

No. 309100 Consolidated with  
No. 312674

**FILED**

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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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

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**ETHEL BOYD, AS PERSONAL REPRESENTATIVE OF EDITH CLARK**

**Respondent,**

**v.**

**MARY PANDREA**

**Appellant.**

**Spokane County No. 10-2-02042-4**

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**APPELLANT'S OPENING BRIEF**

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COURT OF APPEALS, DIVISION III OF THE STATE OF  
WASHINGTON

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	1. Boyd failed to show that Pandrea owed the duty defined by the Notice language in the Power of Attorney document.	
	<i>a) The Notice is not a term governing use of the Power of Attorney.</i>	
	<i>b) Boyd misconstrued the meaning of the Notice language.</i>	
	<i>c) Pandrea is empowered to determine whether to exercise Power of Attorney.</i>	
	<i>d) There is a question of material fact as to the validity and continued effectiveness of the Power of Attorney document.</i>	

2. There is no evidence that Pandrea used Power of Attorney or breached the terms of its use.
  - a) *Pandrea did not use her Power of Attorney.*
  - b) *The trial court did not identify an act that constituted a breach of Pandrea's fiduciary duty.*
  - c) *Pandrea was authorized to purchase the home.*
  - d) *No funds were commingled.*
  - e) *A tracing and full accounting of the funds was provided.*
3. Boyd failed to produce evidence of injury to Clark.
  - a) *Clark received substantial state benefits.*
  - b) *Clark wanted to purchase a home in Hawaii.*
  - c) *Clark wanted to make a gift to Pandrea, and Clark's family members (including Boyd) knew about and approved of the gift.*
  - d) *Boyd's allegation has already been investigated by two state agencies and found without merit.*
  - e) *During the following eight years, Clark never complained.*
4. In the absence of evidence that Pandrea breached her fiduciary duty or that there was an injury to Clark, Boyd cannot show that a breach of fiduciary duty by Pandrea was the proximate cause of an injury to Clark.
5. Boyd failed to identify damages to which Clark was entitled.

**B. The trial court abused its discretion when it improperly denied Pandrea's timely motions for reconsideration and for leave to amend her**

**answer, based on unsupported facts and incorrect application of the law.**

1. Pandrea's motion for reconsideration had merit.
  - a) *Boyd's claim is barred by the statute of limitations contained in RCW 4.16.080(2).*
  - b) *Boyd was unauthorized to sue on behalf of the insolvent Estate of Edith Clark.*
2. Without any showing of prejudice to Boyd the trial court abused its discretion when it denied Pandrea's motion to amend her answer.

**C. The trial court abused its discretion when it improperly denied Pandrea's timely motions for reconsideration and for leave to amend her answer, based on unsupported facts and incorrect application of the law.**

1. The trial court abused its discretion when it denied Pandrea's request for a continuance.
2. Boyd was not entitled to attorney's fees.
3. Boyd misrepresented the eligible attorney's fees to include amounts billed prior to Edith Clark's death.
4. Boyd was not entitled to prejudgment interest.

**D. The trial court abused its discretion when it denied the petition to remove Boyd as Personal Representative presented by Pandrea and the joining heirs.**

1. The trial court's decision ignored the facts of the case.
2. The trial court's decision was based on the wrong legal standard.
  - a) *Failure to obtain court permission to administer an insolvent estate is grounds for removal.*

- b) *Neglect of statutory duties is grounds for removal.*
- c) *Conflict of interest is grounds for removal.*
- d) *The trial court ignored the facts and applied the wrong standard when it dismissed Pandrea's motion on a theory of "unclean hands."*
- e) *The trial court's decision was unreasonable.*

**E. The trial court's refusal to hear Pandrea's complaint in Boyd v. Pandrea or in the Estate of Edith Clark deprived Pandrea of due process and constituted a manifest error affecting a constitutional right.**

**F. Pandrea is entitled to attorney's fees on appeal.**

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## **I. ASSIGNMENTS OF ERROR**

The trial court erred when it:

- a) granted summary judgment in favor of the plaintiff, Ethel Boyd;
- b) denied Mary Pandrea's post-trial motions;
- c) denied Mary Pandrea's request for a continuance and granted Ethel Boyd's motion for attorney fees, costs, and prejudgment interest;
- d) denied the petition to remove Ethel Boyd as personal representative of the Estate of Edith Clark;
- e) violated Mary Pandrea's due process rights by refusing to allow her a hearing.

## **II. ISSUES PRESENTED**

- A. Whether the trial court erred when it applied the wrong legal standards to award summary judgment to Boyd in the presence of acknowledged questions of material fact and in the absence of evidence to support facts upon which relief could be granted.
- B. Whether the trial court abused its discretion when it improperly denied Pandrea's timely motions for

reconsideration and for leave to amend her answer, based on unsupported facts and incorrect application of the law.

- C. Whether the trial court abused its discretion when it denied Pandrea's request for a continuance and when it awarded unwarranted attorney's fees and inappropriate prejudgment interest based on unsupported facts and without legal basis.
- D. Whether the trial court abused its discretion when it denied the petition to remove Boyd as Personal Representative presented by Pandrea and joining heirs.
- E. Whether the trial court's refusal to hear Pandrea's complaint in Boyd v. Pandrea or in the Estate of Edith Clark deprived Pandrea of due process and constituted a manifest error affecting a constitutional right.

### III. Statement of the Case

A. FAMILY HISTORY: The Appellant, Mary Pandrea, and Respondent, Ethel Boyd, are half sisters and two of eight siblings. (CP 55, 71-72, 75, 113.) They are both daughters of the late Edith Clark. (CP 13, 55, 57, 113.)

Clark's husband died in 1975, and from then until her death, Clark relied primarily on Pandrea to care for her. (CP 22-28, 50-52, 113.) Clark and Pandrea lived together off and on until 1997, after which Clark lived with Pandrea full-time until 2009. (CP 22-26, 113-14.) In 2000, Pandrea resigned from her job as a department secretary at Portland State University to care for Clark on a full-time basis. (CP 50, 114.) Pandrea received a limited income from the State of Washington to act as Clark's caregiver. (CP 35, 114.)

In 2001, Boyd insisted that Clark be put into Life Care Center, a retirement home in Escondido, California, near Boyd's home. (CP 50, 115.) Clark did not want to be in a retirement home, but Pandrea eventually relented to pressure from Boyd. (CP 50, 95-96, 115.)

Life Care Center would not admit Clark without a Power of Attorney on file. (CP 27, 50, 116.) Boyd refused to be appointed,

so Pandrea agreed to serve. (CP 17-19; 25-27, 50, 116.) Boyd, Pandrea, and Clark went to a local stationery store and bought a Power of Attorney form, which Clark signed. (CP 27, 116.)

Clark was then admitted to the Life Care Center, but was unhappy and adamant that she did not want to stay. (CP 51, 79, 95-96, 116.) Boyd, who was a nurse, contacted the physician she worked for and obtained prescriptions for additional medications for Clark. (CP 51, 55.) When Pandrea learned that Clark was being heavily medicated, she feared for her safety and removed her from the home (three days after her admission). (CP 51, 116.) Boyd wanted Clark to remain in the nursing home and was angry that Clark had been removed. (CP 26, 51, 95)

In January of 2002, Clark and Pandrea moved to Hawaii. (CP 116.) That year, Clark inherited \$100,000 from her brother. (CP 29, 116.) Clark endorsed the check and deposited it into her checking account, which she held jointly with Pandrea, as had been their custom since 1976. (CP 30, 113, 116, 591.) Pandrea did not use the Power of Attorney to open this account. (CP 116.) In February of 2002, pursuant to Clark's wishes, Pandrea withdrew funds from the account to purchase a home in Hawaii. (CP 31-32, 41, 101, 116.) Pandrea did not use the Power of Attorney to

withdraw funds from the account. (CP 116.) The home was purchased and put in Pandrea's name at Clark's direction. (CP 79, 85, 117, 121.) Pandrea did not use the Power of Attorney to purchase the house. (CP 117.) Pandrea told her family members about the plan, including the purchase of the home in her name. (CP 71-74, 97-98, 101, 117.) Everyone, including Boyd, supported it. (CP 97-98.)

Pandrea and Clark intended to live in the home for the rest of Clark's life. (CP 117.) In August of 2002, however, Clark's great-grandchild was diagnosed with juvenile diabetes, and Clark and Pandrea moved back to help with her care. (CP 33, 117.)

Years later, Boyd and Pandrea had a disagreement related to family land in Pack River, Idaho. (CP 36-37.) Boyd began a pattern of harassment against Pandrea that continues to this day. (CP 72, 74, 118.) In 2007, Boyd made a complaint to the North Idaho Area Agency on Aging alleging that Pandrea had stolen \$100,000 from Clark in 2002. (CP 118, 500, 591.) An investigation determined the allegations were without merit. (CP 118.) Shortly thereafter, Boyd confronted Pandrea saying, "Your troubles are just beginning. When I'm through with you, you'll know that you've been had." (CP 72, 118.)

Boyd next filed a complaint with Washington State alleging that Clark and Pandrea were no longer living in Washington. (CP 36, 118, 519, 521.) Washington stopped Clark's benefits and Pandrea's pay as a caregiver for almost two months until Pandrea proved residency. (CP 118, 524.)

In 2009, Boyd filed another complaint against Pandrea alleging elder abuse and financial exploitation. (CP 120, 537, 591.) Another investigation was made, and the allegations were found to be unsubstantiated. (CP 120, 539.)

In 2009, Pandrea started guardianship proceedings on behalf of Clark in an effort to protect herself from further harassment by Boyd. (CP 541.) The Guardian ad Litem reported that Boyd opposed the appointment of a guardian because Clark would be unable to sue except through the guardian. (CP 591.) The Guardian ad Litem believed that as a result of the "considerable dissension" and "obvious animosity among the family members," an independent guardian would be best. (CP 589-92.)

Clark died intestate on November 25, 2009. (CP 455.)

In December of 2009, Boyd was granted Letters of Administration for the Estate of Edith Clark. (CP 461.) She did

not have nonintervention powers, and the estate was insolvent. (CP 458-59, 461). In May of 2010, Boyd sued Pandrea on behalf of the insolvent Estate of Edith Clark without court permission. (CP 13.)

BOYD V. PANDREA: Boyd included two claims in her motion for partial summary judgment: Breach of Fiduciary Duty and Abuse of Vulnerable Adult. (CP 14-15; 59-70.) Boyd dropped the Vulnerable Adult claim prior to hearing. (1 RP 3.)<sup>1</sup>

The trial court granted summary judgment in favor of Boyd. (CP 162-64; 1 RP 26-27.)

Pandrea, appearing *pro se* after summary judgment, filed a motion for reconsideration and a motion to amend her answer. (CP 167, 402-03.) Both motions were based on arguments that the statute of limitations barred Boyd's claim and that Boyd was unauthorized to bring the suit on behalf of an insolvent estate. (CP 169-86, 402-03.) The trial court denied both motions without comment prior to the hearing on attorney's fees and prejudgment interest. (CP 431; 1 RP 29-31.) The order denying the motions had been prepared in advance by Boyd's counsel and presented to

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<sup>1</sup> The Boyd v. Pandrea report of proceedings is designated as "1 RP."  
The Estate of Clark report of proceedings is designated as "2 RP."  
The Ex Parte report of proceedings is designated as "3 RP."

the trial court without notice to Pandrea. (CP 364; 1 RP 39.) The order inaccurately states that the matter was scheduled and that argument was heard from counsel for both parties. (CP 431; 1 RP 29-31.)

Pandrea requested a continuance prior to the hearing in order to obtain counsel, which was denied. (1 RP 37-39.) Judgment awarding damages, attorney's fees, costs, and prejudgment interest was entered without comment. (CP 433-34; 1 RP 42)

ESTATE OF EDITH CLARK: Pandrea filed a petition in the probate proceeding to remove Boyd as personal representative and also requesting a report of affairs, an inventory and appraisal, administration by the court, and attorney's fees. (CP 473-82.) Pandrea was joined in the petition by three other heirs. (CP 473-82.) In her petition, Pandrea stated that Boyd had failed to file annual reports and tax returns or to provide a requested inventory and appraisal, and that Boyd failed to request permission from the court to file a lawsuit, hire two attorneys, pay attorney's fees, borrow money on behalf of the estate, and file a judgment. (CP 473-475.) Pandrea also argued that Boyd's conflict of interest and misconduct resulted in a basis for her removal. (CP 476.) Pandrea argues that the acrimonious nature of family relations made it

impossible for Boyd or any family member to fairly administer the estate. (CP 476.) Pandrea also believed that Boyd was trying to obtain Pandrea's Idaho property by advancing money to the estate to fund a lawsuit against Pandrea with the intent of collecting the judgment from Pandrea, either by accepting the property as payment in kind to reimburse her advance or by forcing the sale of the property so that she could purchase it. (CP 656.)

In July of 2012, the trial court acknowledged noncompliance with statutory probate provisions by Boyd, but (ignoring the additional heirs joining in the petition) the court found that Pandrea was not entitled to equity, based on a theory of unclean hands. (2 RP 39-40.) The trial court found that Pandrea had not fulfilled "equitable-type requirements" which was "evident in the fact that there's been a trial in a related matter." (2 RP 40.) The trial court further found that since no harm to the estate or the heirs had been alleged, there was no basis to remove Boyd. (2 RP 40-41.)

In August of 2012, Boyd (who refused to enter an order denying the petition unless Pandrea agreed not to appeal and not to make any further attempts to remove Boyd) made a motion to strike all the evidence contained in Pandrea's petition that had been

considered and ruled on by the trial court in July. (CP 745-49.) Boyd's motion contained general statements about relevance and did not cite evidentiary rules. (CP 745-49.)

Pandrea objected stating that it was too late to strike evidence that had been submitted in June and had already been considered and ruled upon by the court. (CP 753-60, 2 RP 44-45.) Pandrea also argued that the relevance of each piece of evidence was clearly argued by the petition. (2 RP 52-53.)

The trial court struck all of Pandrea's evidence without explanation, stating that Pandrea's counsel could file a motion for reconsideration in which she would "have to identify the bases on which she believes that these various documents and statements contained therein are admissible, competent evidence." (2 RP 54.)

Boyd then filed a Petition for Order Adjudicating Solvency and Granting Nonintervention Powers in which she states that the estate's one "asset" is a judgment for \$227,425 against Pandrea and requests to serve without bond because "there are no funds in the estate to pay for a bond." (CP 766-68.) A status report was also filed, stating that "monies were advanced by the Personal Representative to preserve and collect estate assets." (CP 762.) The report explained that attorney fees and costs to Geoffrey D.

Swindler in connection with obtaining the Pandrea Judgment totaled \$58,520.43. (CP 762.) Boyd's report explicitly stated that upon collection of the Pandrea Judgment, she will pay the expenses of the administration that she has advanced on behalf of the estate and those that are yet to be incurred, after which she will make distributions and close the estate; thereby confirming the exact suspicions of the beneficiaries in the petition to remove. (CP 763.)

Mary Pandrea, Nellie Gilbertson, Grace Drechsel and Harold Clark, all heirs to the estate, appeared at the hearing on Boyd's request for an order of solvency and a grant of nonintervention powers and objected to both requests as well as to Boyd's continued appointment as personal representative (2 RP 57-66.) Heirs also requested that Boyd be required to post bond and to substantiate the payment of attorney's fees for which she claims she is entitled to reimbursement. (2 RP 56-67.) Written objections were submitted as well. (CP 915-19, 920-24, 925-27, 928-33.) The trial court did not respond or comment on the objections but said that it "finds the petition and the attached documents sufficient to establish good cause to sign the order." (2 RP 65.) Upon being asked to clarify the decision, the trial court

said, "Well, the answer to that is in the papers presented by Mr. Swindler. He's established a valid basis for that. And that's all I have to say about it." (2 RP 66.)

In October of 2012, Grace Drechsel filed her own petition to remove Boyd, knowing that she would not be subject to dismissal based on unclean hands, but she later withdrew her petition stating that she did not believe she could obtain a fair and impartial trial before Judge Sypolt. (CP 935.)

CONTINUING MISCONDUCT: Boyd's misconduct is not limited to activity related to the cases before this Court. Additionally, Pandrea has filed a number of complaints with the Bonner County Sheriff's office detailing harassment by Boyd and her family. (CP 118, 527-31.) Boyd often conducts activity through family members, particularly through her daughter, Terri-Lynn, who is a paralegal and handles the legal paperwork for Boyd. Terri Lynn sued Pandrea in Bonner County for quiet title, adverse possession and trespass related to real property Pandrea did not own or even have interest in. (CP 118, 544.) Terri Lynn also attempted to sue Pandrea's son in small claims court, alleging that he removed fencing materials from their property. (CP 546.)

In 2010, at Boyd's urging, Kari Clark (Boyd and Pandrea's sister), removed all of the land held in a revocable trust she had created with Pandrea and deeded it to herself, giving a half interest in a small portion to Pandrea. (CP 479.) In May of 2011, Pandrea petitioned the court in Idaho for judicial partition of the land she shared with Kari. (CP 479, 552-56.)

In 2012, Boyd's family began posting video footage on YouTube of pictures taken through a motion-activated camera hidden in the woods near Pandrea's property. (CP 480.) Boyd has often used cameras, video cameras, motion-activated cameras, and the like to harass Pandrea and her family. (CP 480; 558.)

In 2012, Boyd and several family members broke into Pandrea's residence on the Idaho property. (CP 408.) The event was reported to the police and was available on video to the trial court. (CP 480, 561-63, 565-68.)

In June of 2012, eight days after filing the Petition to Remove, Boyd and some of her family members arrived unannounced and uninvited on to Pandrea property. (CP 726.) Pandrea called the sheriff's office. (CP 726, 7334.) Boyd's family verbally abused Pandrea and her son, and Boyd's grandson even tried to knock Pandrea over when she asked them to leave. (CP

726, 736.) When questioned by the sheriff, Boyd produced notes giving her permission from another sister to use property adjacent to Pandrea's to access the river. (CP 726.) Boyd has a house on the river and has no need to enter Pandrea's property, but frequently trespasses with guests and harasses Pandrea and her tenant. (CP 727.)

#### **IV. SUMMARY OF ARGUMENT**

Ethel Boyd failed to meet her burden of production on any element of her prima facie case for breach of fiduciary duty. There is no substantial evidence in the record to support the order granting summary judgment in her favor. Further, the evidence provided by both parties supports summary judgment in favor of the defendant, Mary Pandrea.

Additionally, Boyd is precluded from bringing her claim by the three-year statute of limitations applicable to this case.

Boyd presented no evidence and cited no legal authority that entitles her to an award of attorney's fees or prejudgment interest.

Boyd's ongoing misconduct and negligence requires her removal as personal representative of the Estate of Edith Clark.

A review of the record will show that Judge Sypolt has violated Pandrea's due process rights and those of the other heirs to the estate. Judge Sypolt's rulings are consistently arbitrary and biased. This Court should order any further proceedings be assigned to a new judge.

## V. ARGUMENT

**A. The trial court erred when it applied the wrong legal standards to award summary judgment to Boyd in the presence of acknowledged questions of material fact and in the absence of evidence to support facts upon which relief could be granted.**

*STANDARD OF REVIEW:* Summary judgment is proper only if the moving party demonstrates that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *CR 56(c)*. A material fact is one upon which the outcome of the litigation depends. *Eriks v. Denver*, 118, Wn.2d 451, 456, 824 P.2d 1207 (1992).

This Court reviews summary judgment *de novo*, engaging in the same inquiry as the trial court and viewing the facts and all reasonable inferences in the light most favorable to Pandrea, the nonmoving party. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wash.2d 493, 501, 115 P.3d 262 (2005). "A party may not rest on formal pleadings, but must affirmatively present the factual

evidence upon which he relies.” *Leland v. Frogge*, 71 Wn.2d 197, 200-01, 427 P.2d 724 (1967).

This Court may also grant summary judgment in favor of the non-moving party if it becomes clear that she is entitled to it. *Leland* at 201, citing *Rubenser v. Felice*, 58 Wn.2d 862, 201, 365 P.2d 320 (1967).

Boyd bears the burden of production; therefore, she must make out a prima facie case or be subject to summary judgment against her. *Riehl v. Foodmaker, Inc.*, 152 Ash.2d 138, 149-50, 94 P.3d 930 (2004). A motion for summary judgment tests whether the party with the burden of proof has satisfied her burden of production. *Carle v. McChord Credit Union*, 65 Wn.App 93, 98, 827 P.2d 1070 (1992). The test is whether there is substantial evidence to support a finding of each element of the cause of action. *Carle* at 98. “Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding.” *In re Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004).

A complete failure of proof concerning one essential element of the plaintiff’s case necessarily renders all other facts immaterial, and summary judgment should be granted in favor of

the defendant. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

*PRIMA FACIE CASE:* To survive summary judgment on a breach of fiduciary duty claim, Boyd must provide substantial evidence for all four elements of her prima facie case:

- a) Existence of a duty owed;
- b) Breach of that duty;
- c) Resulting injury; and
- d) That the claimed breach proximately caused the injury.

*Micro Enhancement International, Inc., v. Coopers & Lybrand, LLP*, 110 Wn. App. 412, 433, 40 P.3d 1207 (2002).

Boyd failed to meet the burden of production on all four elements.

**1. Boyd failed to show that Pandrea owed the duty defined by the Notice language in the Power of Attorney document.**

a) *The Notice language is not a term governing the use of the Power of Attorney.* Boyd's argument with respect to the fiduciary duty owed by Pandrea was very specific. She argued that Pandrea's duty arose from and was defined by the language in the "Notice to Person Accepting the Appointment as Attorney-in-Fact" section included in the Power of Attorney document. (CP 59-69,

151-158; 1 RP 7-14, 22-27.) This section provides warnings of potential consequences for unauthorized acts under California law. (CP 18.)

Despite arguing that Pandrea breached the terms of the Power of Attorney, Boyd made no reference to its terms.

*b) Boyd misconstrued the meaning of the Notice language.*

Boyd argued that the Notice language strictly prevents Pandrea from receiving a gift from Clark, regardless of whether Power of Attorney is used and regardless of whether a gift is given and authorized by Clark herself. This is incorrect, as the granting of a non-durable power of attorney does not limit the grantor's ability to act on her own behalf. (And obviously so, as Boyd's interpretation would, for example, cause any parent who had given a child a nondurable power of attorney to be forever prevented from gifting so much as a pair of socks on Christmas morning.) Rather, the language states that Pandrea is not authorized *by the Power of Attorney document* to accept a gift from Clark. (CP 18.) No language in the Power of Attorney serves to prevent Clark herself from authorizing a gift, which is made clear in the preceding Notice section: "[t]his document does not give your agent the power to accept or receive any of your property, in trust

or otherwise, as a gift, unless you specifically authorize the agent to accept or receive a gift.” (CP 18.)

*c) Pandrea is empowered to determine whether to exercise Power of Attorney.* According to the language of the document, Pandrea was empowered to determine in “her sole discretion the time when, purpose for, and manner in which any power herein conferred” upon her would be exercised. (CP 19.) She chose not to use the Power of Attorney and therefore cannot have violated the terms of its use.

*d) There is a question of material fact as to the validity and continued effectiveness of the Power of Attorney document.* Finally, because Boyd made no argument beyond the Notice language of the Power of Attorney, the outcome of litigation depends on both the validity and effectiveness of that document.

Boyd submitted considerable evidence to show that Clark did not have contractual capacity at the time she signed the Power of Attorney. (CP 50-53, 56-57, 115-166.) Further, because the Power of Attorney was not durable, even if competently signed, it would be ineffective upon Clark’s incapacitation. (CP 17-19.) Contractual capacity is a question of fact. *Page v. Prudential Life Ins. Co.*, 12 Wn.2d 101, 109, 120 P.2d 527 (1942). Though the

trial court identified the potential lack of capacity as a concern, (“so if she was having competency issues before signing the Power of Attorney, is the Power of Attorney document itself valid?”) (1 RP 11), the court ignored the issue at the urging of Boyd’s counsel and without regard to the argument of Pandrea’s counsel that the issue of capacity constituted a question of material fact making summary judgment improper. (1 RP 11, 19)

**2. There is no evidence that Pandrea used Power of Attorney or breached the terms of its use.**

The trial court ruled that Pandrea breached her fiduciary duty based on language contained in the Power of Attorney. (“Nonetheless, that Power of Attorney has remained in effect. The language in it is clear.” 1 RP 26.) There is no evidence to support this conclusion.

*a) Pandrea did not exercise Power of Attorney.* Boyd provided no evidence that Pandrea used the Power of Attorney for any purpose other than to fulfill the paperwork required to gain Clark’s entrance into the retirement home in 2001. Therefore, Pandrea could not have breached the terms governing *use* of the Power of Attorney. Boyd failed to prove this element of her claim.

b) *The trial court did not identify an act that constituted a breach of Pandrea's fiduciary duty.* Despite Boyd's failure to present evidence, the trial court determined that Pandrea breached her fiduciary duty, saying:

"So, Counsel, I would find that there are no genuine issues of material fact as to the \$100,000, approximately 89,000 plus of which was spent on the house. That was a departure from the fiduciary duties expected of Ms. Pandrea.

(1 RP 26.)

The trial court failed to specify the act that constituted the breach of fiduciary duty with respect to "the \$100,000." The only transaction that involved the entire \$100,000 was the deposit of Clark's funds into a joint account. It is undisputed that Clark opened the joint account. (CP 116.) Despite Boyd's argument that Pandrea deposited the check, there is no evidence to support any conclusion as to who deposited the check.

When an account holder adds a joint account owner, the account holder's intention as to the ownership of the accounts becomes a matter of statute, rather than common law. *Doty v. Anderson*, 17 Wn.App. 464, 467, 563 P.2d 1307 (1977.) The trial court did not articulate any reasoning for determining that Pandrea

was responsible for the deposit of the \$100,000 inheritance check into the joint account; nor did it apply any law (statutory or otherwise) to explain how such a deposit was a breach of duty.

The trial court acknowledged that a portion of the funds was used to purchase a house, but did not even determine how or by whom that decision was made; nor did it apply any legal standard to determine whether Pandrea's involvement (if any) was a breach of fiduciary duty.

*c) Pandrea was authorized to purchase the home.* There is a multitude of evidence in the record, including the testimony of numerous family members, that Pandrea was authorized to use funds from the joint account to purchase the home and to put the home in Pandrea's name. (CP 41, 71-74, 75-77, 78-83, 84-87, 113-1 25.)

*d) No funds were commingled.* Secondly, the trial court stated:

"In addition, I recall that Ms. Pandrea herself admitted that there was commingling of the funds, in deposition, and yet there wasn't any tracing of the funds to identify whether or not Ms. Pandrea fulfilled her duties as a fiduciary to the – Ms. Clark."

(1 RP 26-27.)

It is true that Pandrea mistakenly states in her deposition that she commingled funds with Clark. (CP 28, 41, 110-12). The trial court was informed that she had misunderstood the meaning of the term, thinking that it meant that she and her mother both contributed to expenses. (1 RP 20-21.) Pandrea did not understand it to mean that she put her funds and her mother's funds into the same account – something she clearly stated in the same deposition that she never did. (1 RP 20-21, 110-12.) Pandrea submitted a sworn affidavit that clarified her financial dealings with her mother in great detail, clearly stating at several points that she “did not deposit her funds into Edith Clark’s account at any point in time.” (CP 115.) To support her clarification, Pandrea even provided a bank statement that clearly demonstrated that the only funds in the joint account were Clark’s funds. (CP 123-125.)

Pandrea, as the non-moving party, is entitled to a degree of leniency in the review of her affidavits. *Cogle v. Snow*, 56 Wn.App. 499, 511, 784 P.2d 554 (1990).

Boyd provided no evidence beyond Pandrea’s mistaken testimony in her attempt to show a commingling of funds actually took place.

*e) A tracing and full accounting of the funds was provided.*

Because no funds were commingled, no tracing of the funds was necessary. Nevertheless, Pandrea provided hundreds of pages of receipts in a financial accounting of all activity from 2001-2009 from five separate banks. (CP 115; 1 RP 21.) Boyd presented no evidence of any wrongdoing from this accounting.

**3. Boyd failed to produce evidence of injury to Clark.**

The trial court did not discuss injury beyond a cursory statement in the order drafted by Boyd's counsel. (CP 163.)

Boyd argues that because Clark did not live in the home as long as she originally intended to, the purchase of the home injured Clark. (CP 62, 155-156.) Boyd provides no evidence in support of her argument, not even in her own declaration. (CP 55-58.) Mere speculation is insufficient to prove the element of injury.

Further, there is substantial evidence in the record to show that Clark did benefit from her gift to Pandrea:

*a) Clark received substantial state benefits.* Clark received benefits for which she would likely have been ineligible had she not given Pandrea the home. (CP 118-121.) (The \$150,054.07 claim made by DSHS in the probate confirms this fact, evidence that was provided by Pandrea on reconsideration. (CP 260.))

The conveyance of resources in order to maintain eligibility for medical benefits is allowable (within specific guidelines) pursuant to RCW 11.94.050(2).

*b) Clark wanted to purchase a home in Hawaii. (CP 41, 74, 79, 85, 101, 117.)*

*c) Clark wanted to make a gift to Pandrea, and Clark's family members (including Boyd) knew about and approved of the gift. (CP 41, 74, 79, 85, 117.) Boyd herself supported it. (CP 97-98.) This is undisputed. There is no allegation of undue influence in the record. There is no evidence to support a finding of undue influence in the record. To the contrary, there is a great deal of evidence that no undue influence took place. (CP 41, 71-74, 75-77, 78-83, 84-87, 113-125, 589-93.)*

*d) Boyd's allegation has already been investigated by two state agencies and found without merit.*

*e) During the following eight years, Clark never complained. The matter was investigated several times during her life, and Clark was interviewed several times. (CP 118.)*

**4. In the absence of evidence that Pandrea breached her fiduciary duty or that there was an injury to Clark, Boyd cannot show evidence that a breach of fiduciary duty by Pandrea was the proximate cause of an injury to Clark.**

The trial court did not discuss causation beyond a cursory statement in the order drafted by Boyd's counsel. (CP 163.) In order to prove that a breach of fiduciary duty caused an injury, Boyd must produce evidence to show that a particular decision made or action taken by the attorney-in-fact on behalf of the principal caused or resulted in an injury to the principal. *Micro Enhancement International, Inc.* at 433.

**5. Boyd failed to identify actual damages to which Clark was entitled.**

The trial court did not discuss the issue of damages beyond the cursory statement in the order drafted by Boyd's counsel. (CP 163.)

Boyd made no argument that entitled her to damages. She simply assumed total reimbursement of \$100,000 (even though she admits that Clark did live in the home for at least six months, and that Pandrea provided care and paid expenses on behalf of Clark for the next eight years). (CP 61, 66-67, 113-25.) Boyd was also provided with a complete accounting that encompassed eight years of activity from five separate banks, and she presented no evidence of wrongdoing. (CP 115; 1 RP 21.) Evidence of damages must afford a reasonable basis for estimating the loss and cannot subject

the trier of fact to mere speculation or conjecture. *Rorvig v. Douglas*, 123 Wn.2d 854, 860, 873 P.2d 492 (1994).

There is no language in the Power of Attorney document that addressed damages. (CP 17-19.)

There is substantial evidence to show that, absent the gift to Pandrea, Clark would likely have spent her inheritance to pay for a retirement home (made unnecessary because of Pandrea's care) or for other expenses as a result of her ineligibility for benefits. (CP 113-125.)

*CONCLUSION:* Boyd failed to meet her burden of production on all four elements of her prima facie case. Therefore, this Court should reverse the decision of the trial court and grant summary judgment in favor of Pandrea.

**B. The trial court abused its discretion when it improperly denied Pandrea's timely motions for reconsideration and for leave to amend her answer, based on unsupported facts and incorrect application of the law.**

Pandrea, acting *pro se*, filed a motion requesting leave to amend her answer to include two affirmative defenses: 1) that Boyd's claim was barred by the statute of limitations and 2) that Boyd was unauthorized to sue as the personal representative of

Clark's insolvent estate because Boyd had never been issued nonintervention powers or granted permission. (CP 402-03.)

The trial court denied both motions without comment at the beginning of a hearing on another matter. (CP 431-32; 1 RP 29-31)

STANDARD OF REVIEW: The denial of both motions is reviewed for abuse of discretion. *Wilson v. Horsley*, 137 Wn.2d 500, 974 P.2d 316 (1999). If the decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons, the trial court has abused its discretion. *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971). "A discretionary decision rests on "untenable grounds" or is based on "untenable reasons" if the trial court relies on unsupported facts or applies the wrong legal standard; the court's decision is "manifestly unreasonable" if "the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.'" *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006), quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71 P.3d 638 (2003).

The trial judge is not entitled to make decisions arbitrarily and without reference to legal standard – he is not “a knight-errant,

roaming at will in pursuit of his own ideal of beauty or goodness.”  
*Coggle* at 505, quoting Justice Benjamin Cardozo’s *The Nature of  
the Judicial Process* (1921).

**1. Pandrea’s motion for reconsideration had merit.**

a) *Boyd’s claim is barred by the statute of limitations  
contained in RCW 4.16.080(2).* Not only is Clark’s continuing  
capacity a question of fact that is critical to Boyd’s prima facie  
case, but it is necessary to determine whether Boyd’s claim is  
barred by the statute of limitations.

After Boyd dropped her other claims, the basis of the  
litigation was one specific and identifiable event that was known to  
Clark, Boyd, and other family members. Boyd is prevented from  
bringing her claim by the three-year statute of limitations. RCW  
4.16.080(2); *Hudson v. Condon*, 101 Wn. App. 866, 873, 6 P.3d  
615 (2000). The inheritance check was deposited and used to  
purchase a home and to pay for Clark’s expenses in 2002. (CP  
117.) Clark died in 2009. (CP 455.)

The questions of fact surrounding Clark’s ongoing capacity  
muddied the water. Pandrea and her witnesses maintained that  
Clark had capacity during the events in question and was not  
incapacitated until years later. Boyd maintained the inconsistent

position that Clark has always lacked capacity (having been mentally ill her whole life according to Boyd), but that the document signed by Clark in 2001 was valid and binding on Pandrea. (CP 59-69, 151-59.) Even the trial court questioned Clark's capacity. (1 RP 11.)

On reconsideration, Pandrea submitted medical evidence showing Clark was undoubtedly incapacitated in 2005, thereby unquestionably voiding her non-durable power of attorney and tolling the statute of limitations. (CP 169-86, 200-09, 366-79.) Since the trial court was willing to assume Clark's capacity (despite an acknowledged question of material fact) to award partial summary judgment to Boyd, Pandrea's evidence (which she would not have had to produce had the court properly denied summary judgment) allowed her to demonstrate that the statute of limitations ran its course prior to any tolling. Boyd argued that "Clark was in a fiduciary relationship with Pandrea until 2009 when Clark died," but provides no evidence of facts or citation to law to support that statement. (CP 356.)

As the presence of this question of fact was recognized by the trial court on the record during argument on summary

judgment, (1 RP 11), the trial court's denial of Pandrea's motion repeats the same error.

*b) Boyd was unauthorized to sue on behalf of the insolvent Estate of Edith Clark.* Pandrea also brought information showing that the Estate of Edith Clark was insolvent and that Boyd did not have nonintervention powers. (CP 179-84.) Without nonintervention powers, a personal representative is not permitted to take action on behalf of the Estate without court authorization. *In re Beard*, 60 Wn.2d 127, 133, 372 P.2d 530 (1962). Boyd had not obtained that permission. Pandrea requested that the trial court remove Boyd as personal representative.

Boyd made no argument in response other than to say that Pandrea waived her opportunity to raise such an argument. (CP 355-56.) The trial court abused its discretion by ignoring this information.

**2. Without any showing of prejudice to Boyd, the trial court abused its discretion when it denied Pandrea's motion to amend her answer.**

Rule 15(a) specifically provides that leave to amend "shall be freely given when justice so requires." CR 15(a). These rules serve to facilitate proper decisions on the merits, not to erect formal and burdensome impediments to the litigation process.

*Caruso v. Local Union No. 690*, 100 Wash.2d 343, 349, 670 P.2d 240 (1983). The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party. *Caruso* at 350-51. The party opposing the amendment has the burden to show actual prejudice, not simply argue it. *Caruso* at 351.

Pleadings may be amended at any stage, including at the conclusion of trial and even after judgment.” *Green v. Hooper*, 149 Wn.App. 627, 636, 205 P.2d 134 (2009). The mere fact that an amendment may introduce a new issue is not sufficient grounds for denying it. *In re Campbell*, 19 Wn.2d 300, 307, 142 P.2d 492 (1943.) The fact that the amendment was delayed, excusably or not, is not sufficient grounds for denying it. *Caruso* at 349. The fact that the material in the amendment could have been included in the original pleading is not sufficient grounds for denying it. *Herron v. Tribune Publishing Co., Inc.*, 108 Wn.2d 162, 166, 736 P.2c 249 (1987)(Rather, amendments merely seeking to assert a new legal theory based upon the same circumstances set forth in the original pleading should be permitted). Without a showing that an amendment will cause actual prejudice to the opposing party, failure to grant leave is an abuse of discretion. *Foman v. Davis*,

371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962). A trial court's failure to articulate a reason for denying the motion to amend is abuse of discretion. *Tagliani v. Colwell*, 10 Wn.App. 227, 233, 517 P.2d 207 (1973).

The single most important factor is prejudice. *P.E. Systems, LLC, v. CPI Corp.*, 164 Wn.App. 358, 369, 264 P.3d 279 (2011), citing *Wilson* at 505. Boyd filed a memorandum in opposition and did not argue prejudice, untimely surprise, or undue delay. (CP 423-426.)

**C. The trial court abused its discretion when it denied Pandrea's request for a continuance and when it awarded unwarranted attorney's fees and inappropriate prejudgment interest based on unsupported facts without legal basis.**

Because Pandrea's motion for reconsideration and motion to amend had not yet been decided by the trial court, the hearing scheduled on the motion to award fees and enter final judgment was premature pursuant to CR 54(b). Pandrea's submitted a written objection on May 4. (CP 416-18.) On May 11, one week later, the trial court attempted to cure the problem by peremptorily denying both motions without comment at the beginning of the hearing. (1 RP 29-31.) The trial court then signed an order denying both motions without comment (an order which,

curiously, had been prepared in advance by Boyd's counsel without notice to Pandrea pursuant to CR54(f)(2)). (CP 431-32; 1 RP 39-42.) This resulted in prejudicial surprise to Pandrea (appearing *pro se*) who was unprepared to respond after the unexpected denial of her pending motions. (1 RP 35-43.) Denial of the motions changed the procedural posture of the request for fees just moments before it was heard and undermined Pandrea's argument. Expressing her surprise to the trial court, she requested a continuance to obtain counsel, which was denied. (1 RP 35-43.) The motion for attorney's fees, prejudgment interest, and entry of judgment was granted and entered without comment.

STANDARD OF REVIEW: An award of attorney's fees and prejudgment interest is reviewed for abuse of discretion. A trial court's decision to deny a continuation is reviewed for abuse of discretion. *Martonik v. Durkan*, 23 Wash.App. 47, 596 P.2d 1054 (1979).

**1. The trial court abused its discretion when it denied Pandrea's request for a continuance.**

The trend of modern law is to interpret court rules and statutes to allow decision on the merits of the case, and justice is not served by a draconian application of time limits. *Coggle v.*

*Snow*, 56 Wn.App. 499, 507, 784 P.2d 554 (1990). Without a clear statement of the basis for denial and absent prejudice to the opposing party, failure to grant a continuance is likely an abuse of discretion. *Coggle* at 508-09.

There was no possibility of prejudice to Boyd had the trial court granted a continuance for Pandrea to obtain counsel prior to a hearing on attorney's fees. Further, the trial court created a prejudicial situation for Pandrea by changing the procedural posture of the case without notice.

**2. Boyd was not entitled to attorney's fees.**

In Washington, attorney fees may be recovered only when authorized by a private agreement of the parties, a statute, or a recognized ground of equity." *Mellor v. Chamberlin*, 100 Wn.2d 643, 649, 673 P.2d 610 (1983).

Boyd argued that Pandrea's "pattern of bad faith and wantonness during this lawsuit" warranted an award of attorney fees against her. (CP 266.) Boyd presented no relevant case law, citing to cases involving findings of fraud, violation of partnership agreements, banks acting as fiduciaries, insurance bad faith, and discovery violations. (CP 269-71.) Boyd's reasoning for claiming "bad faith and wantonness" was that 1) Pandrea would not say

what Boyd wanted her to say during a deposition, 2) that Pandrea failed to make (in Boyd's opinion) good faith offers of settlement or to accept Boyd's offers of settlement, and 3) Boyd felt that Pandrea's set-off claim showing over 25 years of care, eight years of bank records, and testimony from numerous witnesses was based on "flimsy, if not non-existent" evidence. (CP 266.)

Boyd's argument provided no facts or law supporting an award of attorney's fees.

**3. Boyd misrepresented the eligible attorney's fees to include amounts billed prior to Edith Clark's death.**

In addition to Boyd's failure to present evidence entitling her to attorney's fees at all, she failed to substantiate the amount of attorney's fees she requested. Boyd's attorney submitted billing records that included \$3,735.00 billed for work done *prior to Edith Clark's death* on November 26, 2009. (CP 345.) It also included \$877.50 billed for work done prior to Boyd's appointment as personal representative. (CP 345-355.) These amounts were billed to Ethel Boyd personally and were misrepresented as fees incurred by the Estate of Edith Clark. Among other troubling implications, this constitutes a breach of fiduciary duty by Boyd as personal representative to the Estate of Edith Clark.

**4. Boyd was not entitled to prejudgment interest.**

Boyd argued that because Pandrea did not dispute the amount in question (\$100,000) the amount was “liquidated,” thereby entitling her to prejudgment interest. (CP 267.) This ignores the facts and applicable law.

Pandrea *did* dispute the amount in question, specifically stating that there was no evidence to support an award of any amount, but at most, damages were a question of fact that had to be determined – particularly in light of the exhaustive accounting provided. (CP 126-136, 138, 141-42; 1 RP 21.)

Not only are liquidated damages inappropriate when there is no contract claim involved (as here), but the Restatement Second of Contracts, §365(1), states that “[d]amages for breach by either party may be liquidated in the agreement but only at an amount that is reasonable in light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss. A term of fixing unreasonably large liquidated damages is unenforceable on grounds of public policy as a penalty.” Restatement Second of Contracts, §365(1) (1981).

Boyd then attempts to apply the interest rate for tort judgments to obtain prejudgment interest equaling \$75,875.00.

(CP 267.) She provides no authority allowing her to do so. (CP 267.)

CONCLUSION: The trial court awarded unwarranted attorney fees and inappropriate prejudgment interest based on unsupported facts and without legal basis. The trial court abused its discretion, and this Court should reverse the trial court's decision.

**D. The trial court abused its discretion when it denied the petition to remove Boyd as Personal Representative presented by Pandrea and the joining heirs.**

STANDARD OF REVIEW: The decision to deny a petition for removal is reviewed for abuse of discretion. *In re Beard*, 60 Wn.2d 127, 132, 372 P.2d 530 (1962). A discretionary decision rests on untenable grounds or is based on untenable reasons if the trial court relied on unsupported facts or applied the wrong legal standard. *Mayer* at 684.

**1. The trial court's decision was based on unsupported facts.**

The trial court found that there was no sufficient reason to remove Boyd as personal representative because Pandrea made no "meritorious allegation" showing harm to the estate. (2 RP 40-41.) This finding ignores the multitude of facts presented by

Pandrea and the joining heirs that both allege and prove harm to the estate.

Further, when the trial court dismissed Pandrea's motion based on a theory of unclean hands, it ignored the three joining heirs who were entitled to have their estate distributed according to law. *Jones* at 19. No theory of unclean hands (based on a lawsuit that only involved Pandrea) could reasonably prevent the joining heirs from relief.

**2. The trial court's decision was based on the wrong legal standard.**

The trial court abused its discretion when it stated that only a showing that the personal representative had already cheated the heirs was sufficient to remove a personal representative.

*a) Failure to obtain court permission to administer an insolvent estate is grounds for removal.* When no degree of solvency has been entered, a personal representative has no authority to act as though she were proceeding under a nonintervention will. *In re Beard* at 133. The court in *In re Beard* found that proceeding to administer an estate without an order of solvency and nonintervention powers is grounds for removal. *In re Beard* at 133-34.

Boyd hired attorneys, undertook expensive litigation, borrowed money on behalf of the estate, filed judgments (and more), all without court permission.

*b) Neglect of statutory duties is grounds for removal.* Pursuant to RCW 11.28.250, the court has the power and authority to remove a personal representative and revoke letters of administration whenever the court has reason to believe that a personal representative “has neglected to perform any acts” or for any reason which to the court appears necessary. RCW 11.28.250.

Boyd failed to do any of the duties required of her by statute as the personal representative. She did not maintain an inventory or appraisal or provide one upon request as required by RCW 11.55.015(2). (CP 652-60; RP.) RCW 11.44.050 states that the failure to do either of these things is grounds for removal.

She did not make annual reports. (CP 652-60.) She did not file tax returns. (CP 652-60.)

*c) Conflict of interest is grounds for removal.* The right of beneficiaries to have an estate distributed by law is a primary right, and if a particular person serving as a personal representative may interfere with this right, that person should not be the personal representative. *Jones* at 19. The fiduciary duty of a personal

representative requires that she refrain from self-dealing, administer the estate solely in the interest of the beneficiaries and uphold a duty of loyalty to the beneficiaries. *Jones* at 19. It is the court's job to guard against waste or loss to the estate, and where a conflict of interest exists which would contravene the rights of the beneficiaries and result in waste of the estate, a personal representative should be disqualified. *Jones* at 19.

Pandrea and the other heirs provided exhaustive evidence of the animosity and conflict of interest between Boyd and the other beneficiaries.

*d) The trial court ignored the facts and applied the wrong legal standard when it dismissed Pandrea's motion based on a theory of "unclean hands."* The trial court erred when it said that Boyd had not fulfilled her duties but reasoned that Pandrea's failure to fulfill her fiduciary duty in an unrelated matter somehow prevented relief to Pandrea and the other heirs.

A court applying equitable principles will not balance the equities between the parties when they are both in the wrong. *J.L. Cooper & Co. v. Anchor Sec. Co.*, 9 Wn.2d 45, 72, 113 P.2d 845 (1941). Equity disqualifies a plaintiff with unclean hands only

where the inequitable behavior is in the very transaction concerning which he complains. *J.L. Cooper* at 73.

Pandrea has done nothing to instigate Boyd's failure to file reports or obtain court permission, and her complaint about conflict of interest and family acrimony is only supported by the existence of Boyd's judgment against her.

*e) The trial court's decision was unreasonable.* The trial court blatantly disregarded court rules, settled law, and the facts of the case when it concluded that Boyd should not be removed. A mere cursory examination of the file in an ex parte proceeding resulted in the following comment being made by the court commissioner, "I guess I have serious questions about with letters of administration and no order of solvency and no order authorizing lawsuits whether all this other litigation should be engaged in any event..." (3 RP 10-11.)

**E. The trial court's refusal to hear Pandrea's complaint in Boyd v. Pandrea or in the Estate of Edith Clark deprives Pandrea of due process and constitutes a manifest error affecting a constitutional right.**

For Pandrea to bring a claim pursuant to RAP 2.5(a)(3), she must show that the error implicates a specifically identified constitutional right, and that the error is "manifest" in that it had

practical and identifiable consequences in the trial below. *State v. Bertrand*, 165 Wn.App. 393, 400, 267 P.3d 511 (2011).

Article 1, section 3 of the Washington Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Procedural elements of this constitutional guarantee are notice and the opportunity to be heard and defend before a competent tribunal in an orderly proceeding adapted to the nature of the case. *In re Marriage of Ebbighausen*, 42 Wn.App. 99, 102, 708 P.2d 1220 (1985). Pandrea's right to have her mother's estate administered according to law is a primary right. *Jones* at 156.

The trial court refused to hear Pandrea's complaints about Boyd's misconduct in administering the estate on two separate occasions in *Boyd v. Pandrea*. (CP 431-32.) Boyd herself argued that Pandrea's request was more properly brought in the probate case. (CP 353-57.) When Pandrea brought the matter in probate, Boyd argued and the trial court agreed that she was estopped from relief based on the proceedings in *Boyd v. Pandrea*. (2 RP 40-41.) The effectively prevents Pandrea from having her matter heard on the merits and is a violation of her due process rights.

**F. Pandrea is entitled to attorney's fees on appeal.**

Pursuant to RCW 11.96A.150, RCW 11.76.070 and RAP 18.1, this Court may order costs including reasonable attorney's fees to be awarded to Pandrea to be paid by Boyd personally. RCW 11.96A.150(1). This litigation is intended to benefit the Estate of Edith Clark pursuant to 11.96A.150.

**VI. CONCLUSION**

The appellant Pandrea respectfully requests this court to reverse summary judgment in favor of Boyd and grant summary judgment in favor of Pandrea, to remove Boyd as personal representative, to assign all further probate proceedings to another judge and to award attorney's fees to Pandrea.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of March, 2013

  
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