**DECEMBER 1, 2017**
LETTERS EXPIRE ON:	**MARCH 31, 2018**
BOND AMOUNT:	**WAIVED**
RESTRICTED ACCOUNT:	**YES**
AGREEMENTS REQUIRED:	**NONE**
INCAPACITATED PERSON:	**CHERYL RUSSELL** **The Firs** **426 Lilly Road NE, Apt. #302** **Olympia, WA 98506**
GUARDIAN:	**ANCHOR GUARDIANSHIP & CASE MANAGEMENT SERVICES, INC. CPGA#13054** **P.O. BOX 6303, Olympia, WA 98501** **360-451-1466**
STANDBY GUARDIAN:	**3 GRACES GUARDIANSHIP, LLC** **P.O. BOX 67** **OLYMPIA, WA 98540** **360-890-4724**
INTERESTED PARTIES:	**none**
NOTICE PARTIES:	**Earl Russell, 2 Winding Way, Bloomington, IL 61705** **Holly Russell, P. O. Box 1637, Redmond, OR 97756**

LAW OFFICES OF MELANIE K. HANTZE
112 FOURTH AVENUE EAST, SUITE 200
OLYMPIA, WA 98501
(360) 570-9999

Based upon the petition of the Guardian of the Person and Estate and the documents filed with the petition, the Court makes the following Findings of Fact:

I. FINDINGS OF FACT

1.1 ACTS OF GUARDIAN

All acts required of the Guardian to date have been performed.

1.2 NOTICE

Notice has been properly provided to persons entitled to notice of this presentation.

1.3 BUDGET AND CARE PLAN

The proposed Budget and Care Plan of the Guardian are reasonable and appropriate to the needs of the Incapacitated Person and should be approved.

1.4 GUARDIAN AND ATTORNEY FEES OF GUARDIAN

The Court finds that the guardian fees and fees of the attorney for the Guardians are just and reasonable.

1.5 TRANSFER OF GUARDIANSHIP TO THURSTON COUNTY

There is a need to transfer the matter to Thurston County as the IP and the Guardian reside in Thurston County and the IP no longer owns property in Lewis County.

1.6 RELIEVE GUARDIAN OF RESPONSIBILITY TO GIVE DOCUMENTS TO IP

The Court finds there is good cause to waive the requirement of the Guardian to provide copies of court documents to the IP.

1.7 INCREASE GUARDIAN MONTHLY FEE

There is a sufficient basis to increase the Guardian's monthly fee to $1,200.

1.8 TRUSTEE TO PAY FOR EXPENSE BEYOND MONTHLY INCOME

The IP has funds in Trust to pay for her expenses that exceed her monthly income and therefore, the Trustee should pay for these expenses from the Trust assets.

1.9 BOND AND BLOCKED ACCOUNTS

The Vanguard Roth IRA accounts should be blocked and the bond waived.

1.10 AUTHORITY TO HAVE IP EVALUATED BY CLINIC

The Court finds it is reasonable for the Guardian to spend up to $10,000 for the evaluation and treatment of the IP at the Daniel Amen Clinic in Bellevue, Washington.

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1.11 AUTHORITY TO SELL AUTOMOBILE

The Court finds it is reasonable that the Guardian sell the 2006 Dodge Grand Caravan in an amount no less than $5,000.00.

II. ORDERS

2.1 APPROVAL OF INITIAL PERSONAL CARE PLAN AND ACTIONS OF GUARDIAN

The Initial Personal Care Plan and all actions taken on behalf of the IP by the Guardian is approved.

2.2 BUDGET

The Budget as outlined in the petition is approved.

2.3 MEDICAL AND DENTAL EXPENSES

The Guardian is authorized to incur and pay reasonable and necessary medical and dental expenses that the Guardian determines to be in the best interest of the Incapacitated Person.

2.4 INCOME TAX PAYMENTS/ACCOUNTING FEES

The Guardian is authorized to make payments for income tax due as required and to pay fees for accounting services required in connection with the preparation of income tax returns.

2.5 MISCELLANEOUS EXPENSES

The Guardian is authorized to pay miscellaneous expenses of the IP up to the amount of **$1,000** per month in connection with this guardianship without further order of this Court

2.6 ACCOUNTING DUE DATE

The Annual Report and Accounting of the Guardian shall be filed and submitted to Thurston County Superior Court for approval no later than **December 1, 2017.**

2.7 BOND/BLOCK ACCOUNTS

The requirement of the Bond shall be waived.

The Vanguard Roth IRA accounts, ending in xxx7336 and xxx5121 shall be blocked.

2.8 GUARDIAN FEES

The Guardian is allowed to advance a monthly fee up to **$1,200.00** for usual and customary services. Such fees are subject to review and approval by the Court at the next regular accounting. No presumption that these fees will be approved as reasonable is created by this authorization for advance. Amounts shall be advanced only for actual services provided and costs actually incurred.

The initial fees incurred by the Guardian in the amount of **$12,324.50** of which $2,400.00 has been paid for services rendered by the Guardian are reasonable and approved.

The above fees are approved for payment from the guardianship estate assets.

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2.9 ATTORNEY FEES AND COSTS

Attorney fees incurred by Melanie K. Hantze, as attorney for the Guardian in the amount of **$4,228.95** are hereby approved as reasonable. They shall be paid from the guardianship assets of the Incapacitated Person.

2.10 TRANSFER OF GUARDIANSHIP

The Lewis County Superior Court Clerk shall transmit the pleadings and papers filed in this action and a certified transcript of all record entries, up to and including this Order to the Thurston County Superior Court within 30 days after date of this Order.

2.11 RELIEVING GUARDIAN RESPONSIBILITY OF DELIVERING DOCUMENTS TO IP

The Guardian is relieved of the responsibility of delivering court documents to the IP.

2.12 TRUSTEE PAYS EXPENSES THAT EXCEED INCOME

The Trustee of the Cheryl Russell Living Trust shall pay the monthly sum of $6,500 to the guardianship and shall pay any expenses that exceed the monthly income of the IP.

2.13 AUTHORITY TO EXPEND FUNDS FOR EVALUATION AND TREATMENT

The Guardian shall be authorized to spend the sum up to $10,000 for evaluation and treatment of the IP at the Daniel Amen Clinic in Bellevue, Washington.

2.14 AUTHORITY TO SELL AUTOMOBILE

The Guardian shall have the authority to sell IP's 2006 Dodge Grand Caravan automobile in an amount of no less than $5,000.00.

DATED this 6th **day of January, 2017.**

SUPERIOR COURT JUDGE/~~COMMISSIONER~~

Richard L. Brosey
Judge

PRESENTED BY:

MELANIE K. HANTZE, WSB 27673
ATTORNEY FOR GUARDIAN

LAW OFFICES OF MELANIE K. HANTZE
112 FOURTH AVENUE EAST, SUITE 200
OLYMPIA, WA 98501
(360) 570-9999

#4 PETITION FOR APPROVAL OF 90 DAY REPORTS AND TO TRANSFER CASE

SCANNED

HEARING:
DATE: JANUARY 6, 2017
TIME: 11:00 A.M.
CALENDAR: GUARDIANSHIP

Received & Filed
LEWIS COUNTY, WASH
Superior Court
DEC 2 1 2016

ORIGINAL

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNY OF LEWIS

In The Matter of the Guardianship of	)	NO. 16-4-00152-21
	)	
CHERYL RUSSELL,	)	PETITION FOR APPROVAL
	)	OF 90 DAY REPORTS
	)	AND TO TRANSFER CAUSE
An Incapacitated Person.	)	
	)	**GDN 05.0100**

COMES NOW MELANIE REYNOLDS, of ANCHOR GUARDIANSHIP AND CASE MANAGEMENT SERVICES, INC., CPGA#13054, Limited Guardian of the Person and Full Guardian of the Estate, by and through her attorney, MELANIE K. HANTZE, and respectfully petitions to the Court as follows:

I. BASIS

1.1 Appointment of Guardian

ANCHOR GUARDIANSHIP AND CASE MANAGEMENT SERVICES, INC., CPGA #13054, was appointed Limited Guardian of the Person and Full Guardian of the Estate of the Incapacitated Person on September 2, 2016, and immediately thereafter qualified by filing an oath. Letters of Limited Guardian of the Person and Full Guardianship of the Estate were issued by the court at that time.

1.2 Inventory

An inventory of the assets of the Incapacitated Person was filed under separate cover on December 2, 2016.

1.3 Personal Care Plan

An initial Personal Care Plan was filed under separate cover on December 2, 2016.

1.4 Income and Monthly Expenses

The IP's income and expenses are as follows:

INCOME:

Social Security	$269.30
WA State Retirement	$417.33
NV State Retirement	$239.71
Trust Fund Allowance	$6,500.00
TOTAL	$7,426.34

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(360) 570-9999

MONTHLY EXPENSES:

Housing/food	$2,600
Phone/Cable	$ 50
Allowance - clothing/other	$1,000
Medical/ins. counseling/co-pays	$ 500
Transportation	$ 200
Storage Fees	$ 220
Auto Ins.	$ 30
Guardianship Fees	$1,200
TOTAL	$ 5,800

1.5 Authority of Guardian to Receive Income and Pay Expenses

The Guardian should have authority to receive the IP's income to be applied against the IP's expenses.

1.6 Proposed Budget

The Guardian requests approval of the budget as outlined in **1.4** above.

1.7 Relieve Guardian of the responsibility to provide Court documents to IP

The Guardian requests the Court to waive the Guardian's responsibility of providing Court documents to the IP. When documents are given to the IP, it causes her undue stress and confusion. The Guardian, however, may at her discretion discuss court documents with the IP. The Guardian is required to send copies of documents to the Trustee of the IP's trust and to notice parties.

1.8 Transfer Matter to Thurston County

The Guardian is requesting this Court to change the jurisdiction and venue of this Guardianship as allowed under RCW 11.88.130. The IP now resides in Thurston County, the mobile home owned by the IP in Lewis County has been sold. The Guardian also resides in Thurston County, Washington. There are no further connections to Lewis County and the proper venue is now Thurston County.

1.9 Increase in Guardian Monthly Fees

The Guardian has been required to spend more time than originally estimated to establish this guardianship and in selling property of the IP, in assisting the IP with establishing proper residence and obtaining medical assessments and treatment. Therefore, the Guardian is requesting an increase in her monthly fees to $1,200.

1.10 Payment of Guardian and Attorney Fees

The Guardian requests the approval to make the following payments as supported by the statements filed under separate cover.

Attorney Fee – Melanie Hantze, attorney for Guardian **$4,228.95**

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112 FOURTH AVENUE EAST, SUITE 200
OLYMPIA, WA 98501
(360) 570-9999

Guardian Fee – for services rendered from September 2, 2016, to November 30, 2016, is $12,324.50 of which $2,400 has been on December 1, 2016, leaving a balance due of **$9,924.50**

1.10 Trustee to Pay Guardian for expenses beyond Monthly Income

The IP has funds available in excess of approximately 2.5 million from the Cheryl Russell Living Trust, of which she is the sole beneficiary. Even though the IP has funds in Vanguard Roth IRA's, the IP's CPA has suggested to the Guardian that funds should be pulled from the Trust and not the IRA's if needed to support the IP. The Guardian is thus requesting the Trustee to continue to pay the $6,500 per month to the IP and also pay any expenses that exceed her monthly income.

1.11 Bond and Blocked Accounts

The Guardian is recommending that the Vanguard Roth IRA accounts be blocked thus leaving funds in the Guardianship account available to pay for monthly expenses. Since the majority of the assets will be in the blocked accounts, the Guardian is asking that the necessity of a bond be waived.

1.12 Authority to have IP evaluated by Clinic

After discussing the matter with the IP and with other counselors for the IP, it is recommended that the IP undergo an assessment with the Daniel Amen Clinic in Bellevue, Washington, and to participate in any treatment as recommended by the Clinic. The cost for the assessment and treatment ranges between $5,000 to $10,000. The IP wants to attend the clinic and she has the funds to pay for said assessment and possible treatment. The Guardian is therefore requesting the Court to grant her the authority to spend up to $10,000 for the assessment and treatment.

1.13 Authority to sell automobile

The IP no longer drives and there is no need to keep her vehicle. Therefore, the Guardian is requesting the Court for authority to sell the 2006 Dodge Grand Caravan in an amount no less than $5,000.00. This value is consistent with the condition of the vehicle and according to Kelly Blue Book price.

1.14 Medical and Dental Expenses

The Guardian should be permitted to incur and pay any reasonable and necessary medical and dental expenses, which the Guardian determines to be in the best interest of the IP.

1.15 Income Tax Payment/Accounting Fees

The Guardian may be required to file federal income tax returns and pay income tax due on Guardianship income. The Guardian should be permitted to pay fees for accounting services required in connection with the preparation of the income tax returns.

II. Relief Requested

The Guardian requests that the Court enter an Order as follows:

2.1 Approval of Budget
Approving the proposed budget of the Guardian.

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OLYMPIA, WA 98501
(360) 570-9999

2.2 Income and Expenses

Authorizing the Guardian to continue receiving the IP's income to be applied against the expenses set forth above.

2.3 Reasonable Medical and Dental Expenses

Authorizing payment by the Guardian of any reasonable and necessary medical and dental expenses which the Guardian determines to be in the best interest of the Incapacitated Person.

2.4 Monthly Guardian Fees.

Authorizing the Guardian to advance a monthly fee up to **$1,200.00** for usual and customary services. Such fees are subject to review and approval by the Court at the next regular accounting. No presumption that these fees will be approved as reasonable is created by this authorization for advance. Amounts shall be advanced only for actual services provided and costs actually incurred.

2.5 Miscellaneous Expenses

Authorizing payment by the Guardian of miscellaneous expenses in an amount not to exceed **$1,000** for any one expenditure for a maximum of $3,000 per year without further order of the court which the Guardian may incur during the course of the administration of this Guardianship.

2.6 Payment of past due Guardian Fees and Attorney Fees.

Approving the payment by the Guardian for attorney fees in the amount of **$4,228.95** and for unpaid guardian fees **$9,924.50** from the assets of the IP.

2.7 Transfer of this Guardianship to Thurston County

Authorizing the transfer of this Guardianship to Thurston County, Washington.

2.8 Waiving Guardian's Responsibility to deliver Court documents to IP

Relieving the Guardian of the responsibility of delivering Court documents to the IP.

2.9 Trustee to Pay Guardian for expenses beyond Monthly Income

Ordering the Trustee of the Cheryl Russell Living Trust to continue to pay the $6,500 per month to the IP's Guardianship and to pay any expenses that exceed the IP's monthly income.

2.10 Bond and Blocked Accounts

Ordering that the Vanguard Roth IRA accounts be blocked and waive the requirement of a Bond.

2.11 Authority to have IP evaluated and treated at the Clinic

Authorizing the Guardian to spend up to $10,000 for the assessment and treatment of the IP at the Daniel Amen Clinic in Bellevue, Washington.

2.12 Authority to sell automobile

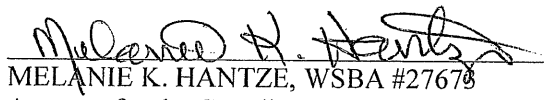
Authorizing the Guardian to sell the IP's 2006 Dodge Grand Caravan in an amount no less than $5,000.00.

LAW OFFICES OF MELANIE K. HANTZE
112 FOURTH AVENUE EAST, SUITE 200
OLYMPIA, WA 98501
(360) 570-9999

For any other order the Court deems appropriate.

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

Signed at Olympia, Washington, this 19th day of December, 2016.



MELANIE K. HANTZE, WSBA #27678
Attorney for the Guardian

LAW OFFICES OF MELANIE K. HANTZE
112 FOURTH AVENUE EAST, SUITE 200
OLYMPIA, WA 98501
(360) 570-9999

#5 GUARDIANSHIP INVENTORY FILED
DECEMBER 2, 2016

SCANNED

FILED
LEWIS COUNTY
2016 DEC -2 AM 8: 59
SUPERIOR COURT
CLERK'S OFFICE

Superior Court of Washington
County of LEWIS

In the Guardianship of: CHERYL RUSSELL, Incapacitated Person	**No. 16-4-00152-21** **Guardianship Inventory** **RCW 11.92.040(1)** **(INV)**

The [X] Full [ ] Limited Guardian of the Estate, being first duly sworn, states that the following is a true and correct inventory of the assets and liabilities of the Incapacitated Person as of the date of the Order Appointing the Guardian.

A. Assets

1. Real Estate: including the address and its tax assessed value: **NONE**

2. Financial Accounts: including the name, address, and phone of the financial institution, type of account, ***the last four digits of the account number(s)*** and balance in each account (*for example, savings, checking, money markets, certificate of deposit, retirement accounts, and all investment accounts*):

	Name of Financial Institution	Account Type	Account # (last 4 digits only)	Balance	As of Date
	Bank of the Cascades	Checking	XXX2320	11,645.78	09/02/16
Address & Phone	PO Box 369 Bend, OR 97709-0369 541-617-3500				
	WSECU	Checking	XXX5378	9,708.71	09/02/16
Address & Phone	PO Box WSECU Olympia, WA 98507 800-562-0999				
	Vanguard	Roth IRA	XXX7336	192,426.04	09/02/16
Address & Phone	PO Box 2600 Valley Forge, PA 19482-2600 800-284-7245				
	Vanguard	Roth IRA Brokerage	XXX5121	329,807.07	09/02/16
Address & Phone	PO Box 2600 Valley Forge, PA 19482-2600 800-284-7245				

3. Stocks, Bonds, and other Securities: (*not held in an account listed above*). **NONE**

	Name of Financial Institution	Account Type	Account # (last 4 digits only)	Balance	As of Date

4. Personal Property: (*attach itemized list of all items valued at $1,000 or more*).

Household Furnishings	$NOMINAL
Manufactured Home – Chehalis, WA Value per Lewis County Assessor	$40,000
Manufactured Home – Redmond, OR* Value per Deschutes County Assessor	$44,000
Automobile – 2006 Dodge Grand Caravan	$7000

*Ownership of the manufactured home in Redmond, Oregon is in question. Title was never transferred and person who signed to accept receipt of the home (from the dealer/seller) may have been an unauthorized signer. Guardian is working to confirm this asset belongs to IP's estate.

Total Assets (including attachments) $ 634,587.60

B. Income

Description	**Per Month**
Social Security Retirement	$269.30
Pension – WA State Retirement	$417.33
Pension – NV State Retirement	$239.71
Trust Fund Allowance*	$6500.00

*IP created a revocable Trust titled Cheryl Russell Living Trust upon receipt of funds from her mother's estate. IP's son, Earl Russell, has become the Successor Trustee due to the IP's incapacity. Earl Russell, in his role as Trust Manager, will continue to provide funds from the Trust for IP's use and benefit, as necessary.

Total Income (including attachments) $7426.34

C. Liabilities/Debts

1. Mortgages and Liens: name and address of each mortgage or lien holder and the amount owing, the property encumbered and the amount due monthly: **NONE**

	Name of Mortgage or Lien Holder	Amount Owing	Property Encumbered	Amount Due Monthly

2. Installment Loans and Notes: name and address of each loan holder, the amount owing and the amount due monthly: **NONE**

	Name of Loan Holder	Amount Owing	Amount Due Monthly

3. Credit Cards: name and address of each credit card company and the outstanding balance owing on each and the amount due monthly:

	Name of Credit Card Company	Outstanding Balance Owing	Amount Due Monthly
	WSECU VISA XXX3934	0.00	0.00
Address	PO Box WSECU Olympia, WA 98507		

Total Liabilities/Debts (including attachments) $0.00

D. Security for Estate's Assets

1. Guardian/Trustee's Bond:
   [X] The court does not require a bond.
   [ ] The court requires a bond in the amount of: $_____
   [ ] The bond should: [ ] remain the same OR [ ] be changed to: $_____

2. Total balance in blocked accounts: $ 624,587.60
   Vanguard ROTH IRA Accounts plus
   funds in excess of $10,000 in checking accounts

3. Total balance unblocked: $ 10,000.00

E. Supplemental Information (Optional)

Current Trust fund balance, managed by Successor Trustee Earl Russell, is estimated to be approximately $2.5 million.

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

Signed at Olympia, WA on November 30, 2016

Melanie J. Reynolds for Anchor Guardianship Services

Signature of Guardian

Melanie J. Reynolds
for Anchor Guardianship Svcs

Print Name of Guardian

CPG# 11394
CPGA #13054

PO Box6303
Address

Olympia, WA 98501
City, State, Zip Code

360-451-1466 / 360-388-4129
*Telephone/Fax Number

melanie.anchorservices@gmail.com
Email Address

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

#6 PERSONAL CARE PLAN FILED DECEMBER 2, 2016

SCANNED

FILED
LEWIS COUNTY
2016 DEC -2 AM 8: 58
SUPERIOR COURT
CLERK'S OFFICE

Superior Court of Washington
County of LEWIS

In the Guardianship of: CHERYL RUSSELL, Incapacitated Person	**No. 16-4-00152-21** **Initial Personal Care Plan (PCP)**

I. ASSESSMENT

Check all that apply to the Incapacitated Person in each category:

1.1 Housing Composition:

[ ] Lives Alone
[ ] Lives with Spouse
[ ] Lives with Children
[ ] Lives with Relative
[ ] Lives with Non-Relative
[ ] Lives with Non-Relative
[X] Other: Senior Living Community/Independent Apartment

1.2 Primary Means of Transportation:

[ ] Own Car
[ ] Public Transportation
[ ] Relative or AFH owner
[X] Other: Taxi or hired driver

1.3 Living Arrangement:

[ ] Home Owner
[ ] Renter
[ ] Adult Family Home
[ ] Cong. Care Facility
[ ] Nursing Home
[X] Senior Housing – Independent Living Community
[ ] Other:.

1.4 If Lives in Home – Services Needed:

[ ] None
[ ] Chore Services (household chores)
[ ] Other: _____
_____
_____

1.5 Functional Limitation:

[ ] Speech
[ ] Hearing
[ ] Vision
[ ] Walking

1.6 Prosthetic Devices:

[X] None
[ ] Wheelchair
[ ] Hearing Aid
[ ] Artificial Limb
[ ] Dentures

1.7 Needs Assistance For:

[ ] Eating
[ ] Toileting
[ ] Ambulation
[ ] Transfer
[ ] Positioning
[ ] Personal Hygiene
[ ] Dressing
[ ] Bathing
[ ] Self Medication*

[ ] Essential shopping with Incapacitated Person
[ ] Essential shopping for Incapacitated Person
[ ] Meal Preparation
[ ] Laundry
[ ] Facilities in Home
[ ] Facilities out of Home
[ ] Housework
[X] Travel to Medical Services: Likely won't go if no transportation

IP does not need assistance to take medication. However, she does get her meds confused, takes them randomly or not at all. If she is not given the prescriptions she wants, there is evidence she will mix her own with over the counter medications such as No-Doze thus creating a potentially dangerous stimulant. Guardian plans to discuss this with IP's doctor to consider appropriate solutions or cautions.

1.8 Needs Assistance to Leave Home:

[ ] Yes [X] No

Circle one of the following codes for each item listed below:

Y=Yes; N=No; CD= Cannot Determine.

1.9 Incapacitated Person's Ability To Handle Emergencies:

	Y	N	CD
Knows what to do in the event of a fire.	Y	X	**CD X**
Knows what to do in case of medical emergency (doctor, ambulance).	Y	X	**CD X**
Knows what to do in the event of a break-in or robbery.	Y	X	**CD X**
Knows how to call emergency telephone services (911).	Y	X	**CD X**

Comments: IP may know what to do in the event of a break-in or robbery. However, she also imagines such events and has reported her efforts / attempts to stay awake to catch people in process of moving her things around, rummaging through her personal files, breaking into her home. IP becomes confused while using her phones (land line and cell phones) and may not be able to immediately call for help.

1.10 Incapacitated Person Knows How To Seek Help From Others To Keep Supply Of Goods and Obtain Services

(Housekeeper, Lawyer, Community Services): Y X **CD X**

IP told Guardian she needs someone to take her shopping. Once arranged, IP will visit multiple stores in search of common items (a stapler, for example). IP has gone out on her own seeking medical help or other services, but cannot seem to reach conclusions or solutions. She cannot seem to complete a task or settle on a decision. IP has demonstrated that she is not able to handle her own medical insurance renewal but will not accept/agree that Guardian has taken care of that for her. She is constantly seeking services and support but cannot recognize them when presented or declines them once provided.

1.11 Incapacitated Person's Financial Abilities:

Able to collect benefit, retirement, social security, V.A. benefits.	Y	**X N**	CD
Able to maintain checking accounts with balance greater than $_____.	Y	**X N**	CD
Able to pay monthly bills for rent, utilities, etc.	Y	**X N**	CD
Willing and able to spend money for necessary goods and services, i.e. food, clothing, sundries, etc.	**Y X**	N	CD
Able to seek help in money management*	**X Y**	N	CD
Able to manage funds.	Y	**X N**	CD

If someone other than the guardian of the person is guardian of the estate, or if the Incapacitated Person's assets are under the control of a trustee, provide the following information:
IP has a living trust which she established several years ago with an inheritance from her mother. Now, the IP's son is the Successor Trustee and the IP is dependent on her son to manage the Trust and to ensure funds are made available for her well-being. Guardian has been appointed Guardian of Estate and is working to separate Trust matters (to be managed by the IP's son) from Estate matters (to be managed by the Guardian). IP's accountant helped her set up routine payments on automatic payment schedules which has been beneficial to the IP.

Successor Trustee: Earl Russell, Son

List sources of income and/or resources to pay for monthly costs and care of the Incapacitated Person: Social Security benefits, State of Washington retirement benefits, State of Nevada retirement benefits, Trust fund allowances.

Estimated monthly costs and care of the Incapacitated Person

Housing/Food:	$ 2600.00
Phone and Cable:	$ 50.00
Clothing/Snacks/Other:	$ 1000.00
Medical:	$ 500.00 (insurance premiums, counseling services, co-pays)
Professional Svcs.	$ 200.00 (IP wants to meet with Accountant monthly)
Transportation	$ 200.00
Storage Fees:	$ 220.00 (personal belongings and automobile)
Auto Insurance:	$ 30.00 (automobile is in storage)
Chicken Boarding	$ 100.00 (best guess; guardian attempting to identify location of chickens)
Guardianship Svcs:	$ 800.00 (advance approved by Court)
Estimated Total:	$ 5700.00

1.12 Incapacitated Person's Psychological/Social/Cognitive Functioning:

Y=Yes; N=No; CD= Cannot Determine. Y N CD

A. Disorientation:

Able to relate to person, place or time: Y **X N** CD

Comment: Cannot recall four meetings with her attorney before the Guardianship appointment, including one meeting where the prospective Guardian was present. Often confuses dates and sequence of events. Believes she has known the Guardian for over a year; blames Guardian for doctor's refusal to write prescription for Ritalin. Insists she has been without a certain medication for over a year when actually the same medication was renewed in August 2016. Believes her retirement pension is at risk if she does not complete her medical insurance renewal during the open enrollment period.

B. Memory Impairment:

Can remember events occurring within the hour: **X Y** N CD

Can remember events occurring within the day: **X Y** N CD

Can remember events occurring within the week: Y N **CD X**

See comments under Section A, above.

C. Impaired Judgment:

Able to make appropriate decisions, solve problems, and respond to major life changes: Y **X N** CD

D. Communications:

Able to understand what is being said: **X Y** N CD

Able to express thoughts and needs: **X Y** N CD

E. Wandering:

Moves about aimlessly, or in pursuit of an unobtainable goal: Y **X N** CD

F. Verbally Abusive Behavior:

Threatens/berates others, yells, uses foul language, etc.: **X Y** N CD

G. Disruptive or Inappropriate Behavior:

Makes excessive demands for attention, takes another's possessions, disrobes in front of others, inappropriate sexual behavior, etc.: **X Y** N CD

IP can be argumentative and her voice can be very loud, at times. IP will become "petulant" or prone to pouting despite efforts of those around her to appease her or assist her. IP is oftentimes not willing or able to recognize or accept the help she is demanding, even when it is offered to her. Guardian has received calls from staff at the IP's retirement residence due to her disruptive behaviors in the public lobby area. For example, IP will remain at the front desk seeing attention or assistance for periods lasting up to two hours. Similar behaviors, lasting similar periods of time, have been reported by personnel at her bank. IP insisted on meeting with a volunteer insurance counselor (SHIBA program) then caused sufficient disruption at the SHIBA office that she was asked to leave.

H. Assaultive or Combative Behavior:

Throws objects, strikes or punches, makes dangerous maneuvers with wheelchair, etc.: **X Y** N CD

IP has thrown objects in the direction of the Guardian.

I. Danger to Self:

Indicated by self-neglect or harm, suicidal thoughts or attempts, etc.: Y N **CD X**

IP has indicated to Guardian that she (sometimes) does not wish to live. Other times she expresses frustration that her life is being cut short by others, especially by her children whom she believes are not treating her well.

IP insisted that a cab driver let her out on a busy street approximately two miles from her residence; she walked home. IP has been visited at least three times by local law enforcement and at least twice by staff from the local crisis resolution unit due to her aggressive behaviors which could have led to self-harm. However, no actions were taken.

IP refuses to take medications currently prescribed to her, and continues to seek medications which she prefers but her doctor will not prescribe (stimulants).

IP's previous home is uninhabitable due to deferred maintenance, significant lack of cleanliness, hoarding tendencies, chicken feed, chicken coop shavings and chicken droppings throughout her home, free access by chickens and other birds throughout her home, unhatched and whole or broken chicken eggs laying around inside the home. Damage to the inside of her home, including debris, has rendered it uninhabitable. The outside requires significant yard maintenance.

The IP has been known to put herself in situations where she is vulnerable to exploitation. She retained a woman she met at K-Mart to drive her places, program her cell phone, and assist her as requested in exchange for cash payment. The IP also spent the night at that woman's home, including a late night walk around the woman's mobile home park (reported by the IP to her attorney and prospective Guardian during a joint meeting). Similarly, the IP met a man at a farm auction and immediately employed him to board her chickens (rather than sell them, as planned that day). She now takes a cab to visit that man and the chickens, delivering feed and cash from time to time. Only this man's first name is known to the accountant or the Guardian. The Guardian is trying to determine the identity and location of this person.

See possible solutions noted in Section 2.3

J. Other Impairments in Thought, Moods, Behavior:

Please describe: IP is inconsistent in her demands and thought processes. When presented with options, she has great difficulty making a decision or bringing things to a conclusion, or she changes her demand. IP's thoughts and conversation patterns are disorganized and do not follow a logical pattern. She will talk for extended periods without listening to her conversation partner or engaging in usual conversational give and take. The Guardian's IP visits usually last more than two hours while the Guardian tries to follow what the IP wants and/or in order to get the IP to agree to a solution that may satisfy her demands or her needs.

The IP has demonstrated a pattern of liking or appreciating a person or service provider during two or three initial visits and then discharging that person when she starts to believe they do not meet her

expectations. The IP's family reports that this pattern is not new. After two visits with a medical doctor chosen by the IP and arranged by the Guardian, the IP refused to see that doctor again. After two visits with a counselor, requested by the IP and arranged for by the Guardian, the IP refused to see that counselor again. The IP has discharged drivers arranged for by the Guardian at the IP's request. The IP sometimes hangs up on the Guardian during phone conversations or refuses meetings with the Guardian despite a very positive beginning relationship.

The IP is interested in dance, movies, books, Tai Chi and used to visit her local senior center regularly. When the Guardian suggested these activities in Thurston County where the IP now lives, she expressed interest. When arrangements were made, the IP proclaimed loudly that these activities would only distract her from "trying to get my life back!", and denied that the outings and activities had been arranged at her request.

One of the most trusted individuals in the IP's life is her accountant. However, the IP will also, at times, refuse to engage with or recognize the accountant's service and attention to her well-being. The accountant and her husband were instrumental in helping the IP move from her home in Lewis County, where she felt unsafe, and in helping her find an apartment at a senior retirement community in Thurston County. Now the IP claims the Guardian or her children are responsible for her being held hostage in that residence. Despite many assurances that the IP can come and go as she wishes, and her demonstrated ability to arrange her own transportation to visit her accountant or her chickens, the IP continues to claim she cannot leave.

II. Care Plan

2.1 Incapacitated Person's Residence

(Effective June 2016) The Firs Retirement Community
Facility Name (if applicable)

426 Lilly Road, Apartment 302
Address

360-515-0817
*Phone:

2.2 Plan for Chore Services Provided in Home

(if necessary) IP receives housekeeping services, and meal services, as part of her rental fee at The Firs.

2.3 Plan for nursing services and other medical or personal care services provided in home, adult family home, or congregate care facility

The IP says she does not identify with most people in her age group. She does not want to live in a place where other residents show their age or frailty.

The IP says she would like to live someplace other than The Firs, a senior retirement community, although she has begun to make friends, and has also stated that she does appreciate having meals

prepared for her. Other times, the IP comments that the meals prepared at The Firs are not suitable for her. The IP has suggested she would like to live in manufactured home where she can have her chickens live with her. Conversely, the IP has suggested that she might like to live with a family.

The Guardian has considered whether the IP would do well in an adult family home where there is only one other resident who is generally independent requiring only a few care and support services. She would not do well where there are several residents requiring care. The Guardian has a lead on one AFH where there are fewer than three residents and all are relatively independent.

The Guardian has taken the IP to tour mobile home parks to develop a sense of what the IP might like. One trip was successful in that the IP identified several mobile home parks that she feels are not suitable for her due to the proximity of power lines. This information was helpful to the Guardian; the IP will not live near exposed power lines. The other trip was not successful in that the IP refused to acknowledge that the parks visited were the parks she previously said she wanted to visit.

If the IP were to live in a single-family home, in a neighborhood or mobile home park, she would need to have live-in assistance to support her housekeeping needs, help the IP shop for and prepare the meals she will eat and enjoy, provide transportation, assist with ensuring the IP will get to scheduled appointments, enable access to enjoyable activities if she wishes to attend, and ensure she does not put herself in unsafe company or situations. The IP would need to be supported by an aide who can help her remain focused, and who is skilled at re-directing the IP's behaviors. This aide would need to work closely with the Guardian in the best interest of the IP and her wishes.

The Guardian has identified a new program in Thurston County supporting "home share" where the IP may be able to share living quarters in exchange for assistance with transportation, appointment management, shopping and cooking, companionship and other support services. The Guardian plans to pursue more information about this program.

Suitable placement for this IP is complicated by the fact that she sometimes insists she live with her chickens again. Other times, she says she is content to just visit the chickens at their current boarding place. The Guardian recognizes that the IP's chickens are important to her.

In the meantime, the IP will remain at The Firs, as long as The Firs management team will allow her to do so. The Guardian is aware that a discharge could occur should the IP's disruptive behaviors continue.

The Guardian will continue to arrange transportation, in hope that the IP will use it. The Guardian will continue to encourage the IP to keep future appointments with the counselor, whom the IP did seem to like. It is not likely that the IP will see the medical doctor again, or any medical doctor, who will not prescribe the medications demanded by the IP. However, the Guardian will retain that doctor on the IP's case in the event the IP needs to be followed during some future hospital stay.

The IP has requested, and the Guardian is pursuing, assessment and possible treatment at the Amen Clinic in Bellevue, Washington. The IP identifies with this particular practice, framed by Dr. Daniel Amen, as it

may relate to her belief that she needs to be treated for Attention Deficit Disorder. In this, the IP may be correct. There are only five Amen Clinics in the United States; fortunately, one is in Washington. This effort will be expensive and the Guardian plans to seek authorization from the Court for this approach.

The IP insists she can only see a certain dentist in Kent, Washington. The Guardian has confirmed that the IP has not visited that dentist in two years. The Guardian has made an appointment for the IP to see her preferred dentist; unfortunately an appointment opening is not available until January 2017.

2.4 Plan for other services, including rehabilitative, educational, social, and recreational services:The Guardian will offer the IP options for dance programs and dance classes, senior center activities, movie outings, Tai Chi classes, etc. It will be up to the IP to accept the opportunities.

2.5 Treating Physician:

Name	Address	Phone/Fax Number
Dr. Samantha Ritchie Advantage Physicians	3703 Ensign Road Suite 10 A	360-438-1161

2.6 Other Professionals Assisting Incapacitated Person:

Name	Service Provided	Address	Phone/Fax Number
Laura Vaillancourt Elder Care Counseling and Guidance Services	Counseling	3525 Ensign Road Suite G Olympia, WA 98506	360-979-1786
Wendy Mecham Lewis County Tax & Bookkeeping	Accountant / Tax Prep	308 SW 13th Street Chehalis, WA 98532	360-748-0217
Comfort Keepers	Transportation	2958 Limited Lane, Ste B Olympia, WA 98502	360-438-1161

2.6 Other Significant Persons:

Name/Relationship to Incapacitated Person	Address	Phone/Fax Number
Rush Road Storage (automobile)	Chehalis, WA	360-262-3190
The Self Storage Place (personal belongings)	Olympia, WA	360-705-8336
Bill Peacock, Manager	Parkwood Mobile Home Park Chehalis, WA	360-262-3777
Al and Bev Gemigniani Managers	Country Home Mobile Home Park Redmond, OR	beverlyal@gmail.com
Earl Russell (Son / Trust Manager)	2 Winding Way	Bloomington, IL 61705
Eric Russell (Son)	1168 Fields Street	Las Vegas, NV 89142
Holly Russell (Daughter)	6120 SW McVey	Redmond, OR 97756

2.9 Plan for Financial Management:

The Guardian has opened a guardianship checking account for the IP. The Guardian is in the process of directing the IP's Social Security and pension benefits to that account. Automatic payments will be set up for routine bills such as rent, phone and storage fees. Sufficient funds will be available to the IP for discretionary spending.

The Guardian has established positive communication with the IP's son, Earl Russell, who is the Successor Trust Manager. Mr. Russell has provided sufficient funds from the Trust account to cover attorney and GAL fees previously approved by the Court. He has also provided sufficient funds to cover the IP's monthly expenses and has agreed to continue to do so monthly.

The Guardian, with the help of the Guardian's attorney, is in the process of reviewing and confirming which assets are assigned to the IP's Trust fund, to be managed by the Successor Trust Manager and which assets are assigned to the IP's Estate to be managed by the Guardian.

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

Signed at Olympia, WA on (date) November 30, 2016

Melanie J Reynolds for Anchor Guardianship Services

Signature of Guardian

Melanie Reynolds for Anchor Guardianship Services
Print Name of Guardian [ ]WSBA [X]CPGA# 13054

PO Box 6303
Address

Olympia, WA 98501
City, State, Zip Code

360-451-1466
*Telephone/Fax Number

melanie.anchorservices@gmail.com
Email Address

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

Note: Do not attach records produced and signed by a health care provider to this form.

#7 AMENDED MOTION AND DECLARATION FOR RELIEF UNDER CR 60(b)

E-FILED
THURSTON COUNTY, WA
SUPERIOR COURT
May 17, 2017
Linda Myhre Enlow
Thurston County Clerk

☐ Expedite
☒ Hearing is set:
Date: 5/26/17
Time: 2pm
Judge/Calendar: Zinn
☐ No hearing Set

In re the Guardianship of:	No.: 17-4-00036-34
CHERYL RUSSELL An Incapacitated Person	AMENDED MOTION AND DECLARATION FOR RELIEF UNDER CR 60(b)

I. MOTION

Comes now Earl Russell, as Trustee of the Cheryl Creed Russell Living Trust, by and through his Attorney, Virginia Clifford, moves this Court for relief from the Order Approving Budget, Disbursements and Initial 90 day Personal Care Plan and Transfer Matter to Thurston County entered on January 2, 2017 in Lewis County Superior Court in this matter under Civil Rule 60(b). Mr. Russell is seeking to vacate this Order dated 1/6/17 for the following reasons: 60(b)(1) because of mistake, inadvertence, surprise or irregularity in obtaining the order; and under CR 60(b)(11) because of lack of jurisdiction, failure to make timely service, failure to provide notice of the correct subject set for hearing on January 2, 2017; and for violation of the requirement in RCW 11.92(7) to obtain court approval of the specific amount budgeted for care of the incapacitated person.

Law Office of Virginia A. Clifford, PLLC
2952 Limited Lane NW, Suite A
Olympia, WA 98502
360-357-3007
Fax: 360-357-3071

Civil Rule 60(b)(1) permits relief from a judgment which is obtained through mistake, surprise or irregularity in procedure. In this case, Earl Russell as the son of Cheryl Russell, the incapacitated person, and as the trustee of the Cheryl Creed Russell Living Trust filed a request for special notice on September 26, 2016 after entry of the order establishing guardianship on September 2, 2016. His sister, Holly Russell also filed a request for special notice on November, 29, 2016 and she was not provided with all pleadings before this January 2, 2017 hearing. Because Earl Russell filed a request for special notice, RCW 11. 92. 150 requires that notice shall be served upon him at least 10 days before hearing. The Guardian did not provide notice of the hearing until Mr. Russell received notice of a sort on December 23, 2016. This was not 10 days before hearing was scheduled to occur on January 2, 2017. Guardian's counsel has supplied no proof of service of any of the documents prior to December 23, 2016.The Guardian did not provide copies of the Inventory or Personal Care Plan. **In point of fact, Mr. Russell was unaware of the Guardian's intention to require that Cheryl Creed Russell Living Trust to pay for all living expenses of Cheryl Russell regardless of the amount of that expense or of her assets available to pay for her support**. He had agreed to provide the sum of $6500 as a temporary measure during the transition of initiation of the guardianship and until a budget was proposed and agreed to between the Guardian and himself as Trustee for his mother's trust. He has a fiduciary responsibility to use discretion wisely in dispersing funds for his mother's care

Law Office of Virginia A. Clifford, PLLC
2952 Limited Lane NW, Suite A
Olympia, WA 98502
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and he never agreed to hand over the checkbook for his mother's trust (which she established during her capacity to manage her funds) to the unfettered discretion of the Guardian. The guardian's proposed monthly budget supplied in the petition was for a total expense of $5,800 per month. Mr. Russell could not be aware that the Guardian was really seeking approval of a budget almost $10,000 more per month, and in fact there is no evidence that the court was aware of this either.

Mr. Russell was not aware of what was at stake in the hearing on January 2 because the Guardian did not disclose her intentions regarding spending exceeding the budget proposed to the court. Even if the court now considers that notice of the hearing was adequate to Mr. Russell, the Guardian had a budget to work from as approved by the court for only the amount specified in that order. There was no jurisdiction in the court to require Mr. Russell as trustee to disperse any more funds than what was stated in the section 1.4 of her Petition for approval of the 90 day budget, in the Personal Care Plan and in the statement of income in Section B on page 2 of the Inventory (although it must be noted that neither of these last two documents were served on Mr. Russell prior to the hearing). **The Guardianship court did not have itemized expenses explained beyond that total and so could not authorize undisclosed future expenses**. It is the court's responsibility to supervise the spending done by a guardian to make sure that the expenditures are reasonable, necessary and of benefit to the incapacitated person, while bearing in mind the responsibility of the Guardian to preserve the estate. The

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Guardian attempted to obtain plenary authority to spend whatever she wished for any expenditure she considered appropriate (including her own earnings), completely circumventing the statutory requirement of the 90-day hearing to approve a budget. The Guardian was outside of her authority in seeking to spend beyond that without a court order approving the expenses, even if she was only spending from the more than $600,000 in the guardianship estate. However, she also sought by court order to freely dip into the nonreporting Cheryl Creed Russell Trust established by the incapacitated person in years past as her chosen method of having her family handle her funds. The court had no authority to order such expenditures beyond any amount which Earl Russell agreed as Trustee to provide for Cheryl's care, and his consent was not obtained.

Section 1.4 of the Petition stated that her expenses were $5,800 per month, and 1.6 requested approval of that amount. Section 1.6 of the Petition stated that "the Guardian requests approval of the budget as outlined in 1.4 above". The average layman would not know to keep reading to notice that 1.10 has completely irregular language requesting an order that the Trustee **"also pay any expenses that exceed the monthly income" from the nonreporting Trust. Absolutely no one would anticipate that the Guardian would routinely exceed the authorized budget thereafter by $10,000 per month.** The guardian continued to spend in excess of the

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approved budget for months on end, without any request for amendment of the approved budget.

The Guardian added extra language in Section 2.11 of the Order (which the trustee never saw, because it wasn't sent to him) purporting to authorize the Guardian to spend in excess of $5800, the budget figure requested to be approved in Section 1.4 of the Petition and Section B of the Inventory. This spending was ultra vires, and the blanket order to "charge it all to the trust" in so many words was in violation of Washington Guardianship law and Trust law. The court did not have jurisdiction to order mandatory and unregulated transfers from the Trust assets at all, much less anytime the Guardian asked for money. If the need had been justified, which it was not, the Guardian needed to get the Court's approval.

The combination of poor procedure regarding timely service of proper notice and pleadings plus lack of service of the proposed Order to Mr. Russell and his sister, plus the contradictory language on the Petition, all seem to be one continuous set of acts of extreme negligence or bad faith. **Mr. Russell had no way to know this topic of invading the Trust was coming up for hearing or to be aware of the proposed outcome. The Docket Notice (attached as Exhibit A) finally provided by mail to Mr. Russell on December 23, 2017 (in Illinois) identified the topic of the hearing as "Approval of First Annual Report". Whether this was inadvertent or not, the matter set for hearing as communicated to Mr. Russell was not the actual matter**

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heard, and the court may not have read the irregular language in the Petition or Order first supplied at hearing.

Mr. Russell at this time was not represented by counsel and had no opportunity to address the court regarding the proposed budget. When dealing with an unrepresented party, the guardian's counsel had an obligation to be candid with the other party, and filing a note for hearing incorrectly omitting the topic to be decided (raiding his mother's Trust), which he would naturally oppose is reason to vacate the Order on 1/6/17 for procedural irregularities.

The entire purpose of the Petition for Guardianship was to protect Cheryl Russell from self-neglect and inadvertent harm in the life she was living early in 2016. Earl Russell, her son and Trustee could handle her money: she needed immediate help in her personal life and medical care and he was in Illinois, where he could not provide that. Raiding her trust for the whims of her Guardian without any accountability was a reversal of the role of Guardian, who "shall at all times be under the general direction and control of the court making the appointment" as required in RCW 11.92.010. This is a situation run amok outside of court supervision, facilitated by an order entered in dubious circumstances and asserting jurisdiction over a non-reporting trust for expenses which were never disclosed to the court for approval in advance

The Trustee moves the court to vacate the 1/6/17 Order so that a hearing can occur in Guardianship court on the actual budget being spent.

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RESPECTFULLY SUBMITED BY:

Dated: 5/17/17

Virginia Clifford/bb
Virginia A. Clifford, WSBA # 32354
Attorney for Trustee

II. DECLARATION

I, EARL RUSSELL, declare and state as follows:

I am over the age of eighteen (18), and am the Trustee of the CHERYL CREED RUSSELL LIVING TRUST, and presently I am ordered to make payments to the Guardian for amounts vastly in excess of what I believe are appropriate expenditures for me to make under the terms of this discretionary Trust. By the terms of this Trust (Article 10, section 3 on page 12), it is a nonreporting trust. The Superior Court of Washington for Lewis County entered an order dated January 6, 2017 in this matter and I make this declaration in support of my MOTION AND DECLARATION FOR RELIEF UNDER CR 60(b) and ask this court to vacate the Order for the following reasons:

I was the Petitioner in this Guardianship. I requested special notice in this case in September 2016. The inventory and Personal Care Plan were not included with the Petition (dated 12/19/2016) received on 12/23/2016 – I did not get them until 1/11/2017 when I asked the Guardian directly for them. My sister also did not get information on what was happening in court on 1/6/17. I thought the budget was for a contribution of $6500/month from the Trust, which I have been paying. The hearing Notice I received

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for January 6, 2017 said "First Annual Accounting" on it and I was not aware of what was at stake in the hearing: being ordered to spend $15,000 a month from my mother's trust to pay for whatever the guardian decides to spend. This is irresponsible.

I was never served with the Inventory or Personal Care Plan, nor with the proposed Order which was entered on January 6, 2107. The Guardian requested approval of a budget of $5800 per month for my mother in the first part of the Petition for Approval of the 90 day Reports filed 1/6/17, but **I did not realize that her addition of "requesting that the Trust pay all other expenses she incurs" would result in an avoidance of court oversight of expenditures above a court-approved budget.** The Guardian is now incurring expenses in excess of $15,000 per month, without accountability as to what she spends and why.

I ask this court to vacate this Order dated 1/6/17.

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

Signed at Bloomington, Illinois on 5/16/2017

EARL E. RUSSELL, III

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#8 WASHINGTON COURTS CERTIFIED GUARDIANSHIP PROGRAM RULES, REGULATIONS AND STANDARDS

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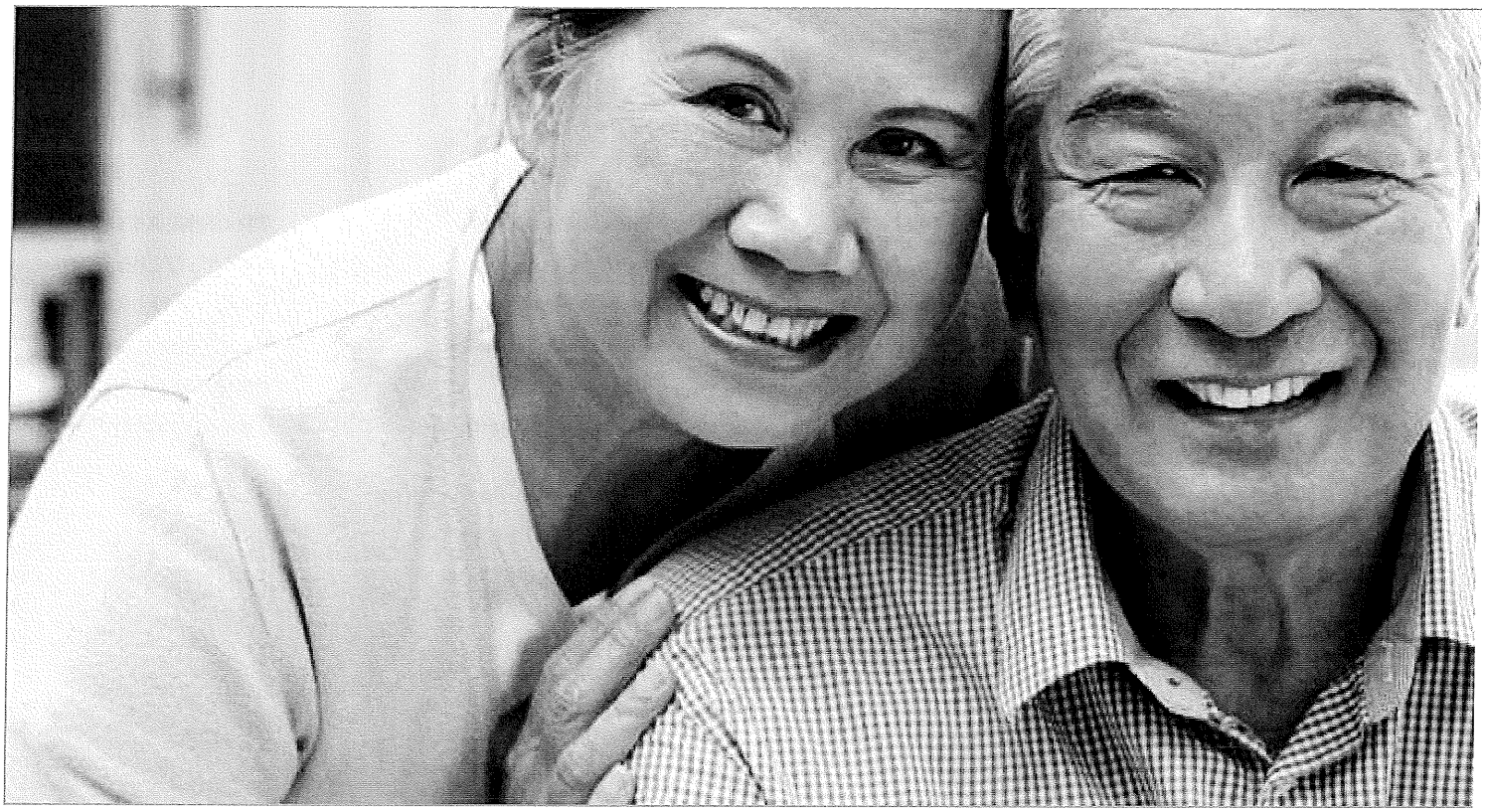

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Certified Professional Guardianship Progran

To achieve the greatest protection for the estates and affairs of incapacitate State, the Certified Professional Guardian Board adopts and implements re certification, minimum standards of practice, training, and discipline of prof

Announcements:

- There are currently no News & Announcements.

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Certified Professional Guardianship Program

Rules, Regulations and Standards

The Certified Professional Guardian Board and Program Regulations found on the Washington State Court's Internet site, are current as of November 2013.

Rules, Regulations, &

Any Words All Words

Generally, regulations are updated within 10 days following adoption or rev

Regulations and Standards of Practice are developed to protect the public, p oversight for the benefit of the public at large, and assist professional guar duties. Regulations and standards provide the procedures and process to ap professional guardian, to maintain and renew certification, and when neces noncompliance of certification requirements and standards.

Questions or general comments regarding guardianship program rules may guardianshipprogram@courts.wa.gov

Sign up to be notified when proposed changes to Guardianship Program for comment.

Rule Making Process

The Guardian Board's rulemaking process is governed by Regulation 600 Pr Amendment and Repeal of Regulations.

A proposed regulation change will be published for comment on the Board's text of the regulation change, it may be accompanied by a purpose statem

All comments to proposed regulation changes must be in writing and submi guardianshipprogram@courts.wa.gov by the published comment period dea

Questions about the rulemaking process should be directed to AOC staff at: guardianshipprogram@courts.wa.gov.

Policies

- CPGB Bylaws
- Communication Plan
- Recusal Process

Rules, Regulations

- Reg 000 Administrative Regulations
- Reg 100 Application Regulation
- Reg 200 Continuing Education Regulation
- Reg 300 Ethics Advisory Opinion Regulation

Guardianship Program Rules

400 Standards of Practice Regulation

- 400 Standards of Practice Regulation
- 401 Guardian's Duty to Court
- 402 Guardian's Relationship to Family and Friends of Incapacitated Person and to Other Professionals
- 403 Self Determination of Incapacitated Person
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- 407 Residential Decisions
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- 412 Sale or Purchase of Guardianship Practice
- 413 Responsibilities of Certified Professional Guardian Agencies

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Review the Complete Set of 400 Standards of Practice Regulation

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Guardianship Program Rules
Regulation 400 Standards of Practice Regulation

Effective January 31, 2012
Revised April 11, 2011, May 14, 2012, and October 14, 2013

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Guardianship Program Rules

401 Guardian's Duty to Court

401.1 The guardian shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.

401.2 The guardian shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian is aware of a court order that may be in conflict with these standards, the guardian shall bring the conflict to the attention of the court and seek the court's direction.

401.3 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and, any other regulations or laws which govern the conduct of the guardian in the management of the affairs of an incapacitated person.

401.4 The guardian shall seek legal advice as necessary to know how the law applies to specific decisions.

401.5 The guardian shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. The financial accounting shall include information as to the sustainability of the current budget when expenditures exceed income during the reporting period.

401.6 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian.

> 401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian who accepts the appointment and has the skills, experience and availability to assume responsibility as court appointed guardian per statutory requirements. (Revised 10-14-13)
>
> 401.6.2 The certified professional guardian will make available to the standby guardian those records and information needed to address the needs of the incapacitated person in the event of a planned or unplanned absence. (Revised 10-14-13)

Guardianship Program Rules

402 Guardian's Relationship to Family and Friends of Incapacitated Person and to Other Professionals

402.1 When the guardian has limited authority the guardian shall work cooperatively with the incapacitated person or with others who have authority in other areas for the benefit of the incapacitated person.

402.2 The guardian, where appropriate, shall consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.

402.3 The guardian shall seek independent professional evaluations, assessments, and opinions when necessary to identify the incapacitated person's needs and best interests.

402.4 The guardian shall recognize that his or her decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian alone is ultimately responsible for decisions made by the guardian on behalf of the incapacitated person.

402.5 A guardian shall not disclose personal or other sensitive information about the incapacitated person to third parties except: (a) when necessary and relevant to the needs of the incapacitated person or (b) as required by these standards or other applicable laws or when directed by the court or the CPG Board.

402.6 The guardian must know and acknowledge personal limits of knowledge and expertise and shall engage appropriate professionals to provide services to the incapacitated person to the extent reasonable and necessary.

402.7 The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian shall act to coordinate and monitor services needed by the incapacitated person to ensure that the incapacitated person is receiving the appropriate care and treatment.

Guardianship Program Rules

403 Self-Determination of Incapacitated Person

403.1 The civil rights and liberties of the incapacitated person shall be protected. The independence and self-reliance of the incapacitated person shall be maximized to the greatest extent consistent with their protection and safety. The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.

403.2 Whenever appropriate a guardian shall consult with the incapacitated person, and shall treat with respect, the feelings, values, and opinions of the incapacitated person. The guardian shall acknowledge the residual capacity and preferences of the incapacitated person.

403.3 When making decisions on behalf of the incapacitated person, the guardian shall evaluate the alternatives that are available and choose the one that best meets the needs of the incapacitated person while placing the least restrictions on the incapacitated person's freedom, rights, and ability to control his or her environment.

403.4 When appropriate, the guardian will defer to an incapacitated person's residual capacity to make decisions.

403.5 Unless otherwise directed by the court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.

403.6 The guardian shall, whenever appropriate or required by law, provide other requested information to the incapacitated person unless the guardian is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on: (a) the status of investments and operating accounts, (b) the costs and disbursements necessary to manage the incapacitated person's estate, and (c) medical and other personal information related to the care of the incapacitated person.

403.7 The guardian shall determine the extent to which the incapacitated person identifies with particular ethnic, religious, and cultural values and shall consider those values in the guardian's decision-making to the extent appropriate.

403.8 Sexual Expression:

> 403.8.1 The guardian shall acknowledge the incapacitated person's right to interpersonal relationships and sexual expression. The guardian shall take reasonable steps to ensure that a private environment conducive to this expression is provided. The guardian shall take reasonable steps to protect the incapacitated person from victimization.

Guardianship Program Rules

404 Contact with the Incapacitated Person

404.1 Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in-person contact.

> 404.1.1 The guardian should, when appropriate, assess the incapacitated person's physical appearance and condition (taking into account the incapacitated person's privacy and dignity) and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.
>
> 404.1.2 The guardian shall maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.
>
> 404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.
>
> 404.1.4 The guardian shall request that each residential care professional service provider develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.
>
> 404.1.5 The guardian shall ensure that the personal care plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person at the place of residence and at any program site.

404.2 Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and the appropriateness of financial arrangements.

404.3 A certified professional guardian of the person, as a sole practitioner or agency, must ensure that the initial in-person visit and then one visit every three months is made by a certified professional guardian, unless otherwise approved by the court. For other meaningful in-person visits, a certified professional guardian, as a sole practitioner or agency, may delegate the responsibility for in-person visits with a client to: (a) a non-guardian employee of the certified professional guardian, sole practitioner or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian with final

Guardianship Program Rules

405 General Decision Standards

All decisions and activities of the guardian shall be made according to the applicable decision standard.

405.1 The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian's determination of the incapacitated person's competent preferences, i.e. what the incapacitated person would have decided when he or she had capacity. The guardian shall make reasonable efforts to ascertain the incapacitated person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the incapacitated person when the incapacitated person had capacity.

405.2 When the competent preferences of an incapacitated person cannot be ascertained, the guardian is responsible for making decisions which are in the best interests of the incapacitated person. A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person and defer to an incapacitated person's residual capacity to make decisions.

Guardianship Program Rules

406 Conflicts of Interest

406.1 The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.

406.2 There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.

406.3 A conflict of interest arises when the guardian has some personal, family or agency interest that is self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4. (Revised 1-9-12)

406.4 The role of a guardian is primarily that of a decision-maker and coordinator of services. The guardian or agency (or an entity in which a guardian has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the incapacitated person or profit from any transaction made on behalf of the incapacitated person's estate. In exceptional circumstances some direct services may be approved by the court provided written permission of the court is given in advance of the service being provided. When requesting court approval the guardian must demonstrate in writing and with prior notice to notice parties that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. (Revised 1-9-12)

406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest. (Adopted 1-9-12)

406.6 A guardian shall not accept a gift from an incapacitated person or their estate other than ordinary social hospitality.

406.7 Payment of fees or other compensation for guardianship services by a party other than the incapacitated person is a potential conflict of interest which shall be fully disclosed.

406.8 The guardian shall protect the incapacitated person's rights and best interests against infringement by third parties.

Guardianship Program Rules

407 Residential Decisions

407.1 The guardian shall ensure that the incapacitated person resides in the least restrictive environment that is appropriate and available.

407.2 The guardian shall acknowledge the need to allow all persons the opportunity to engage in activities and live in conditions which are culturally and socially acceptable within the context of the incapacitated person's cultural and life values.

407.3 The guardian shall take reasonable measures to effectuate the incapacitated person's residential preferences.

407.4 The guardian shall know the current state of the law regarding limits on the guardian's authority as to residential decisions.

407.5 The guardian shall not remove the incapacitated person from his or her home or separate the incapacitated person from family and friends unless such removal is necessary to prevent significant harm or because of financial constraints. The guardian shall make reasonable efforts to ensure the incapacitated person resides at the incapacitated person's home or in a community setting.

407.6 The guardian shall, to the extent possible, select residential placements which enhance the quality of life of the incapacitated person, provide the opportunity to maximize the independence of the incapacitated person, and provide for physical comfort and safety.

407.7 Before relocating the incapacitated person to a new residence, the guardian shall consult the incapacitated person, and should consult professionals, notice parties, and other third parties involved with the incapacitated person's care to the extent doing so does not put the incapacitated person, guardian, or guardian's staff at risk of personal harm. Emergency residential decisions to protect the incapacitated person may be made without prior consultation.

407.8 The guardian shall, as necessary, thoroughly research and evaluate the incapacitated person's residential alternatives.

407.9 Should the only available residential placement not be the most appropriate or least restrictive, the guardian shall regularly review alternatives to that placement and shall make reasonable efforts to arrange an appropriate and least restrictive residential alternative.

407.10 The guardian shall regularly monitor the incapacitated person's residential placement to ensure that it is appropriate and that such placement is the least restrictive alternative. The guardian should consent to changes, as they become necessary,

Guardianship Program Rules

408 Medical Decisions

408.1 The guardian shall provide informed consent on behalf of the incapacitated person for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits.

408.2 The duty to provide informed consent does not prevent a guardian from electing to make code status decisions in advance of need.

408.3 The guardian shall be familiar with the law regarding the withholding or withdrawal of life-sustaining treatment.

408.4 The guardian shall actively promote the health of the incapacitated person by arranging for regular preventative care including but not limited to dental care, diagnostic testing, and routine medical examinations to the extent preventative care and resources are available.

408.5 The guardian shall be available to respond to urgent need for medical decisions. The guardian shall provide instructions regarding treatment or non-treatment to be followed by medical staff in emergencies.

Guardianship Program Rules

409 Financial Management

409.1 The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest. The management of the estate shall be documented by means of accurate and complete records of all transactions.

> 409.1.1 The guardian shall meet with the incapacitated person and gather information from family, friends and other collateral sources, as soon as practicable after appointment, to determine the current wishes of the incapacitated person and to obtain historical information about the incapacitated person's prior management of financial affairs.
>
> 409.1.2 The guardian shall, subject to court direction, allow the incapacitated person to manage funds to his or her ability when appropriate.

409.2 The guardian shall know and obey the law related to managing an incapacitated person's estate. Such knowledge shall include statutes relating to the investment of assets, restrictions imposed on investing and expenditures by RCW 11.88 and 11.92, and laws relating to employment, income, and taxes. The guardian shall hire competent professionals as appropriate and financially feasible to assure compliance with all statutes and regulations relating to the management of funds.

409.3 The guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

409.4 The guardian shall manage the estate with the primary goal of providing for the needs of the incapacitated person.

409.5 In certain cases, guardian shall consider the needs of the incapacitated person's dependents for support or maintenance, provided appropriate authority for such support is obtained in advance. The wishes of the incapacitated person as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such support or maintenance.

409.6 When the available estate of the incapacitated person is sufficient, the guardian may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the incapacitated person, bearing in mind both foreseeable requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such gifts, including tax consequences.

409.7 The guardian shall apply for all public and insurance benefits for which the incapacitated person is eligible. When implementing necessary changes in the

Guardianship Program Rules

410 Guardian Fees and Expenses

410.1 The guardian is entitled to reasonable compensation for services rendered on behalf of the incapacitated person. The guardian has a duty to conserve the estate of the incapacitated person. Accordingly, decisions to provide services and incur fees shall be made in such a way as to reflect this duty. Services requiring a minimal degree of training, skill and experience should be billed accordingly.

410.2 All compensation for the services and expenses of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses from any source except as approved by the court. The guardian shall review each of the following factors in determining the reasonableness of his/her fee: (a) the necessity of the service, (b) the time required, (c) the degree of skill and experience required to perform the service, and (d) the cost of any reasonable alternative.

410.3 When requesting court approval, the guardian shall disclose all compensation, fees and expenses requested, charged, or received in a guardianship case to the court and parties entitled to notice. The guardian shall maintain contemporaneous time and billings records for services which shall state: (a) date and time spent, (b) service performed, (c) the identity and job classification of the person performing the service, (d) expenses incurred, and (e) subject matter of conferences, staffing, or telephone calls of significant duration.

410.4 The duties of a guardian to an incapacitated person are not conditioned upon the person's ability to compensate the guardian.

410.5 If the guardian is also an attorney, billings shall be in accordance with RCW 11.92.180.

Guardianship Program Rules

411 Changes of Circumstances/Limitation/Termination

411.1 The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.

411.2 The guardian shall seek out information that will provide a basis for termination or limitation of the guardianship.

411.3 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall request court action.

411.4 The guardian shall assist the incapacitated person to terminate or limit the guardianship and arrange for independent representation for the incapacitated person when necessary.

411.5 If the guardianship is a limited guardianship, the guardian shall report to the court when there are circumstances in which the incapacitated person appears to require assistance which exceeds the authority of the guardian.

411.6 If the guardianship is of the person only, the guardian shall report to the court when protection of the incapacitated person's estate may be necessary.

411.7 If the guardianship is of the estate only, the guardian shall report to the court when protection of the person may be necessary.

Guardianship Program Rules

412 Sale or Purchase of Guardianship Practice

412.1 A certified professional guardian may choose to sell all or substantially all of a guardianship practice to another certified professional guardian, including goodwill, subject to the following guideline: to the extent that the sale of the practice contemplates a substitution of guardian for any of the guardian's current clients, court approval, with notice to all incapacitated persons and all notice parties, shall be obtained at least 60 days before completing the sale. Regardless of whether any sale or transfer occurs, a guardian remains subject to all of these standards with respect to any incapacitated persons the guardian is appointed for, including the duty to ensure continuity of care, until the guardian is discharged by the court.

Guardianship Program Rules

413 Responsibilities of Certified Professional Guardian Agencies

413.1 The designated Certified Professional Guardian (CPG) is responsible for the actions of the agency for which they serve as designated CPG.

413.2 A CPG is bound by the Standards of Practice not withstanding that the professional guardian acted at the direction of another person.

413.3 A designated CPG shall make reasonable efforts to ensure that the conduct of non-guardian agency employees is compatible with the professional obligations of the professional guardian.

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