

No. 32024-3

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Court of Appeals
Division III
State of Washington

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

In re the Matter of:

JAMES D. CUDMORE, Alleged Vulnerable Adult,
SHEA C. MEEHAN, Respondent,
and
JOHN C. BOLLIGER, Appellant

SECOND AMENDED APPELLANT'S BRIEF

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The appellant is John C. Bolliger (“Mr. Bolliger”). The respondent is Shea C. Meehan (“Mr. Meehan”). The alleged vulnerable adult was Mr. Bolliger’s client, James D. Cudmore (“Mr. Cudmore”).

Under RCW 11.88.045(1)(a), Mr. Cudmore, as the alleged AIP in the related guardianship case, was statutorily entitled to be defended against the guardianship by the attorney of his own choosing. **Mentally competent** Mr. Cudmore chose and hired Mr. Bolliger to defend him against the related guardianship case. Mr. Meehan represented Mr. Cudmore’s polar-opposing party in that guardianship case: guardianship petitioner Tim Lamberson (“Mr. Lamberson”), who is Mr. Cudmore’s step son. Engaging in an unscrupulous strategic ploy – to try to prevent Mr. Cudmore from asserting his statutory right to be defended by his chosen and hired attorney for the guardianship case (Mr. Bolliger) – Mr. Meehan insinuated himself as a vulnerable adult protection order (“VAPO”) petitioner, purportedly on “behalf” of his polar-opposing party in the guardianship case (Mr. Cudmore), claiming to want to “protect” Mr. Cudmore from his chosen and hired attorney for the case (Mr. Bolliger).

I. ASSIGNMENT OF ERROR

The superior court (1) erred by failing to establish (by clear, cogent, and convincing evidence) that Mr. Cudmore was a “vulnerable adult,” (2) abused its discretion in entering its 5-year VAPO against Mr. Bolliger (because substantial evidence does not exist to support its findings that Mr. Bolliger had “committed acts of abandonment, abuse, neglect, and/or financial exploitation” of Mr. Cudmore), and (3) therefore abused its discretion in imposing \$2,714.64 in attorneys’ fees and costs against Mr. Bolliger.

II. STATEMENT OF THE CASE

1. When Mr. Bolliger became admitted to practice law in Washington State, he took the *Oath of Attorney*, which is set forth in Admission to Practice Rule 5(e). (Indeed, he took a similar oath when he became admitted to practice law, after passing the bar exams, in each of CA, ID, and OR.) Paragraph 8 of the oath states as follows (with emphases added):

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

2. **At all times material hereto**, Mr. Cudmore lived at a deluxe residential care facility (“The Manor”), in his own apartment. The Manor provided his every daily need, e.g., it provided his meals in its dining facility – and care givers who regularly checked on him and timely gave him medications prescribed by his doctor. It has a barbershop, an exercise room, and activities and entertainment. **Mr. Cudmore was free to, and did, depart The Manor any time it pleased him.** For example, he sometimes would take Dial-A-Ride to his doctor’s office across town. Also, he sometimes would take The Manor’s bus to Fred Meyer to shop for snacks, drinks, laundry soap, etc. On 9/6/13, he took The Manor’s bus to the Mall and “walked the entire mall.” (At other times, he would catch a ride from a friend.) He cut his own fingernails and toenails, shaved himself, bathed himself, dressed himself, and used the bathroom by himself. He did his own laundry in the laundry machines down the hall from his room. He did his own shopping and bought his own clothes. Nearly every day, he’d use

the exercise machines in The Manor's exercise room – to keep his arms, shoulders, and legs toned; his regular, 1-hour routine was to use 10 workout stations, including an exercise bike. [CP 76-83 and 142-49]

3. On 7/2/13, Mr. Cudmore first met with Mr. Bolliger to consult about having new estate planning documents prepared for him. Mr. Cudmore expressed that he no longer wanted Mr. Lamberson to have control of his finances – and that he wanted to change his Will to specifically disinherit his stepchildren. With his several years of experience dealing with elderly clients and their estate-planning issues, Mr. Bolliger had no doubt that Mr. Cudmore was **mentally competent** to make such decisions. Mr. Cudmore hired Mr. Bolliger for those purposes, **via a written fee agreement**, during their second meeting on 7/4/13. (For those legal services, Mr. Bolliger reduced his years-old standard hourly rate for Mr. Cudmore by 25%: from \$220/hr to \$165/hr.) [CP 106, 115, 120, 121-22]

4. Mr. Lamberson found out about Mr. Cudmore's intended estate-planning changes, including a new Will, which is the **only reason** he initiated the guardianship case against Mr. Cudmore. [CP 2-3]

5. On 7/8/13, Mr. Cudmore and Mr. Bolliger reviewed the following estate planning documents which Mr. Bolliger had prepared for Mr. Cudmore according to his instructions – and Mr. Cudmore signed the same: [CP 8, 14-22, and 120]

a. a *General Durable Power of Attorney for Financial Decision*

Making,

- b. a *General Durable Power of Attorney for Health Care Decision Making*, and
- c. a *Health Care Directive*.

Both of Mr. Cudmore's new power of attorney documents contain the following paragraph (with emphasis added in bold): [CP 121-22]

This General Durable Power of Attorney for [Financial/Health Care] Decision Making of James D. Cudmore shall not be revoked by any subsequent guardianship action, unless specifically set forth in the Court's Order. It is the intention of the Principal that the powers granted herein shall eliminate the need for the appointment of a Guardian of the Estate of the Principal.

6. Mr. Cudmore's first 3 meetings with Mr. Bolliger – on 7/2/13, 7/4/13, and 7/8/13 – cumulated to approximately 5½ hours, with Mr. Cudmore's 35-years-long friend, Dona Belt, attendant throughout. Mr. Bolliger had Dona Belt attendant throughout, so she could be a witness as to Mr. Cudmore's **mental capacity** on the subject of his understanding and signing of the estate planning documents he wanted Mr. Bolliger to prepare for him. [CP 120]

7. On 7/12/13, Mr. Meehan filed Mr. Lamberson's guardianship petition, affirmatively alleging therein that Mr. Cudmore was already **mentally incapacitated**.¹ [CP 24-32] In his guardianship petition, Mr.

¹ Although Mr. Meehan affirmatively alleged in his 7/12/13 guardianship petition that Mr. Cudmore was already **mentally incapacitated**, 2½ months later (at the 9/27/13 VAPO hearing for this case), Mr. Meehan admitted something quite different to the court, as follows (with emphasis added):

. . . . I think that what's going on here is **we have a gentleman who may have capacity or may not. We**

Meehan falsely represented to the court that Mr. Lamberson was currently Mr. Cudmore's lawful attorney in fact for both financial and health care decision making. [CP 28] In "support" of his false representation to the court, Mr. Meehan referred to a 1/8/08 document titled *Washington Durable Power of Attorney for Health Care*. [CP 41-42] However, on that document, **both "Witness" signatures are blank** – and, so, it is a legally ineffective power of attorney document for Mr. Cudmore's health care decision making. Mr. Meehan never did produce any historic power of attorney document purporting to give the Mr. Lamberson authority with respect to Mr. Cudmore's financial decision making.

8. On 7/18/13, **via a second written fee agreement**, Mr. Cudmore hired Mr. Bolliger to defend Mr. Cudmore against the guardianship action. (For those legal services, too, Mr. Bolliger reduced his years-old standard hourly rate for Mr. Cudmore by 25%: from \$220/hr to \$165/hr.) [CP 106, 117, and 121-22]

9. On 7/18/13, Mr. Bolliger filed Mr. Cudmore's *Declaration of James Daniel Vaughn, M.D.* In that declaration, Dr. Vaughn, who had been Mr. Cudmore's primary care physician since 1999 (and who was successfully treating him for Alzheimer's), provided his medical opinion – that Mr.

don't know. . . . [9/27/13 RP, p. 6]

Mr. Meehan later similarly admitted as follows (with emphasis added):

. . . . **And if Mr. Cudmore is found to be with capacity, then that's fine.** [9/27/13 RP, p. 7]

Those pronouncements clearly controvert Mr. Meehan's earlier affirmative allegation, in his guardianship petition, that Mr. Cudmore already was **mentally incapacitated**.

Cudmore was **mentally competent** to direct that new estate-planning documents be prepared for him – set forth in the following footnote.²

² 2. I have been Mr. Cudmore's primary care physician since approximately 1999.

3. I previously met with Mr. Cudmore, regarding a sinus infection for which I was treating him, on 7/1/13. The next time I met with Mr. Cudmore was on **July 18, 2013**, when his attorney, Mr. Bolliger, brought Mr. Cudmore in for his appointment to follow up on that subject.

4. During that latter appointment, Mr. Bolliger and Mr. Cudmore explained that, on July 8, 2013, Mr. Cudmore reviewed and signed some new estate planning documents for himself in Mr. Bolliger's office. They asked me to provide a written medical opinion which addresses Mr. Cudmore's mental capacity to understand and sign those new estate planning documents on July 8th. In particular, Mr. Bolliger asked me to assess Mr. Cudmore's mental capacity during the period between the two dates set forth in the preceding paragraph. Further, Mr. Bolliger provided me the legal standard, set forth by the Supreme Court of Washington, in In re Bottger's Estate, 14 Wn.2d 676, 685, 129 P.2d 518 (1942), which my medical opinion is to address, which he represented is as follows from that Supreme Court case (with emphasis added in bold):

The rules as to what constitutes testamentary capacity have been stated, and the earlier cases collected, in a number of our recent decisions: In re Larsen's Estate, 191 Wn. 257, 71 P.2d 47; Dean v. Jordan, 194 Wn. 661, 70 P.2d 331; In re Schafer's Estate, 8 Wn.2d 517, 113 P.2d 41; In re Miller's Estate, 10 Wn.2d 258, 116 P.2d 526.

Those cases hold that a **person is possessed of testamentary capacity if at the time he assumes to execute a will he has sufficient mind and memory to understand the transaction in which he is then engaged, to comprehend generally the nature and extent of the property which constitutes his estate and of which he is contemplating disposition, and to recollect the objects of his bounty.**

When Mr. Cudmore's stepson, Tim Lamberson, asked me on July 8, 2012 to opine generally about Mr. Cudmore's mental capacity, Mr. Lamberson did not ask me to address the aforementioned Supreme Court legal standard.

5. In rendering my renewed medical opinion, I base it upon my two visits with Mr. Cudmore on the dates set forth in ¶ 3 above, my historical knowledge about Mr. Cudmore as his primary care physician, my review of the facts Mr. Bolliger set forth in his July 1[7], 2013 *Declaration of John C. Bolliger* (which Mr. Bolliger told me he is filing in this case), and the aforementioned Supreme Court legal standard. Based upon those observations of mine, I now renew my written medical opinion to specifically address the Supreme Court legal issue mentioned above: Mr. Cudmore's mental capacity to understand and sign his new estate planning documents on July 8, 2013. I have attached that written medical opinion hereto as **Exhibit A**.

6. I swear under penalty of perjury under the laws of the state of Washington the foregoing is true and correct.

EXHIBIT A:

I met today with Mr. Cudmore and his attorney, and we discussed his mental capacity to understand and sign his estate planning documents.

As I understand it, these were performed on July 8, 2013.

Although this patient suffers from a treated dementia illness, I believe that his ability to converse and understand his estate planning issues on July 8, 2013 were adequate and not impaired.

I agree that he is able to comprehend generally the nature and extent of his estate plan and make decisions about it. I gather this opinion from talking with him. He is able to understand the extent of his assets, and who his natural heirs are.

A copy of the aforementioned 7/17/13 *Declaration of John C. Bolliger*, which Dr. Vaughn relied upon, appears in [App., pp. 2-9]. [CP 122-23]

10. In his declaration in this VAPO case, Mr. Lamberson admitted that Mr. Cudmore's Alzheimer's diagnosis is at only "Level II." [CP 97]

11. Also on 7/18/13, Mr. Bolliger filed his *Verified Petition to Appoint Attorney for Alleged Incapacitated Person* – which is required by RCW 11.88.045(2) in order to be able to represent an AIP like Mr. Cudmore.³ [CP 8, 106, and 121] In his petition, Mr. Bolliger declared as follows (with emphasis added): [CP 121]

I am an attorney licensed to practice law in the state of Washington. I already have performed as Mr. Cudmore's attorney in fact and his attorney at law in related matters. Today, for example, I took him to his doctor's appointment. **During our drive, he asked me about this guardianship action. I told Mr. Cudmore he is entitled to be represented in this guardianship action by an attorney of his own choosing. He said, "that's you, isn't it, John?" I said, "it is if you want it to be." He responded by saying "well, of course I do!"** After getting back to the office after Mr. Cudmore's doctor's appointment, I found that GAL Mr. May today filed a similar petition requesting that attorney Rachel M. Woodward be appointed to represent Mr. Cudmore in this case. To the best of my knowledge, Mr. Cudmore doesn't even know who Ms. Woodward is. . . .

12. In his 7/17/13 *Declaration of John C. Bolliger*, Mr. Bolliger declared in pertinent part, as follows: [CP 121, App. 2-9]

³ RCW 11.88.045(2) states in pertinent part as follows (with emphases added):

During the pendency of any guardianship, any attorney purporting to represent [the AIP, Mr. Cudmore] shall petition to be appointed to represent [Mr. Cudmore]. . . .

However, attorney Rachel Woodard ("Ms. Woodard") never filed the required RCW 11.88.045(2) petition in the guardianship case. [CP 123] In order to mask that fact, at the 9/27/13 hearing on his VAPO petition, Mr. Meehan delivered the following passively worded representation to the court (shown in bold): [9/27/13 RP, p. 2]

. . . . Mr. Bolliger moved to be appointed counsel for Mr. Cudmore, as well as there was a motion filed to ask that Rachel Woodard be appointed counsel for Mr. Cudmore. . . .

The "motion" that Mr. Meehan was there referring to is the wrongful and unlawful court petition filed by GAL Mr. May, which is described more fully in fn. 6, item no. 3. The point here is that Ms. Woodard never complied with RCW 11.88.045(2), which mandates that she, herself, was required to file a petition to become Mr. Cudmore's attorney in the guardianship case.

I have been an attorney for 21 years. I have dealt with elderly clients seeking estate planning documents for the past several years

13. Prior to the 7/19/13 initial guardianship hearing, Mr. Meehan **improperly** hand-picked GAL Mr. May for the case, by ignoring the following GAL-selection process set forth in the superior court's LGAL 5(a)(2)(A) (with emphasis added):

A party needing an appointment from the Guardianship registry shall provide by email, fax or letter a written request to the Superior Court Administrator's Office, which office shall, except in extraordinary circumstances, appoint as Guardian ad Litem **that person whose name next appears on the registry on a rotational basis**

Totally ignoring that process, Mr. Meehan instead secured an ex parte appointment of his hand-picked GAL, Mr. May. [CP 128] With his hand picking of GAL Mr. May, Mr. Meehan engaged in an **improper conflict of interest**, because he was representing Mr. Cudmore's polar-opposite party in the guardianship case – and, so, Mr. Meehan had no business getting involved in any way whatsoever with the GAL-selection process for Mr. Cudmore. That is the reason for the aforementioned LGAL 5(a)(2)(A).

14. Mr. Meehan's hand-picked GAL, Mr. May, in turn, hand-picked (i.e., **wrongfully** and **unlawfully** petitioned the judge to appoint) attorney Ms. Woodard to represent Mr. Cudmore therein. [CP 128] Mr. May's hand picking of Ms. Woodard to be Mr. Cudmore's attorney in the guardianship case, via a court petition therefor, was

- a. **wrongful** because RCW 11.88.045(1)(b) clearly expresses that the AIP's GAL and the AIP's attorney have distinct (conflicting) duties toward the AIP (and, so, the AIP's GAL has no business getting involved in any way whatsoever with the appointment process for the AIP's attorney)⁴ and
- b. **unlawful** because, pursuant to RCW 2.48.170 and .180, Mr. May is prohibited from practicing law (i.e., filing such a court petition) without a law license – which act constitutes a gross misdemeanor pursuant to RCW 2.48.180(3)(a) – and which act, pursuant to RCW 2.48.180(6), constitutes “unprofessional conduct in violation of RCW 18.130.180.” (See, again, fn. 3, above.)

15. Those unprincipled hand pickings by Mr. Meehan and Mr. May were effective for Mr. Meehan – because, throughout the guardianship case, Mr. May and Ms. Woodard **wrongfully** facilitated Mr. Meehan's every effort to obtain Mr. Lamberson's desired guardianship over Mr. Cudmore – which guardianship Mr. Cudmore neither needed nor wanted. [CP 81 and 147; 9/27/13 RP, p. 25] The participants' actual relationship as to each other is pictorially represented in [App., p. 1].

16. At the 7/19/13 guardianship hearing, the judge appointed Ms. Woodard, instead of Mr. Cudmore's chosen and hired attorney Mr. Bolliger, as Mr. Cudmore's attorney for the case. In so doing, the judge adopted Mr. Meehan's **unmerited argument** that Mr. Bolliger “might have to be a testifying witness” in the case.⁵ [9/27/13 RP, pp. 2-

⁴ RCW 11.88.045(1)(b) clearly sets forth that distinction as follows (with emphases added):

Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

⁵ The certainty that that argument was **unmerited** is revealed by the following briefing contained in Mr. Cudmore's guardianship case motion for revision: [CP 129-33]

There is no earthly reason why the Court should decline to appoint Mr. Bolliger as Mr. Cudmore's attorney for this case. Mr. Cudmore is statutorily entitled to select his own attorney. Time and again he has expressed that he wants Mr. Bolliger as his attorney – and he does not want Ms. Woodard as his attorney. In an effort to try to get around those facts, Mr. Lamberson and Mr. May each have opined that “Mr. Bolliger might have to be a testifying witness” in this case on the subject of Mr. Cudmore's mental capacity.

A. At The July 19, 2013 Hearing, Mr. Lamberson Improperly Invoked RPC 3.7 In Trying To Get Mr. Bolliger Disqualified From Serving As Mr. Cudmore's Attorney In This Case

The gravamen of Mr. Lamberson's and Mr. May's allegation that “Mr. Bolliger might be a testifying witness in this case” is that Mr. Bolliger met with Mr. Cudmore several times in **July of 2013** on the subject of Mr. Cudmore's desire to effect new estate planning documents. In other words, their point is that Mr. Bolliger might be testifying as a witness at trial regarding Mr. Cudmore's mental capacity at/during those meetings. However, Mr. Bolliger is not planning to offer himself as a witness at trial in this case – regarding Mr. Cudmore's mental capacity at any given time (or regarding any other matter).

i. Mr. Bolliger Is Not A “Necessary Witness” With Respect To Mr. Cudmore's Mental Capacity In July of 2013

RPC 3.7, invoked by Mr. Lamberson at the **July 19, 2013** hearing, reads in pertinent part as follows (with emphasis added):

(a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a **necessary witness** unless:

This issue of whether a lawyer can be considered “likely to be a **necessary witness**” at trial most recently was addressed by our Division 3 of the Court of Appeals in State v. Sanchez, 171 Wn.App. 518, 288 P.3d 351 (Div. 3 2013). In Sanchez, Mr. Sanchez's attorney – Mr. Witchley – interviewed Mr. Sanchez's co-counsel (one Mr. Mendez) on three (3), separate occasions before Ms. Sanchez's trial; **during each of those 3 occasions, Mr. Witchley had his investigator, Mr. Freeman, in attendance with him and Mr. Sanchez.** *Id.* At 533. Mr. Mendez then brought a motion seeking to disqualify Mr. Witchley from representing Mr. Sanchez at Mr. Sanchez's trial – on grounds of the “lawyer-witness” rule, RPC 3.7. The trial court granted that motion and denied Mr. Sanchez's motion for reconsideration. *Id.* At 534. At trial, with different counsel, Mr. Sanchez was convicted of aggravated first-degree murder and other charges stemming from a home invasion robbery and shooting. On appeal, Mr. Sanchez argued that the trial court erred when it disqualified Mr. Witchley from representing him on grounds of RPC 3.7. On that issue, the Sanchez Court held that the trial court abused its discretion in disqualifying Mr. Witchley from representing Mr. Sanchez, as follows (with emphases added in bold):

Witchley's three interviews of Mendez created a prospect that Witchley would have personal knowledge of impeaching matter should Mendez testify inconsistently at trial. **But Witchley had his investigator, Freeman, join him for his interviews of Mendez, and Freeman was available to testify should it be necessary to impeach Mendez at trial with statements made during the interview.** To avoid lawyer-witness problems, it is typical and advisable for lawyers to conduct witness interviews in this manner, so that a third person can be called as an impeachment witness if the interviewee testifies inconsistently at trial. See ABA Guidelines at 79; ABA STANDARDS FOR CRIMINAL JUSTICE std. 4-4.3(e) at 185 (3d ed. 1993); United States v. Watson, 87 F.3d 927, 932 (7th Cir. 1996) (lawyer-witness rule did not bar prosecutor who interviewed defendant from representing government when interview was conducted in presence of third person available to testify as to government's version of conversation). It was speculative whether impeachment testimony based on the Mendez interviews would be presented at all, but **because any testimony Witchley could provide could also be provided by Freeman**, Mendez did not demonstrate the second PUD No. 1[, 124 Wn.2d 789, 881 P.2d 1020 (1994)] factor: that the evidence was unobtainable elsewhere.

Id. at 365.

Here, as in Sanchez, Mr. Lamberson's allegation that “Mr. Bolliger might be a testifying witness in this case” is merely speculative. Moreover, it is wrong. As in Sanchez, when Mr. Bolliger met with Mr. Cudmore in **July of**

3] Mr. Cudmore was aggrieved that the judge had disqualified Mr. Bolliger from defending him therein, because he did not want or need a guardianship over him. [CP 124] So, the chronological events set forth in

2013 on the subject of Mr. Cudmore's desire to effect new estate planning documents, a third person also was in attendance during the entirety of all of those meetings: Mr. Cudmore's decades-old friend, Dona Belt. Thus, with respect to any lay witness testimony Mr. Bolliger may need to offer at trial on the subject of Mr. Cudmore's mental capacity during those meetings, Mr. Bolliger is not a "necessary witness" within the meaning of RPC 3.7 – because Ms. Belt can independently provide that lay witness testimony. Moreover, Mr. Cudmore's primary care physician, Dr. Vaughn, will provide expert witness testimony at trial on that same issue. So, for that reason as well, Mr. Bolliger is not a "necessary witness" within the meaning of RPC 3.7.

ii. The Trial Court Must Enter The Required, Justifying Findings Of Fact If It Wants To Disqualify Mr. Bolliger From Serving As Mr. Cudmore's Attorney In This Guardianship Case – Yet, Mr. Lamberson Is Not Entitled To Such Findings

In ASIC v. Nammathao, 153 Wn.App. 461, 466-67, 220 P.3d 1283 (Div. 3 2009) our Division 3 of the Court of Appeals held as follows (with emphases added):

An attorney can be removed from litigation when he or she is a necessary witness, but **a court must make appropriate findings to justify that action. The record here does not reflect such findings were made.**

.....
PUD No. 1, supra, involved review of a trial court decision to permit counsel to continue representation in a case where the opposing party intended to call him as a witness. 124 Wn.2d at 811-12, 881 P.2d 1020. In upholding that decision, our court favorably cited and applied a test adopted by the Arizona Supreme Court in Cottonwood Estates, Inc. v. Paradise Builders, Inc., 128 Ariz. 99, 624 P.2d 296 (1981). PUD No. 1, 124 Wn.2d at 812, 881 P.2d 1020. The court cited the following passage from Cottonwood Estates in its analysis:

[A] motion for disqualification must be supported by a showing that the attorney will give evidence material to the determination of the issues being litigated, that the evidence is unobtainable elsewhere, and that the testimony is or may be prejudicial to the testifying attorney's client.

Id. (citing Cottonwood Estates, Inc., 124 Ariz. At 105, 624 P.2d 296). **Our court then concluded that because counsel's testimony was available from other sources, denial of disqualification was proper.** Id.

We believe that a trial court considering disqualification in this situation must apply the Cottonwood Estates standards and **make appropriate findings** concerning the materiality and necessity of counsel's testimony, as well as determine any prejudice to the attorney's client, before making the decision to disqualify counsel. **That was not done here.**

Nonetheless, it does not appear that ASIC would satisfy these standards in this case. ASIC can establish its counterclaim without calling Mr. Greenlee He is not a necessary witness for ASIC's case.

In the instant case, as in ASIC, not only must the trial court make the requisite, PUD No. 1 findings if it wants to make a "decision to disqualify" Mr. Bolliger, but also, Mr. Lamberson (like ASIC) does not qualify for such findings both (1) because Mr. Bolliger is not a "necessary witness" for this case and (2) because the testimony (which Mr. Lamberson wrongly speculates Mr. Bolliger will need to offer from himself) would not be prejudicial to Mr. Cudmore, anyway. In other words, there is no reason to disqualify Mr. Bolliger from being Mr. Cudmore's attorney in this case.

Based upon the foregoing, Mr. Cudmore respectfully requests that the Court grant his petition to appoint Mr. Bolliger as his attorney for this case.

the following footnote took place in the guardianship case.⁶

⁶ 1. On 7/25/13, the judge signed an order giving Mr. Lamberson health care decision making authority over Mr. Cudmore, to which order Mr. Meehan attached the legally ineffective 1/8/08 document titled *Washington Durable Power of Attorney for Health Care* which was discussed above (in fact paragraph no. 7). [CP 37-42]

2. On 7/26/13, Mr. Cudmore and Mr. Bolliger reviewed the *Last Will and Testament and Declaration of Testamentary Trust* which Mr. Bolliger had prepared for Mr. Cudmore according to his instructions – and Mr. Cudmore signed the same. The trust provision related only to Mr. Cudmore’s comatose wife. Mr. Cudmore was always very specific with Mr. Bolliger and Dona Belt about the changes he wanted implemented with his new Will (i.e., to first provide for his wife and, thereafter, to disinherit his stepchildren – and, instead, bequeath his estate to 2 charities specified by Mr. Cudmore). [CP 124]

3. Also on 7/26/13, Mr. Cudmore file his *Declaration of James D. Cudmore*, in which he stated in pertinent part as follows (with emphases added): [CP 124]

2. When the GAL in this case, Mr. May, first met with me – last week – he gave only two names for attorneys who can represent me in this case. Neither name was my attorney John C. Bolliger. Mr. May made it sound as if I could choose only between the other names he gave me. Of those other two names, I told him Rachel Woodard, but only because Mr. May insisted that I had to choose one of those two other names.

3. After last week’s hearing, my stepson, Tim [Lamberson], and others told me that the Court decided I cannot have Mr. Bolliger represent me in the guardianship case. Tim said “Bolliger is out.”

4. Yesterday, attorney Rachel Woodard met with me for the first time. We had a pleasant conversation, and she seems like a nice person, but I don’t want her to be my attorney in this case.

5. I have told Mr. Bolliger at least 20 times that I want him to be my attorney for this case. I ask the judge to appoint Mr. Bolliger to be my attorney for this case, not Rachel Woodard. I’m not sure why people keep telling me that the judge won’t let Mr. Bolliger be my attorney in this case.

Mr. Cudmore’s allegation – set forth in ¶ 2 of his just-mentioned declaration – essentially constitutes an allegation of fraud on Mr. May’s part.

< Text removed from here. See Commissioner Wasson’s 7/14/15 *Commissioner’s Ruling*. >

4. On 8/20/13, Mr. Bolliger filed a declaration which included as its exhibit Mr. Cudmore’s 8/18/13 handwritten statement, with which Mr. Cudmore expressed (with emphasis added) that

I, James Cudmore, want John Mr. Bolliger for my attorney and not Rachel Woodard. [CP 125]

5. Also on 8/20/13, Mr. Bolliger emailed Ms. Woodard in pertinent part as follows: [CP 125 and 138]

I’d like to make a suggestion. How about you and I both go visit Mr. Cudmore at the same time and have him tell us both who he wants to be his attorney in this case. I’ll abide by his decision in such a setting, if you will. Will you? Please advise.

6. On 8/21/13, Ms. Woodard emailed Mr. Bolliger back, declining to meet with him and Mr. Cudmore. [CP 125]

7. On 8/25/13, Mr. Bolliger replied to Ms. Woodard by email, as follows (with original emphasis): [CP 125-26 and 140]

Hi, Rachel:

Thank you for your reply.

I am only continuing to "fight to become his counsel" because Mr. Cudmore always tells me he wants me, and not you, to be his attorney in this guardianship case.

You and I meeting together with Mr. Cudmore, could, indeed, change your duty in this case – because, as you know, **he is statutorily entitled to be represented by the attorney of his choice**. If he tells us together he wants his attorney to be you, I will abide and bow out. On the other hand, if he tells us together he wants his attorney to be me, you should abide and bow out. All I was suggesting is that you and I resolve this issue with him – professionally and definitively. I hope you will reconsider doing so.

Regarding your assertion that Mr. Cudmore authorized you to have the contents of his files from my office, I regard him to have countermanded that authorization with his August 18, 2013 handwritten note I provided you.

Further on that latter point, as you know, in this case, (1) Mr. Meehan represents Mr. Lamberson, (2) Mr. Lamberson is seeking total guardianship authority over Mr. Cudmore's person and finances, and (3) Mr. Cudmore vehemently opposes Mr. Lamberson's efforts in that regard. **Thus, Mr. Cudmore and Mr. Lamberson are "opposing parties" in this case, in every sense of that phrase**. However, when Mr. Meehan subpoenaed my Mr. Cudmore files on behalf of Mr. Lamberson – on behalf of Mr. Cudmore, you remained silently on the sidelines. Your inaction in response to that subpoena suggests to me that you are not fully representing Mr. Cudmore's interests in this case. I'm not happy to have to make that observation, however, I don't know any other way to assess your passivity in response to Mr. Meehan's subpoena.

Again, I remain hopeful you will agree to meet with me and Mr. Cudmore, all in person and at his residence – so we can definitively clear up the issue of who he wants his attorney to be in this guardianship case. Thank you for your professional courtesies in giving the matter some further consideration.

Ms. Woodard never replied to that email from Mr. Bolliger.

8. The 2013 Administrative Presiding Judge was Judge Spanner. Because of Mr. Meehan's and Mr. May's aforementioned unprincipled and unlawful hand pickings, Mr. Bolliger wrote a letter to Judge Spanner, which began and ended as follows (with original emphases): [CP 86-89]

I write you in your capacity as the 2013 Administrative Presiding Judge. It has come to my attention that GALs sometimes are petitioning the Court for appointment of the AIP's attorney in guardianship cases. I have such a case pending, myself. As you know, the **AIP's GAL** and the **AIP's attorney** have conflicting duties in a guardianship action. In my view, then, the GAL should not be getting involved in any way whatsoever in the process of the Court's appointment of an attorney for the AIP.

....

Of course, I don't mention my pending case in an effort to ask you to intervene in it. Rather, I mention it merely as anecdotal evidence that the problem this letter addresses actually is taking place in our current cases.

Based upon the foregoing, I suggest that the Superior Court judges contemplate a new local rule which prohibits GALs in guardianship cases from getting involved in any way whatsoever with the attorney-appointment process for the AIP. Thank you for your consideration of this issue.

Judge Spanner was not pre-assigned to Mr. Cudmore's guardianship case and no hearings in the case were pending before Judge Spanner. Besides the 2013 Administrative Presiding Judge, there was no other person or entity to whom/which Mr. Bolliger could direct his concerns about the foregoing wrongdoing that was occurring in our local court system.

9. On 9/3/13, Mr. Bolliger wrote Judge Spanner a second letter, which began as follows (with emphases added): [CP 90-94]

On Friday, I was in court for the 8:30 am Adoption/Probate/Guardianship docket. I observed another case in which the **AIP's GAL** successfully petitioned the Court for appointment of the **AIP's attorney** for the case.

That case is BCSC No. 13-4-00289-7. I have enclosed herewith copies of (1) the docket for that morning and (2) the Washington Courts printout of the documents filed to date in that case. I have circled the pertinent information in each document. Thus, that case is a second, active case I am aware of in which the AIP's GAL is insinuating himself into the attorney-selection process for the AIP. I do not have the resources to investigate how widespread this practice has become in recent time and, so, I defer to your office of the 2013 Administrative Presiding Judge to handle this matter as you deem appropriate.

With those two letters, it was Mr. Bolliger's hope that – as the 2013 Administrative Presiding Judge – Judge Spanner would (1) appreciate Mr. Bolliger's raising of this apparent institutional problem which was occurring in our Benton County Superior Court system and (2) recuse himself from hearing any matters in the identified cases (including Mr. Cudmore's Guardianship case) to investigate the problem – and perhaps come up with a new local rule to avoid the problem in the future. In Mr. Bolliger's view, the addressing of the problem could best be handled "in house" (i.e., within the Superior Court), rather than having to address the problem in an appeal to the Court of Appeals. Mr. Bolliger could not think of any other person to raise this issue with than the 2013 Administrative Presiding Judge – Judge Spanner. He still can't.

10. On 9/4/13, Judge Spanner wrote Mr. Bolliger in response to his two letters. Judge Spanner chose to avoid addressing the problem Mr. Bolliger had identified for him as follows: [CP 85]

This is in response to your letters of August 30 and September 3, 2013. You have indicated in your first letter that you have a case pending in Benton County that involves the issue of appointment of attorneys for guardianship AIPs. If I were to agree to your request to discuss the matter with my colleagues, I would be facilitating ex parte communications between you and judicial officers. I will not do so. Therefore, I do not intend to take any action in response to your letters.

11. On 9/11/13, Mr. Cudmore executed another *Declaration of James D. Cudmore*, [CP 76-83 and 142-49] in which Mr. Cudmore set forth the care he was receiving at The Manor, his limitations, his aforementioned independencies, his estate plan for his continuing care, and his desire to exercise his several entitlements in the case. With respect to his entitlements, Mr. Cudmore concluded with the following paragraphs (with emphases added):

14. A few years ago, [Mr. Lamberson] . . . talked me into giving him power of attorney. That seemed to work out OK for awhile, because he would help me with some of the bookkeeping (financial) matters I mentioned above. Over time, however, our relationship has deteriorated. [Mr. Lamberson] now complains whenever I spend any money whatsoever. He opens my mail without my permission. He checks my cell phone without my permission. He comes into my room uninvited. He ridicules and berates me, saying things to me like "you can't even add 2 plus 2!" He treats me as if I'm no more than a potted plant over in the corner. Things had gotten so bad between us that, a while back, I decided I didn't want anything to do with [Mr. Lamberson] anymore and I didn't want him managing my finances anymore.

....

17. Mr. Bolliger informs me I have a right to be represented in this case by an attorney of my own choosing. [RCW 11.88.045(1)(a)] **I want Mr. Bolliger to be my attorney – and not Rachel Woodard.**

18. Mr. Bolliger informs me I have a right to a jury trial in this case. [RCW 11.88.045(3)] **I want a jury trial.**

19. Mr. Bolliger informs me I have a right to have a medical report prepared by a doctor of my own choosing for this case. [RCW 11.88.045(4)] **I want that doctor to be Dr. Vaughn, who has been my doctor for about 15 years. He knows more about my medical (physical and mental) needs than any other doctor.**

20. Mr. Bolliger informs me I have a right to a court-ordered mediation in this case. [RCW 11.88.090(2)] **I want a court-ordered mediation.**

21. Mr. Bolliger informs me I have a right to court review of any power of attorney documents that any party in this case believes should be operative. [RCW 11.94.090(1)] **I want the court to review all such power of attorney documents – and approve the ones I had Mr. Bolliger prepare for me.**

22. Mr. Bolliger informs me I have a right for this case to be resolved with the "least restrictive alternative" for my ongoing care and decision making assistance. [RCW 11.88.005] **I want that to continue to be**

17. After the 7/19/13 guardianship hearing, Mr. Cudmore was aggrieved that the judge refused to appoint Mr. Bolliger to defend him against the guardianship case – and Mr. Cudmore remained adamant that (1) he wanted Mr. Bolliger, and not Ms. Woodard, to defend him and (2) he did not want or need Mr. Lamberson to obtain a guardianship over him. So, on 7/22/13, Mr. Bolliger filed Mr. Cudmore’s *Motion for Reconsideration*. [CP 9] In that motion, Mr. Cudmore also moved, in the event the judge was going to deny the motion, for the judge to certify his denial for immediate appeal under CR 54(b). On 7/24/13, the judge denied Mr. Cudmore’s *Motion for Reconsideration* – however, **it ignored addressing the CR 54(b) issue.** [CP 9 and 44-45]

18. On 7/26/13, Mr. Bolliger met with Mr. Cudmore again – for Mr. Cudmore to review and sign his new Will. Mr. Cudmore did not want his Will to be provided to Mr. Lamberson or Mr. Meehan. [CP 124]

19. Because the judge had ignored addressing Mr. Cudmore’s CR 54(b) issue in his *Motion for Reconsideration* in the guardianship case, on behalf of Mr. Cudmore, Mr. Bolliger took the steps explained in the following footnote to calendar Mr. Cudmore’s CR 54(b) motion for revision therein. Mr. Cudmore was looking forward to personally testifying at the hearing

provided by The Manor, and be provided as set forth in my power of attorney documents prepared by Mr. Bolliger – without the need for any guardianship.

23. I am unaware of any effort attorney Rachel Woodard has made to inform me of my rights just mentioned or do anything about advancing them for me.

on his CR 54(b) motion for revision.⁷ [9/27/13 RP, pp. 17-22]

20. On Friday, 9/13/13 (i.e., just two days after the last event described in the preceding footnote) – not on behalf of Mr. Lamberson, but on his **own behalf** (i.e., as the **VAPO petitioner himself**) – Mr. Meehan deceptively insinuated himself as a VAPO petitioner, purportedly on “behalf” of his polar-opposing party in the guardianship case (Mr. Cudmore), claiming to want to “protect” Mr. Cudmore from his chosen and hired attorney in the case (Mr. Bolliger). [CP 1-6] Mr. Meehan served his stack of VAPO materials on Mr. Cudmore [CP 167-68] and Mr. Bolliger [CP 160-66] that same day. Despite the fact that both Mr. Meehan and the judge knew Mr. Bolliger was representing Mr. Cudmore in the guardianship case (to rectify the seminal issue of who Mr. Cudmore’s attorney should be for the case) and recently had prepared

⁷ 1. Mr. Bolliger communicated with Court Administration to get a “special setting” with the same judge who presided over the initial guardianship hearing and denied Mr. Cudmore’s *Motion for Reconsideration*. On 8/7/12, after receiving an email from Court Administration (Tiffany) explaining that the judge wouldn’t be available until 9/6/13 for the special setting, Mr. Bolliger filed the *Note for Motion Docket* for Mr. Cudmore’s CR 54(b) motion for revision. Thus, Mr. Cudmore was going to have to wait another month to get into court to express himself in person to the judge.

2. On 8/29/13, Mr. Bolliger filed Mr. Cudmore’s CR 54(b) motion for revision. (Mr. Cudmore’s CR 54(b) motion for revision was actually titled *Motions for Orders (1) Allowing the AIP to Testify re: Whom he Wants for his Attorney in This Case, (2) Striking the GAL’S Petition for Appointment of Ms. Woodard as the AIP’S Attorney, and (3) Granting the AIP’S Petition to Appoint Mr. Bolliger as his Attorney, In the Alternative, Motion for Order Certifying The Foregoing Matters for Immediate Appeal Under CR 54(b) and RAP 2.2(d), and Declaration of John C. Bolliger in Support of Motions.*) [CP 119-140]

3. On 9/5/13 (i.e., the day before the hearing for Mr. Cudmore’s CR 54(b) motion for revision), the same judge struck the 9/6/13 hearing. Mr. Bolliger received notice of the striking via an email from Court Administration (Tiffany). Thus, Mr. Cudmore’s desire to get into court – in order to express himself in person to the judge – was again delayed by the judge.

4. On 9/11/13, Mr. Bolliger therefore filed Mr. Cudmore’s *Re-Note for Motion Docket* for the hearing (on Mr. Cudmore’s CR 54(b) motion for revision) to take place on Friday, 9/20/13.

5. Also on 9/11/13, Mr. Cudmore and Mr. Bolliger met for him to review and sign his aforementioned 9/11/13 *Declaration of James D. Cudmore*. [CP 76-83 and 142-149] Mr. Meehan reacted very badly to Mr. Cudmore’s declaration, as described next in the text above.

estate planning documents for Mr. Cudmore, (1) Mr. Meehan obtained an ex parte temporary VAPO against Mr. Bolliger from the judge, without providing Mr. Bolliger any notice that he was going in to see the judge therefor and (2) the judge signed Mr. Meehan's ex parte temporary VAPO without allowing Mr. Bolliger to participate in the process. [CP 99-101] The temporary VAPO prohibited Mr. Bolliger from having any contact with Mr. Cudmore – and prevented Mr. Bolliger from engaging in any acts **in the guardianship case** – until “the end of the hearing” on the VAPO issue – which hearing was set to occur on 9/27/13. Thus, Mr. Meehan's unscrupulous temporary VAPO would have two, disastrous effects for Mr. Cudmore: (1) it would prevent Mr. Bolliger from bringing Mr. Cudmore to the previously scheduled 9/20/13 hearing **in his guardianship case** (on Mr. Cudmore's oft-continued motion for revision) and (2) it would prevent Mr. Bolliger from bringing Mr. Cudmore to the VAPO hearing itself (so that Mr. Cudmore could explain to the judge that he did not want or need a VAPO against Mr. Bolliger).

21. Also on 9/13/13, Mr. Bolliger faxed Mr. Meehan a letter, in which he stated as follows:

This notifies you I will be going in on the Franklin County ex parte docket Monday morning, September 16, 2013 to ask [the judge] to re-address the *Temporary Order of Protection* you obtained from him ex parte this morning (you know, without extending me the courtesy of informing me you were going in to see him ex parte this morning). You are invited to attend. I'll bring your copy of my motion to hand it to you before the hearing on Monday morning (I have not yet prepared it). [CP 111-13]

22. With respect to the pile of VAPO papers Mr. Meehan had served on Mr. Cudmore two days earlier – on 9/15/13, Mr. Cudmore left the following (still preserved) voice message on Mr. Bolliger’s cell phone (at 10:56 am):

Hey, John. This is Jim Cudmore. Dona Belt’s here with some paperwork – and she’s on her way to bring it to your office, so, I’d appreciate if you would read this paperwork and determine it and help me out on it because its really complex. Thank you, John. This is Jim Cudmore. Have a good day. Bye-bye.

Of course, because of Mr. Meehan’s temporary VAPO which the judge had entered against Mr. Bolliger two days earlier, Mr. Bolliger was forced to ignore responding to Mr. Cudmore’s telephone call seeking more legal advice. Mr. Cudmore has enjoyed no communication with the attorney he chose and hired pursuant to his statutory entitlement (Mr. Bolliger) ever since. Also because of Mr. Meehan’s temporary VAPO, Mr. Bolliger was prevented from taking Mr. Cudmore to court – for either

- the calendared 9/20/13 hearing on Mr. Cudmore’s CR 54(b) motion for revision in the guardianship case, at which he wanted to testify, or
- the 9/27/13 hearing on Mr. Meehan’s VAPO case against Mr. Bolliger, at which Mr. Cudmore also wanted to testify.

Because Mr. Bolliger never arrived to pick up Mr. Cudmore on 9/20/13 for the hearing on his CR 54(b) motion for revision – and because Mr. Bolliger could not return Mr. Cudmore’s phone calls after Mr. Meehan’s

temporary VAPO was filed and served on 9/13/13 – Mr. Cudmore was left to think that, as of 9/13/13, Mr. Bolliger just silently quit his case and abandoned him.

23. On Monday, 9/16/13, with respect to Mr. Meehan's VAPO case against him, Mr. Bolliger presented his *Respondent's Ex Parte Motion for Order Relaxing the Court's September 13, 2013 Temporary Order for Protection – Vulnerable Adult* to the court on the regularly scheduled ex parte docket [CP 105-150], and proposed order therefor [CP 151-52], seeking extremely limited relief as follows:

The above-named respondent, Mr. Bolliger, respectfully moves the court for an order relaxing the court's 9/13/13 VAPO temporary order of protection against him, to enable Mr. Bolliger to (1) participate in the [9/20/13] hearing on Mr. Cudmore's [motion for revision] in the guardianship case, (2) take Mr. Cudmore to that hearing and back (from and to his residence), and (3) have prehearing telephone contact with Mr. Cudmore about that upcoming hearing. This motion is based upon the facts set forth in the following declaration (and its stated attachments).

Because Mr. Bolliger provided Mr. Meehan notice of that ex parte presentation, Mr. Meehan was in attendance. After the Deputy Clerk handed Mr. Bolliger's motion and its materials to the judge (who was in plain view to Mr. Bolliger through the Clerk's window), he refused to even read the motion and its materials. The Deputy Clerk returned the motion and materials to Mr. Bolliger, saying "he won't hear this; he says

you'll have to note up a hearing for it.”⁸ That response by the judge further prevented Mr. Bolliger and Mr. Cudmore from participating in the previously scheduled 9/20/13 hearing in the guardianship case (on Mr. Cudmore's oft-continued motion for revision) – which, at this point, was only 4 days hence. Thus, because of the judge's unyielding stance with respect to Mr. Meehan's temporary VAPO against Mr. Bolliger, a hearing on Mr. Cudmore's oft-continued motion for revision never did take place. So, Mr. Cudmore was comprehensively denied the opportunity to appear in court to personally explain to the judge that (1) he wanted Mr. Bolliger to be his attorney, (2) he did not want or need a guardianship, and (3) he wanted his 7/26/13 Will preserved. [CP 153-59]

24. On 9/20/13, Mr. Bolliger filed his *Motions for Order Permitting AVA to Testify and Awarding CR 11 Attorneys' Fees* in the VAPO case against him, stating in pertinent part as follows (with original emphasis):

RCW 74.34.135(3) states in full as follows (with emphases added):

At the hearing scheduled by the court, the court shall give the [AVA, Mr. Cudmore], the respondent, the petitioner, and in the court's discretion other interested persons, the opportunity to testify and submit relevant evidence.

Thus, the alleged vulnerable adult, Mr. Cudmore, is statutorily entitled to testify at the [9/27/13] hearing on Mr. Meehan's petition to extend the VAPO temporary order of protection against Mr. Bolliger. Mr. Cudmore has been trying to get personally heard in court for approximately two months now, but Mr. Meehan and his client in Mr. Cudmore's guardianship case, . . . [Mr. Lamberson] have been obstructing his efforts to do so. Because Mr. Meehan purports to have

⁸ So, the same judge who had signed the temporary VAPO which Mr. Meehan presented against Mr. Bolliger (without notice to Mr. Bolliger of the ex parte presentation) on Friday – inexplicably and unfairly would not even **address** relaxing the same on Monday, where Mr. Bolliger provided notice to Mr. Meehan, so that he was in attendance, at the Monday ex parte hearing.

brought the instant VAPO petition **on behalf of Mr. Cudmore**, Mr. Cudmore's views on the subject should be heard by the court. **Because Mr. Bolliger is prohibited (by the VAPO temporary order of protection) from providing Mr. Cudmore's transportation to the courthouse for the hearing, Mr. Bolliger here requests that Mr. Meehan do so – or that he have [Mr. Lamberson] do so.** [CP 174-77]

25. On 9/27/13, the hearing in the VAPO case against Mr. Bolliger took place. [9/27/13 RP] Of course, neither Mr. Meehan nor Mr. Lamberson brought Mr. Cudmore to the hearing. Although Ms. Woodard and Mr. May also attended this hearing, they, too, refused to bring Mr. Cudmore to court. The judge for the hearing was the **same judge** (1) who presided over the initial guardianship hearing (at which the judge ignored Mr. Cudmore's statutorily entitled choice to have Mr. Bolliger defend him against the guardianship case), (2) who denied Mr. Cudmore's *Motion for Reconsideration* therein, and (3) who went to improper lengths to ensure that Mr. Cudmore's motion for revision therein would never come to a hearing. In his effort to justify why he, personally, decided to be the VAPO petitioner (i.e., instead of having someone else be the VAPO petitioner), Mr. Meehan stated as follows (with emphases added):

. . . . With that said, I believe that Ms. Woodard could have potentially filed this same petition under the auspices of RPC 1.4. **But she's in an awkward position under RCW Title 11 to represent the subjective interests of Mr. Cudmore.** I didn't want to put **Mr. Lamberson in the position of again destroying or causing further damage to the relationship with [Mr. Cudmore] by being the petitioner**, and that is why I'm here today. . . . [9/27/13 RP, pp. 3-4]

With those words, Mr. Meehan effectively was corroborating the fact that **Mr. Cudmore was expressing to their side that he did not want or**

need a VAPO against Mr. Bolliger.

26. At the 9/27/13 VAPO hearing, the judge inappropriately asked Ms. Woodard the following **leading question**, yet got the following answer from her (with emphasis added): [9/27/13 RP, p. 11]

THE COURT: Is Mr. Bolliger's continued involvement in this and the [guardianship] matter harmful to the representations that you have with Mr. Cudmore?

MS. WOODARD: My opinion is yes. I find it to be – him to have extreme stress. When I go and see him, there is sometimes when he is very stressed out, and **it's dealing with court and feeling like he needs to find ways to get here to yell at the court for what they have done, because he has said that he would like [Mr. Bolliger] to be his attorney.** It's very stressful for him, and I can see the stress.

Next, the judge inappropriately asked Mr. May the **same leading question**, and got the following unsupported answer from him:

THE COURT: Do you believe that the continued contact with or by Mr. Bolliger with Mr. Cudmore is harmful?

MR. MAY: Yes, sir, I do.

THE COURT: Anything else you would like to say with regard to this?

MR. MAY: No, sir. [9/27/13 RP, p. 14]

27. Mr. Meehan's VAPO petition clearly was based upon mere speculation, not proof, as indicated by his following words at the 9/27/13 VAPO hearing: [9/27/13 RP, p. 7]

.... In terms of financial exploitation, that does not mean Mr. Bolliger would actually take Mr. Cudmore's money. It is that he has exerted control over it or improper control over it.

28. At the 9/27/13 VAPO hearing, the judge and Ms. Woodard had the following additional exchange (with emphases added):

THE COURT: **Has [Mr. Cudmore] expressed a dissatisfaction, excuse me a request to you that Mr. Bolliger somehow be his counsel?**

MS. WOODARD: **Yes, he has expressed that to me, your Honor.**

THE COURT: What he has indicated to you?

MS. WOODARD: **There's been multiple occasions where he's expressed that he would like [Mr. Bolliger] to still be his attorney.⁹**

29. Then, Mr. Bolliger was given his say to explain **the real and only reason why Mr. Meehan personally brought his VAPO case against Mr. Bolliger**, as follows:

Your Honor, this case is clearly about keeping me away from Mr. Cudmore so that I cannot represent his interests, what he wants done in the guardianship case. And I just want to toss out there initially I cannot even believe that Mr. Meehan or Mr. Lamberson or Mr. May or Miss Woodard, none of them brought Mr. Cudmore to court today. Nobody has. What they've done throughout the guardianship case is thwart every effort I have made to bring Mr. Cudmore in here so you can cut through all of this hearsay that they keep bringing up. And whether it's you or some other judge on the docket, it matters not to me, but I'm just saying so a Superior Court judge can confab with Mr. Cudmore and get an understanding that I am not ginning up declarations and putting things in his mouth. I am not appointing myself as an attorney in fact. He appointed me. That was [at] his behest.

Your Honor I think is aware of the long history since we were all together before on July 19th, the initial hearing **in the guardianship**

⁹ 9/27/13 RP, pp. 9-10. Although Ms. Woodard added some prevaricating words after that, she was not then under oath.

case, of me trying to get Mr. Cudmore in here for Mr. Cudmore's sake. And I have never, ever once had any sense that Mr. Cudmore doesn't want to come in here. He wants to talk to a judge. He wants to talk to a judge.

I initially wanted to put the issue of your appointment of Miss Woodard back in front of you, because that was your decision. I didn't want to be accused by Mr. Meehan of judge shopping, so I asked Tiffany to get a special set with you. And on the day [b]efore that hearing I get an email from Tiffany that says you've stricken the hearing and that I just need to put it on the regular docket. OK. I was a little concerned about that because I was hoping you would be able to hear it. Again it was to readdress your appointment of Miss Woodard and to have Mr. Cudmore here. **Isn't it funny that all of them don't want Mr. Cudmore here, and I do, and I stand here accused of exploiting Mr. Cudmore, of causing him financial distress?** I think the Court can perceive and see through that as a tactic.

Well, anyway, once I got Tiffany's email that the personal set with you had been stricken, I put it on the docket for two weeks hence from that point, which was last Friday, Friday the 20th of September. So I don't even know who was on the docket last Friday, because the Friday before that Mr. Meehan commences this VAPO protection order case against me, goes in *ex parte* without even notifying me, and gets a judge's signature prohibiting me for two weeks, from two weeks ago until today. At the end of today's hearing, as it says. . . .

Back to my point, two weeks [a]go Mr. Meehan gets a two-week order of protection against me, which is designed to do one thing, [] which is to keep me and Mr. Cudmore out of court last Friday, which again is on the motion to Mr. Cudmore's motion [in the guardianship case]. It's not my motion. It's Mr. Cudmore's motion to replace his attorney, replace me, Miss Woodard with me, and bring Mr. Cudmore in and let him talk to the judge and let any judge ask him any question they want. I promise you he will not pull his pants down. I've never seen that happen. He's never, never failed to recognize me. I don't understand why anybody's saying he couldn't recognize them after the first visit or whatever. So that's what this is designed to do.

Now, if you want to, if I may hand up a page here and copy for you, Mr. Meehan. This is from Mr. Meehan's petition in this case. And it's on page 6. Actually it's his declaration supporting his petition. Page 6 paragraph 33 reading the highlighted portions, Mr. Meehan says, "Mr. Bolliger has imposed and threatened." Those are both past-tense phrases. "Mental anguish and financial exploitation on Mr. Cudmore." And I have indicated in my opposition briefing that not only is there not a single fact in evidence to support such a statement, but there's not a single fact in existence. And, you know, I've spent the last two weeks completely faithful to [the judge's] two-week temporary order of protection. I haven't communicated with Mr. Cudmore. I haven't

communicated with him through third parties. I haven't been to see him. I haven't done anything. He called my office yesterday afternoon and told my – I got the phone note here from my receptionist. She tells me he called and said that, "He misses you and that you are the best attorney and he trusts you so much." Now I know that's hearsay, but I'm just telling you it's the God's honest truth. **He called just yesterday. He knows there's a hearing this Friday apparently. You know, but nobody – I can't take him. I even asked, went in ex parte a week ago or the Monday right after this two-week temporary order of protection to ask [the judge] to lighten his two-week temporary order of protection up just so I could have this hearing, which is now a week ago from today, last Friday.** But [the judge] wouldn't even read the materials. He said you have to get it on a motion hearing.

So Mr. Meehan has been successful once again in keeping me and Mr. Cudmore out of court on the guardianship case on the subject of Mr. Cudmore's desire to have me as his attorney in [that] case. I haven't been paid a penny. I haven't billed him a penny. There's no financial exploitation. There's no mental anguish. Mr. Cudmore always tells me, "John, I'm so glad you're – you're doing a great job. I'm so glad you're my attorney." They have invented, in my view, they have invented the facts that are the hearsay facts. **And what this case really, really cries out for, Your Honor, is Mr. Cudmore in court. Mr. Cudmore to do his own testifying, where, you know, you're asking him questions or whichever judge is asking him questions, and let him decide, and let the judge decide from hearing from the horse's mouth. . . .**

. . . . [H]is independence, how he works out every day on the 10 stations in the exercise room there at [The Manor], how he can take Dial-A-Ride to go to his doctor across [t]own, and The Manor bus, he takes that to go to Fred Meyer and do his shopping. He does his own laundry. He cuts his own toenails. He washes himself, goes to the bathroom himself, dresses himself. He shops for his own clothes, you know, this sort of thing. **And it's like are you [] kidding me? Are we going to sit here and muzzle Mr. Cudmore repetitively when he's the alleged incapacitated person in the guardianship case? His rights should be paramount to anybody's: Mine, Mr. Meehan's, Mr. Lamberson's, blah, blah, blah, you know. If he's the central focus of this, then the Court needs to hear from him.**

If the allegations are going to keep coming out that every time he files a declaration, one of them was in his own handwriting you may recall where he says, "I want John Bolliger to [] be [my] attorney, not Rachel Woodard." He's statutorily entitled to make that decision. He's entitled to a hearing. [9/27/13 RP, p. 17, line 4 to p. 22, line 11]

. . . .

. . . . And there's one way for the Court to get to the bottom of these

lies, and that is to **have Mr. Cudmore come into court and do his own talking, 'cause he's certainly capable of doing so.** And the representations to the contrary are just they're very, very disappointing to me, because you are being misled with that.

So why not just get Mr. Cudmore in here? Let him talk. Who does he want for his attorney? Does he want a jury trial, as he said? I will tell you yes. I've talked with him extensively about it. He wants a jury trial. He wants me to be his attorney. He wants Dr. Vaughn to write [the] report on this guardianship business, and he's statutorily entitled to say who the doctor can be. He wants to have a court-ordered mediation in this case. He wants the Court to review the power of attorney documents in this case. These are all statutory rights that he has and that Miss Woodard has not asserted any of them on his behalf, and yet he wants them.

He also has the right for this, for the guardianship case[– a]nd I know we're talking about the guardianship case, but that's really what this VAPO thing is all about[–] to have the least-restrictive alternative to be the end point of that guardianship case. He's in The Manor. His every need is provided for. His power of attorney documents to take care of his health care and financial decision making. He doesn't need a guardian even, and he wants to express that and tell the Judge. That's why he wants a jury trial. He wants to be on the stand and tell the jury that, etc.

Do you think I would be . . . making these assertions? [“]Let's get Jim Cudmore in here. Let's get Jim Cudmore in here,[”] if I thought for a second that everything I'm saying wouldn't be borne out? And yet they're the ones that keep saying, “No, we don't want Cudmore. We don't want Cudmore in here.” They don't want Mr. Cudmore to have access to the Court. They just want to have this thing concluded in his absence, and that's what's going on here. [9/27/13 RP, p. 24, line 15 to p. 26, line 2]

30. At the end of the 9/27/13 VAPO hearing, the judge curiously stated as follows (with emphasis added): [9/27/13 RP, p. 28]

. . . . I believe that in fact Mr. Bolliger and Mr. Cudmore, there is some relationship there. He recognizes Mr. Bolliger. But I do believe that that, based upon the information I have, is in fact to large extent based upon **this advanced stage of dementia.**

However, there is no evidence in the record to support the judge's

statement of Mr. Cudmore having “this advanced stage of dementia.” **The judge entirely ignored addressing Mr. Bolliger’s repeated pleas to allow Mr. Cudmore to come into court to testify.** The judge then entered a 5-year VAPO to “protect” Mr. Cudmore against Mr. Bolliger – thereby entirely prohibiting Mr. Cudmore from consulting any further with his chosen and hired attorney for the guardianship case and for the preparation of his estate planning documents, Mr. Bolliger. [CP 204-06] Indeed, Mr. Cudmore and Mr. Bolliger have not communicated with each other now for nearly 2 years – since Mr. Meehan’s temporary VAPO was served on both of them on 9/13/13.

31. On 10/18/13, the court entered an *Order Awarding Attorney Fees and Costs* against Mr. Bolliger (for Mr. Meehan “having” to bring the VAPO case against Mr. Bolliger) – in the amount of \$2,714.64. [CP 197-98]

< Text removed from here. See Commissioner Wasson’s 7/14/15
Commissioner’s Ruling. >

33. Despite Mr. Meehan’s unmerited speculations of financial exploitation of Mr. Cudmore by Mr. Bolliger, to date, Mr. Bolliger never has been paid anything for any of the legal work he performed on Mr.

Cudmore's behalf in the guardianship case or this VAPO case.¹⁰

III. ARGUMENT

The foregoing facts demonstrate that Mr. Meehan, Mr. May, and Ms. Woodard all were working together to achieve Mr. Meehan's goal of imposing an unneeded and unwanted guardianship over 85-year-old Mr. Cudmore. Again, the participants' actual relationship as to each other is pictorially represented in [App., p. 1].

Mr. Meehan knew from prior experience that Mr. Bolliger would effectively represent his client's desired objectives in a case. Mr. Meehan also knew that the facts of the case did not make it likely that he would be able to succeed in imposing a guardianship against Mr. Cudmore, because:

- Mr. Cudmore had clearly demonstrated **physical independencies and mental competence,**
- Mr. Cudmore already was living in a full-care senior living facility, and
- Mr. Cudmore already had made arrangements for getting assistance with his financial and health care decision making.

Mr. Meehan therefore decided that he did not want Mr. Bolliger defending Mr. Cudmore against the guardianship case. The evidence which supports that statement is the bundle of unscrupulous acts Mr. Meehan employed to

¹⁰ Also, during the period of 7/8/13 - 7/19/13, when Mr. Bolliger was Mr. Cudmore's attorney in fact pursuant to Mr. Cudmore's 7/8/13 *General Durable Power of Attorney for Financial Decision Making*, Mr. Bolliger took no steps whatsoever to "get himself paid" from Mr. Cudmore's financial account.

get rid of Mr. Bolliger as his opposing counsel, as follows.

- Mr. Meehan (by ignoring the GAL-selection process set forth in the superior court's LGAL 5(a)(2)(A)) **improperly** hand-picked Mr. May to be Mr. Cudmore's GAL,
- Mr. Meehan **wrongfully** presented his 7/12/13 order for Mr. May's appointment as Mr. Cudmore's GAL in the guardianship case *ex parte*, without giving Mr. Bolliger any advance notice of that presentation, despite the fact that Mr. Meehan knew at the time that Bolliger already was representing Mr. Cudmore,
- Mr. Meehan **dishonestly** brought this VAPO case (in which Mr. Meehan, personally, insinuated himself as the VAPO petitioner) against Mr. Cudmore's chosen and hired attorney for the guardianship case, Mr. Bolliger, solely for the improper purposes of
 - preventing Mr. Cudmore from getting into court to self-testify about his wishes for Mr. Meehan's guardianship case against him, including that he wanted Mr. Bolliger (and not Ms. Woodard) to defend him against Mr. Meehan's guardianship case,
 - preventing Mr. Cudmore from opposing having his Estate pay for fees generated by Mr. Meehan, Mr. May, and Ms. Woodard in the guardianship case,
 - preventing Mr. Cudmore from being able to oppose Mr. Meehan's efforts in the guardianship case to (a) obtain a copy of Mr. Cudmore's 7/26/13 Will and (b) try to revoke the same, and
 - preventing Mr. Cudmore from getting into court to self-testify that he did not want or need a VAPO against Mr. Bolliger,
- in the VAPO case he **dishonestly** (and personally) brought against Mr. Bolliger, Mr. Meehan purported to be representing the legal interests of Mr. Cudmore (who was Mr. Meehan's polar-opposing party in the substantially related guardianship case) – **in violation of RPC 1.7(a)**; in this regard, Mr. Meehan's **misrepresentation to the court** – that Mr. Cudmore needed to be "protected" from Mr. Bolliger – was nothing more than a pretention invented by Mr. Meehan,
- in the VAPO case he **dishonestly** (and personally) brought against Mr. Bolliger, Mr. Meehan **wrongfully** obtained his 9/13/13 VAPO temporary order of protection from the judge *ex parte*, without giving Mr. Bolliger any advance notice of that *ex parte* presentation,
- in the VAPO case he **dishonestly** (and personally) brought against Mr. Bolliger, using past-tense language (shown emphasized), Mr. Meehan **falsely represented** to the court that "Bolliger . . . **has imposed** and **threatened** mental anguish and financial exploitation upon Mr.

Cudmore” – without having any factual basis for his misrepresentations,

- at the 7/19/13 initial guardianship hearing, Mr. Meehan **falsely represented to the judge** that Mr. Bolliger should be disqualified from representing Mr. Cudmore in the case because Bolliger has a “conflict” under RPC 3.7 because Bolliger “might have to be a testifying witness in the case” – without having any factual or legal basis for his RPC 3.7 misrepresentation,
- at the 7/19/13 initial guardianship hearing, Mr. Meehan **wrongfully** asserted to the court his support for Ms. Woodard (and against Mr. Bolliger) to be appointed as Mr. Cudmore’s attorney – which was wrongful because, as Mr. Cudmore’s polar-opposing attorney in the case, Mr. Meehan had no business getting involved in any way whatsoever with the attorney-selection process for Mr. Cudmore,
- at the 7/19/13 initial guardianship hearing, Mr. Meehan **wrongfully** assisted Mr. May in his unauthorized practice of law, **in violation of RPC 5.5(a)** – when Mr. Meehan knew (or should have known) that
 - a. Mr. May did not have a law license authorizing him to file his court petition seeking to have Ms. Woodard appointed as Mr. Cudmore’s attorney for the case,
 - b. RCW 11.88.045(1)(b) clearly expresses that the AIP’s GAL and the AIP’s attorney have distinct (conflicting) duties toward the AIP (and, so, Mr. May – as Mr. Cudmore’s GAL – had no business getting involved in any way whatsoever with the attorney-selection process for the Mr. Cudmore), and
 - c. Mr. May did not have a law license to legally advise (and thereby deceive) Mr. Cudmore to the effect that Bolliger could not represent Mr. Cudmore because Bolliger had a “conflict,” < Text removed from here. See Commissioner Wasson’s 7/14/15 *Commissioner’s Ruling*. > yet, Mr. Bolliger had no conflict on grounds that Mr. Bolliger “might have to be a testifying witness in the case,”
- Mr. Meehan **dishonestly** attached to his 7/25/13 ex parte order appointing Mr. Lamberson as Mr. Cudmore’s attorney in fact an “Exhibit A” in support thereof: the 1/8/08 *Washington Durable Power of Attorney for Health Care* – which Mr. Meehan knew (or should have known) was not legally effective because both of its “Witness” signatures are blank,
- Mr. Meehan **falsely represented** to the judge that Mr. Bolliger unilaterally plotted to “get himself appointed” as Mr. Cudmore’s new attorney in fact in early July of 2013, whereas the actual facts in the record reveal that it was Mr. Cudmore’s idea (after timely deliberation), not Mr. Bolliger’s, to appoint Mr. Bolliger as his new

attorney in fact,

- as Mr. Cudmore's polar-opposing attorney in the guardianship case, Mr. Meehan **wrongfully** engaged in enormous litigation efforts (via motions, letters, subpoenas, and, later, four (4) depositions) to try to get Mr. Cudmore's litigation files from Bolliger (in particular, to obtain a copy of, and specific details about, Mr. Cudmore's new Will), for himself and for Mr. May and Ms. Woodard – even though Mr. Meehan knew (or should have known) that RPC 1.6 and settled decisional law forbid Mr. Meehan, Mr. May, and Ms. Woodard from any entitlement to such files from Mr. Cudmore (and that the court had “no jurisdiction” to order the production of Mr. Cudmore's Will in the guardianship case – because a testator's Will has no force or effect until the testator passes),
- Mr. Meehan **wrongfully** engaged in the aforementioned enormous litigation efforts in the guardianship case, aimed at trying to force Mr. Bolliger to produce a copy of Mr. Cudmore's new Will to Mr. May and Ms. Woodard – which was wrongful because, by so moving on behalf of Mr. May and Ms. Woodard (who was herself supposed to be Mr. Meehan's opposing counsel in the case), Mr. Meehan further revealed that all three of them really were working together in the case – all against Mr. Cudmore, and
- Mr. Meehan **falsely represented** to the judge that Mr. Bolliger was causing emotional distress to Mr. Cudmore, without any evidence to support that misrepresentation – when the clear evidence was that the only thing Mr. Cudmore was upset about was that the judge erroneously kept refusing to appoint Mr. Bolliger to defend Mr. Cudmore against Mr. Meehan's guardianship case.

In order to help obtain the guardianship which Mr. Meehan was seeking to impose upon Mr. Cudmore, **non-attorney** Mr. May wrongfully and unlawfully hand picked Ms. Woodard to defend Mr. Cudmore in the guardianship case (1) by providing (deceptive and wrong) legal advice to Mr. Cudmore (advising Mr. Cudmore that he could not be defended against the guardianship case by Mr. Bolliger) – and advising Mr. Cudmore that he must instead choose one of two other attorneys to so defend him (one of whom was Ms. Woodard) and (2) by filing a court petition requesting that the court appoint Ms. Woodard, in Mr. Bolliger's stead, as Mr. Cudmore's attorney.

For her part, In order to help obtain the guardianship which Mr. Meehan was seeking to impose upon Mr. Cudmore, Ms. Woodard did **absolutely nothing** to defend Mr. Cudmore against the guardianship case. Ms. Woodard did **absolutely nothing** to advance any of Mr. Cudmore's stated legal objectives in Mr. Meehan's guardianship case against him. For Ms. Woodard, it was just "go along to get along." By merely sitting on her hands throughout the case, she was going to (and did) get paid at the end of the case from Mr. Cudmore's Estate, anyway.

So, Mr. Meehan, Mr. May, and Ms. Woodard all were working together to achieve Mr. Meehan's goal of imposing an unneeded and unwanted guardianship over 85-year-old Mr. Cudmore. All three of them obviously were doing their best to render Mr. Cudmore both "defenseless and oppressed," within the meaning of Mr. Bolliger's aforementioned *Oath of Attorney*. For that reason (and because **mentally competent** Mr. Cudmore had chosen and hired him expressly to do so), Mr. Bolliger considered it his legal obligation to continue to help Mr. Cudmore redress his grievance in the guardianship case on the seminal issue therein: Mr. Cudmore's pursuit of his statutory entitlement under RCW 11.88.045(1)(a) – to be defended against Mr. Meehan's guardianship case by his chosen and hired attorney, Mr. Bolliger – and not by Ms. Woodard.

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A. Mr. Bolliger Appropriately Served Mr. Cudmore's Legal Interests And Needs In The Guardianship Case, From 7/19/13 To 9/13/13 – A Period Of Less Than 2 Months

Mr. Meehan's guardianship case against Mr. Cudmore was all about keeping Mr. Cudmore from disinherit Mr. Lamberson. In turn, Mr. Meehan's sole stated purpose in bringing his VAPO case against Mr. Bolliger was to prevent Mr. Cudmore from being defended against Mr. Meehan's guardianship case by Mr. Cudmore's chosen and hired attorney, Mr. Bolliger. So, properly analyzed, this VAPO appeal must spotlight RCW 11.88.045(1)(a), which prescribes as follows (with emphasis added):

Alleged incapacitated individuals [i.e., Mr. Cudmore] shall have the right to be represented by willing counsel of [his] own choosing at any stage of the guardianship proceedings. . . .

For all the wrong reasons (aided, as shown, by the unprincipled acts of Mr. Meehan and Mr. May), when the 7/19/13 initial guardianship hearing was over, the judge ignored Mr. Cudmore's just-quoted statutory entitlement and, instead, appointed Ms. Woodard to defend Mr. Cudmore against the guardianship case – despite the facts that (1) Mr. Cudmore had never met nor communicated with Ms. Woodard, (2) Ms. Woodard wasn't even at the hearing, and (3) Ms. Woodard had not filed the required RCW 11.88.045(2) petition to even be considered for such an appointment.¹¹

¹¹ Respectfully, the judge who presided over that initial guardianship hearing had been a judge for only about 2½ months. In his prior law practice, primarily as an adult and juvenile criminal defense attorney, respectfully, he did not seem to have gained experience with guardianship cases, VAPO cases, or estate planning issues.

However, **Mr. Cudmore was aggrieved** by the judge's 7/19/13 decision to appoint Ms. Woodard, and not Mr. Bolliger, to defend him against Mr. Meehan's guardianship case. As Mr. Cudmore declared, he wanted the "'least restrictive alternative' for my ongoing care and decision making assistance. I want that to continue to be provided by The Manor, and be provided as set forth in my power of attorney documents prepared by Mr. Bolliger -- without the need for any guardianship." Mr. Cudmore had confidence that Mr. Bolliger would pursue that outcome for him. In RCW 11.88.005, the Legislature accorded Mr. Cudmore the right to that "least restrictive alternative," as follows (with emphases added):

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

Because **Mr. Cudmore was aggrieved** by the judge's 7/19/13 decision to appoint Ms. Woodard, and not Mr. Bolliger, to defend him against Mr. Meehan's guardianship case, the law allows Mr. Cudmore options to redress his grievance. For example, CR 59(a) allows Mr. Cudmore to file a *Motion for Reconsideration*, as follows:

On the motion of the party aggrieved, . . . any . . . order may be vacated and reconsideration granted. . . .

Mr. Cudmore therefore appropriately filed his *Motion for Reconsideration* of the issue on 7/24/13.

For another example, because Mr. Cudmore's *Motion for Reconsideration* contained a request, in the alternative, that the court certify the issue for immediate appeal under CR 54(b) – and because, in denying the *Motion for Reconsideration*, the judge completely ignored addressing Mr. Cudmore's CR 54(b) request set forth therein – CR 54(b) authorizes Mr. Cudmore to file a CR 54(b) motion for revision, as follows (with emphasis added):

. . . . In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of all the parties shall not terminate the action as to any of the claims or parties, and **the order or other form of decision is subject to revision at any time** before the entry of judgment adjudicating all the claims and rights and liabilities of all the parties.

Mr. Cudmore therefore appropriately filed his CR 54(b) motion for revision of the issue on 8/29/13.

So, there was nothing untoward or improper about Mr. Cudmore filing his *Motion for Reconsideration* and his CR 54(b) motion for revision to seek redress of his grievance about the judge's decision at the 7/19/13 initial guardianship hearing to force Mr. Cudmore to be defended against Mr. Meehan's guardianship case by Ms. Woodard. That is also true with respect to the declarations which accompanied Mr. Cudmore's motions. Mr. Cudmore merely was trying to get the guardianship case against him

on a proper track: he wanted to be able to present his own testimony in furtherance of getting his chosen and hired attorney, Mr. Bolliger, to defend him against Mr. Meehan's guardianship case – and he wanted to not be represented by Ms. Woodard. That was his statutory entitlement. RCW 11.88.045(1)(a).

In Mr. Cudmore's and Mr. Bolliger's view, the judge should have done the following:

- appoint Mr. Bolliger at the 7/19/13 initial guardianship hearing to defend Mr. Cudmore against Mr. Meehan's guardianship case or,
- failing that, grant Mr. Cudmore's *Motion for Reconsideration* on the issue or,
- failing that, grant Mr. Cudmore's alternative request (set forth in his *Motion for Reconsideration*) that the judge certify the issue for immediate appeal pursuant to CR 54(b) or,
- failing that, allow Mr. Cudmore's CR 54(b) motion for revision to come to a hearing, so the judge could hear from Mr. Cudmore himself on the issue.¹²

All Mr. Bolliger did during the short period – from the initial guardianship hearing (on 7/19/13) until he was served with the VAPO which prohibited Mr. Cudmore from communicating/consulting any further with Mr. Bolliger (on 9/13/13) – was assist Mr. Cudmore with

¹² Doing any one of the foregoing would have prevented this case, and the guardianship case, from having to mushroom to where they now have mushroomed. The point is: the issue of getting Mr. Cudmore's statutorily entitled choice for his attorney resolved (to his satisfaction, pursuant to RCW 11.88.045(1)(a)) was **seminal** to the guardianship case. The judge should not have allowed any of the succeeding activities in the case to occur until Mr. Cudmore's RCW 11.88.045(1)(a) entitlement to the attorney of his own choosing was first – and finally – resolved. However, the judge erred by failing to accomplish any one of the foregoing opportunities to rule correctly with respect to that seminal issue for the case. Then, to make matters worse, the same judge exacerbated the whole scenario by entering the unmerited VAPO against Mr. Bolliger – thereby dooming Mr. Cudmore to the manifest travesty which since has occurred: unimpeded (indeed, aided) by Mr. May and Ms. Woodard, Mr. Meehan succeeded in imposing an unneeded and unwanted guardianship over Mr. Cudmore.

trying to resolve that seminal issue described in the preceding footnote. In the judge's 7/19/13 order erroneously appointing Ms. Woodard as Mr. Cudmore's attorney, the judge did not express any prohibitions against Mr. Bolliger assisting Mr. Cudmore with resolving that seminal issue – and the judge did not express any prohibitions against Mr. Bolliger continuing to represent Mr. Cudmore with respect to his estate planning documents. So, Mr. Bolliger appropriately served Mr. Cudmore's legal interests and needs in the guardianship case for his total time of involvement in it – from 7/19/13 to 9/13/13 – a period of less than 2 months.

There is nothing in the foregoing which supports the judge entering a 5-year VAPO to “protect” Mr. Cudmore from Mr. Bolliger. As such, Mr. Bolliger respectfully requests that this Court vacate that VAPO.

B. The Superior Court Erred In Entering Its 5-Year VAPO To “Protect” Mr. Cudmore From Mr. Bolliger, Because The Court Made No Findings Or Conclusions That Mr. Meehan Had Established – With The Required Clear, Cogent, And Convincing Evidence – That Mr. Cudmore Was A “Vulnerable Adult”

In Matter of Knight, 178 Wn.App. 929, 317 P.3d 1068 (2014), the alleged vulnerable adult was Ms. Knight, an 83-year-old woman. One of her sons, Eric, brought a VAPO action against his brother (Ms. Knight's other son), Tor. In the case, Ms. Knight “maintained she did not want a protection order against Tor.” *Id.* at 933. (How she “maintained” that was not discussed in the case but, presumably, a single declaration from her would have sufficed.) Nonetheless, the superior court entered the VAPO against Tor. Both Ms. Knight and Tor appealed. The Court of Appeals

held as follows (with emphasis added):

We hold the standard of proof for proving whether the adult is a vulnerable adult **in a case contested by the alleged vulnerable adult** is clear, cogent, and convincing evidence.

Id. at 937. Because it was not apparent from the record whether that standard of proof had been met, the Court of Appeals remanded for a determination of whether Eric had met his burden.¹³

In this case, the alleged vulnerable adult, Mr. Cudmore (much more so than Ms. Knight in Knight), obviously was opposed to the VAPO which Mr. Meehan sought against Mr. Bolliger. Remember, Mr. Meehan's sole stated purpose in bringing his VAPO case against Mr. Bolliger was to prevent Mr. Cudmore from being defended against the guardianship case by his chosen and hired attorney, Mr. Bolliger. So, the evidence establishing that Mr. Cudmore wanted to exercise his statutory entitlement under RCW 11.88.045(1)(a) to be defended against Mr. Meehan's guardianship case by Mr. Bolliger, and not by Ms. Woodard – is also evidence certain that Mr. Cudmore was opposed to a VAPO being entered against Mr. Bolliger. That chronological evidence includes the following from above.

- Mr. Cudmore came to Mr. Bolliger's offices on 4 occasions (7/2/13,

¹³ Matter of Knight controls the standard of proof on this issue. It is irrelevant that the 9/27/13 VAPO hearing against Mr. Bolliger occurred before Matter of Knight was decided, because a new rule announced by the appellate court applies retroactively, unless doing so would be "barred by procedural requirements, such as the statute of limitations or res judicata." Robinson v. City of Seattle, 119 Wn.2d 34, 77-78, 830 P.2d 318 (1992), cert. den. by 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992).

7/4/13, 7/8/13, and 7/26/13) – totaling approximately 6½ hours – specifically to direct, discuss, review, and sign new estate planning documents which he wanted Mr. Bolliger to prepare for him – and, on 7/4/13, Mr. Cudmore hired Mr. Bolliger with a written fee agreement expressly for those purposes.

- On 7/18/13, Mr. Cudmore hired Mr. Bolliger – with a second written fee agreement – expressly to defend him against the guardianship case.
- Mr. Cudmore wanted a declaration from his personal physician since 1999, Dr. Vaughn, addressing Mr. Cudmore’s **mental competence** – and, on 7/18/13, he accompanied Mr. Bolliger to Dr. Vaughn’s office to be present while Dr. Vaughn reviewed, provided his own typewritten exhibit thereto, and signed his declaration.
- Mr. Cudmore wanted the judge to reconsider his decision to deny Mr. Cudmore his statutory right – under RCW 11.88.045(1)(a) – to be defended against Mr. Meehan’s guardianship case by his chosen and hired attorney (Mr. Bolliger), so Mr. Bolliger filed Mr. Cudmore’s *Motion for Reconsideration* on 7/24/13.
- In his 7/26/13 *Declaration of James D. Cudmore*, Mr. Cudmore explained how GAL Mr. May tried to dissuade Mr. Cudmore from keeping Mr. Bolliger as his attorney in the guardianship case – and how Mr. May directed Mr. Cudmore to choose one of two other attorneys (one of which was Ms. Woodard). Mr. Cudmore further declared about Ms. Woodard, “I don’t want her to be my attorney in this case.” Mr. Cudmore further declared, “I have told Mr. Bolliger at least 20 times that I want him to be my attorney for this case. I ask the judge to appoint Mr. Bolliger to be my attorney for this case, not Rachel Woodard. I’m not sure why people keep telling me that the judge won’t let Mr. Bolliger be my attorney in this case.”
- Mr. Cudmore directed Mr. Bolliger not to provide a copy of his 7/26/13 Will to Mr. Lamberson or Mr. Meehan.
- In his 8/18/13 handwritten statement, Mr. Cudmore wrote “I, James Cudmore, want John Bolliger for my attorney and not Rachel Woodard.”
- In his 9/12/13 *Declaration of James D. Cudmore*, Mr. Cudmore declared “I want Mr. Bolliger to be my attorney – and not Rachel Woodard.” Mr. Cudmore also set forth his understanding of his rights in the guardianship case: to a jury trial, to have his Dr. Vaughn prepare the statutory medical report, to a court-ordered mediation, and to have the court review all power of attorney documents at issue – and Mr. Cudmore asserted that he wanted to exercise all of those rights. Mr. Cudmore elaborated that Ms. Woodard had been doing nothing to explain or advance any of those rights on his behalf. Finally, Mr. Cudmore explained that he wanted the guardianship case to be resolved with the “least restrictive alternative” for his ongoing care and

decision making assistance, asserting that “I want that to continue to be provided by The Manor, and be provided as set forth in my power of attorney documents prepared by Mr. Bolliger – without the need for a guardianship.”

- Mr. Cudmore wanted the judge to revise his decision to deny Mr. Cudmore his statutory right – under RCW 11.88.045(1)(a) – to be defended against Mr. Meehan’s guardianship case by his chosen and hired attorney (Mr. Bolliger), so Mr. Bolliger filed Mr. Cudmore’s CR 54(b) motion for revision on 8/19/13. Mr. Cudmore was looking forward to providing his own, personal testimony to the judge on the subject, at the calendared 9/20/13 hearing on his CR 54(b) motion for revision.
- Two days after Mr. Meehan served his stack of VAPO paperwork on Mr. Cudmore – i.e., on 9/15/13 – Mr. Cudmore left the following voice message on Mr. Bolliger’s phone, showing that Mr. Cudmore still was seeking legal advice from Mr. Bolliger, after the VAPO restrained Mr. Bolliger from communicating any further with Mr. Cudmore:

Hey, John. This is Jim Cudmore. Dona Belt’s here with some paperwork – and she’s on her way to bring it to your office, so, I’d appreciate if you would read this paperwork and determine it and help me out on it because its really complex. Thank you, John. This is Jim Cudmore. Have a good day. Bye-bye.

- At the 9/27/13 hearing on Mr. Meehan’s VAPO against Mr. Bolliger, even Ms. Woodard corroborated Mr. Cudmore’s choice to have Mr. Bolliger defend him against the guardianship case. Ms. Woodard asserted to the judge that Mr. Cudmore “feel[s] like he needs to find ways to get here to yell at the court for what they have done, because he has said that he would like [Mr. Bolliger] to be his attorney.” Ms. Woodard also asserted to the judge that “[t]here’s been multiple occasions where [Mr. Cudmore]’s expressed that he would like [Mr. Bolliger] to still be his attorney.”
- At the 9/27/13 hearing on Mr. Meehan’s VAPO against Mr. Bolliger, even Mr. Meehan effectively corroborated the fact that Mr. Cudmore was expressing to their side that he did not want or need a VAPO against Mr. Bolliger.

The foregoing evidence makes it abundantly clear that (1) Mr. Cudmore certainly was opposed to a VAPO being entered against Mr. Bolliger and (2) Mr. Meehan effectively prevented Mr. Cudmore from providing in-court testimony to that effect by bringing his (Mr. Meehan’s) unprincipled

VAPO case against Mr. Bolliger.

Given Mr. Cudmore's demonstrated and appreciable **physical independencies and mental competence** set forth throughout the facts above, and given that Mr. Cudmore was opposed to a VAPO being entered against Mr. Bolliger, it could not properly be concluded that Mr. Cudmore was a "vulnerable adult" when the superior court entered its 5-year VAPO to "protect" Mr. Cudmore from Mr. Bolliger on 9/27/13 – not even by a preponderance of the evidence – let alone by the "clear, cogent, and convincing evidence" burden required by Matter of Knight, *supra*. Moreover, the judge's VAPO order itself deficiently does not contain any finding or conclusion indicating that the required "clear, cogent, and convincing evidence" burden on this issue had been met by Mr. Meehan.¹⁴

¹⁴ RCW 74.34.020(17) provides in its subsections definitions for a "vulnerable adult" – and two of its subsections pertain to the facts (set forth by the Court in its Matter of Knight decision) as follows:

- (17) "Vulnerable adult" includes a person:
- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
 - (f) Receiving services from an individual provider

The facts the Matter of Knight Court set forth on pp. 931-34 of its decision, which meet those two subsections, are as follows (with emphases added):

- "Dagmar is 83 years old."
- Dagmar's son "Tor, the younger of the two [sons], suffers from schizophrenia and has a criminal history, including several assault convictions and an unlawful possession of a firearm conviction. Tor resides in a house on the Lillegaard property, located approximately 100 yards away from Dagmar's house."
- "Dagmar and [her deceased husband,] Wayne [had] executed a power of attorney in May 2007, which authorized [Dagmar's other son,] Eric to automatically act as Dagmar's attorney in fact upon Wayne's death. In March 2011, Eric became concerned for Dagmar's physical and financial well-being due to Tor's behavior and the manner in which he was spending Dagmar's money."
- "In his petition for the protection order, Eric alleged **Tor was unduly influencing Dagmar, isolating her, and threatening her physical well-being**. In support of his allegations, **Eric provided a recent medical report, in which a licensed clinical psychologist concluded Dagmar suffers from dementia**. Eric also submitted 13 declarations from family and close friends; Dagmar's financial records; several letters he wrote to Dagmar, Tor, and Tor's mental health counselor, Dr. Donnelly; and a handwritten letter from Dagmar to Eric."
- "In the declarations, multiple family members stated they do not visit Dagmar's home anymore nor do they have

their traditional family holiday celebration there because of **threats Tor made to various family members and because Tor generally makes the family members feel uncomfortable and unsafe.** One particular incident mentioned in several declarations concerned a day during the summer of 2009 when Tor assaulted Erin Knight, Dagmar's step-granddaughter. Dagmar and Wayne both attempted to stop the assault and were injured by Tor in the process. The police were called and Tor was arrested. Several family and friends also noted that Dagmar is not as talkative or stops talking when Tor is present.”

- “Family and friends also expressed concern as to Dagmar's safety and well-being. **Dagmar had major surgery for cancer in spring 2011. Tor, without telling any family, brought Dagmar home from the hospital early and left her alone on the couch at her home. Dagmar's cousin and Eric both visited Dagmar in the days after Tor brought her home. They both stated that Dagmar was too weak to get off the couch on her own, that she had soiled her gown, that she was in a lot of pain, and that she was disoriented. Family also noted that Tor told them he took Dagmar's pain medication after her surgery and threw it away because he did not believe she needed it.**”
- “Eric and family members also alleged Tor was unduly influencing Dagmar. Eric stated **Dagmar received \$109,000.00 in life insurance in July 2010 and by February 2011 Tor had spent almost \$90,000.00 of it.** Eric stated that **Tor spent \$5,000.00 to \$7,000.00 a month of Dagmar's money between May 2011 and February 2012.** Eric also experienced trouble getting Dagmar's debit card back from Tor, Eric had to cancel Dagmar's credit card, and Eric had to correct Dagmar's putting Tor's name on her bank account. Additionally, a family friend witnessed Tor coerce Dagmar into stopping at the bank to get him money when he drove them on lunch outings. Eric also provided a copy of Dagmar's bank statements, which demonstrate that **Dagmar wrote checks to Tor between May 2011 and February 2012 totaling \$6,904.00; paid \$14,000.00 to Dr. Donnelly, Tor's mental health counselor; spent \$2,589.17 at liquor stores; and paid \$4,865.00 for an apartment in Tacoma Tor no longer needed. Dagmar also paid all Tor's bills and expenses.**”
- “The superior court entered a temporary protection order on February 23, 2012, restraining Tor, among other conditions, from entering Dagmar's residence, having any contact with Dagmar, or from coming within 1,000 feet of Dagmar's residence and the 26-acre Lillegaard estate. Dagmar learned Eric filed a vulnerable adult protection order and guardianship the next day, and **Tor took Dagmar to an attorney where Dagmar revoked Eric's power of attorney.** Tor was served with the temporary protection order on February 27, 2012. The order effectively prevented him from living in his house, which was less than 1,000 feet away from Dagmar's house. **Tor failed to remain at least 1,000 feet from the 26-acre Lillegaard estate and was arrested for violating the temporary protection order.** Eric also stated he changed Dagmar's phone number after the superior court entered the temporary protection order because **several of Tor's friends were calling Dagmar on Tor's behalf in violation of the temporary protection order.**”

Thus, because Ms. Knight was 83 years old (and had a functional, mental, or physical inability to care for herself) – and because Tor was an individual provider taking care of her – the foregoing facts, alone, seemingly might have supported a trial court finding that Ms. Knight was a “vulnerable adult” pursuant to a black-letter reading of RCW 74.34.020(17)(a) and (f). However, that was not enough for the Matter of Knight Court. As discussed, because **Ms. Knight was opposed to a VAPO being entered against Tor**, the Court held there must be a demonstration – with “clear, cogent, and convincing evidence” – that Ms. Knight was a “vulnerable adult.” Thus, it is not enough for the VAPO petitioner to present facts which meet the wording of a subsection of RCW 74.34.020(17). Rather, “clear, cogent, and convincing evidence” of Ms. Knight’s actual vulnerability needed to be demonstrated.

Here, Mr. Meehan has suggested the same unsuccessful approach as did the VAPO petitioner in Matter of Knight. Mr. Meehan has suggested that this Court should hold Mr. Cudmore was a “vulnerable adult” merely because he resided at The Manor, i.e., merely because that fact meets the black-letter wording of another subsection – subsection (d) – of RCW 74.34.020(17), which reads as follows:

- (17) “Vulnerable adult” includes a person:
(d) Admitted to any facility.

However, Mr. Bolliger respectfully submits that, consistent with Matter of Knight, because **Mr. Cudmore was opposed to a VAPO being entered against Mr. Bolliger**, the mere fact that Mr. Cudmore resides at The Manor is not enough to conclude that he was a “vulnerable adult.” Rather, “clear, cogent, and convincing evidence” of his actual vulnerability needed to be demonstrated. Given the facts regarding Mr. Cudmore’s abundant **physical independencies and mental competence** set forth above, Mr. Meehan would have fallen markedly short of meeting

Based upon the foregoing, Mr. Bolliger respectfully requests that this Court hold that the superior court erred in entering its 5-year VAPO to “protect” Mr. Cudmore from Mr. Bolliger, because the court made no findings or conclusions that Mr. Meehan had established – with the required clear, cogent, and convincing evidence – that Mr. Cudmore was a “vulnerable adult.”

C. The Superior Court Abused It’s Discretion In Entering Its 5-Year VAPO To “Protect” Mr. Cudmore From Mr. Bolliger, Because Substantial Evidence Does Not Exist To Support Its Findings Against Mr. Bolliger – That He Had “Committed Acts Of Abandonment, Abuse, Neglect, And/Or Financial Exploitation” Of Mr. Cudmore

This Court reviews the superior court’s decision to grant or deny a protection order for an abuse of discretion. Hecker v. Cortinas, 110 Wn.App. 865, 869, 43 P.3d 50 (2002). This Court reviews the superior court’s findings (for an abuse of discretion) by determining whether the court’s findings are supported by substantial evidence in the record. Scott v. Trans-Sys., Inc., 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003).

The record in this case is very, very clear. There is **nothing** in the record which supports a finding that Mr. Bolliger committed an “abandonment” of Mr. Cudmore. There is **nothing** in the record which supports a finding that Mr. Bolliger committed an “abuse” of Mr. Cudmore. There is **nothing** in the record which supports a finding that Mr. Bolliger committed a “neglect” of Mr. Cudmore. There is **nothing** in

his heavy “clear, cogent, and convincing evidence” burden – even if he had argued for it (which he did not).

the record which supports a finding that Mr. Bolliger committed a “financial exploitation” of Mr. Cudmore. Mr. Bolliger never did any of those things – never, never, never – not even once.

Based upon the foregoing, Mr. Bolliger respectfully requests that this Court hold that the superior court abused its discretion in entering its 5-year VAPO to “protect” Mr. Cudmore from Mr. Bolliger, because substantial evidence does not support its findings against Mr. Bolliger – that he had “committed acts of abandonment, abuse, neglect, and/or financial exploitation” of Mr. Cudmore.

D. The Superior Court Abused Its Discretion In Imposing The \$2,714.64 In Attorneys’ Fees And Costs Against Mr. Bolliger – So, Mr. Meehan Should Be Required To Repay That Amount To Mr. Bolliger, Plus Interest

Pursuant to RCW 74.34.130(7), if the court properly enters judicial relief against a respondent in a vulnerable adult protection case, the court also may award attorneys’ fees and costs against the respondent. However, as discussed above, the court both (1) erred by failing to establish in the first place (by clear, cogent, and convincing evidence) that Mr. Cudmore was a “vulnerable adult” and (2) abused its discretion in entering a 5-year VAPO to “protect” Mr. Cudmore against Mr. Bolliger (because substantial evidence does not exist to support its findings against Mr. Bolliger – that he had “committed acts of abandonment, abuse, neglect, and/or financial exploitation” of Mr. Cudmore). As such, it likewise was an abuse of the court’s discretion to impose the \$2,714.64 in

attorneys' fees and costs against Mr. Bolliger pursuant to RCW 7.34.130(7).

Based upon the foregoing, Mr. Bolliger respectfully requests that this Court hold that (1) the court abused its discretion in imposing the \$2,714.64 in attorneys' fees and costs against Mr. Bolliger and (2) Mr. Meehan therefore must repay the \$2,714.64 to Mr. Bolliger, plus interest.

E. Mr. Bolliger Requests Recovery Of His Attorneys' Fees Pursuant To CR 11 And RAP 18.1

With Mr. Bolliger's 9/20/13 *Motions for Order Permitting AVA to Testify and Awarding CR 11 Attorneys' Fees* in the VAPO case against Mr. Bolliger – and with Mr. Bolliger's 2/12/14 reminder letter – Mr. Bolliger put Mr. Meehan on notice that Mr. Bolliger would be seeking CR 11 sanctions against Mr. Meehan. Those communications constitute proper informal notice of the same pursuant to Biggs v. Vail, 124 Wn.2d 193, 198, 876 P.2d 448 (1994). The above facts, points, and authorities demonstrate that Mr. Meehan's VAPO case against Mr. Bolliger has been violative of CR 11, because (1) it was not well grounded in fact, (2) it was not warranted by existing law, and (3) it was not reasonably researched by Mr. Meehan prior to his filing it. Rather, Mr. Meehan brought his VAPO case against Mr. Bolliger merely to render Mr. Cudmore "defenseless and oppressed" within the meaning of the aforementioned *Oath of Attorney*.

Moreover, from the very inception of his pursuit of his VAPO case

against Mr. Bolliger, Mr. Meehan was engaging in a **clear and concurrent conflict of interest**: Mr. Meehan was purporting to represent the legal interests **OF** Mr. Cudmore (in Mr. Meehan's VAPO case against Mr. Bolliger) while, at the same time, he was representing Mr. Lamberson **AGAINST** Mr. Cudmore (in Mr. Lamberson's guardianship case against Mr. Cudmore) – where Mr. Meehan already had improperly involved himself in both the GAL-selection process, and the attorney-selection process, for Mr. Cudmore. That is not allowed under RPC 1.7(a).

This Court may impose on Mr. Meehan a sanction for “the amount of the reasonable expenses incurred because of the filing . . . , including a reasonable attorney fee.” CR 11(a). See, also, Biggs v. Vail, supra.

Based upon the foregoing, and pursuant to RAP 18.1, Mr. Bolliger respectfully requests that this Court impose CR 11 sanctions against Mr. Meehan for filing and pursuing his frivolous VAPO case against Mr. Bolliger – merely as a deceptive and unscrupulous strategic ploy to try to prevent Mr. Cudmore from being defended by his chosen and hired attorney for the guardianship case, Mr. Bolliger.

IV. CONCLUSION

In his 23 years of law practice, Mr. Bolliger never has seen or heard of (or even read about) an attorney filing a **meritless** VAPO petition in order to try to get rid of an opposing attorney on a separate case – let alone seeing, hearing of, or reading about the petitioning attorney actually getting away with such a stunt.

Mr. Meehan acknowledges that he pursued his VAPO case against Mr. Bolliger solely to try to prevent Mr. Cudmore from being defended by his chosen and hired attorney for the guardianship case, Mr. Bolliger. And yet, **Mr. Bolliger didn't do anything wrong** with respect to Mr. Cudmore in the guardianship case. Mr. Bolliger only assisted Mr. Cudmore with exercising his **absolute legal entitlements** to file his follow-up *Motion for Reconsideration*, CR 54(b) motion for revision, motion to appear in court to present his own testimony, and supporting declarations – all aimed at effecting his statutory rights to have (1) his chosen and hired attorney, Mr. Bolliger, appointed to defend him against Mr. Meehan's guardianship case, (2) his proposed "least restrictive alternative" be the outcome of Mr. Meehan's guardianship case, and (3) his 7/26/13 Will preserved. Indeed, that is precisely what Mr. Cudmore hired Mr. Bolliger, with a written fee agreement, to do for him. Mr. Meehan's VAPO case against Mr. Bolliger had no basis in law or in fact. Accordingly, Mr. Bolliger prays for the following relief from this Court:

- a holding that the superior court erred in entering its 5-year VAPO to "protect" Mr. Cudmore from Mr. Bolliger, because the court made no findings or conclusions that Mr. Meehan had established – by the required clear, cogent, and convincing evidence – that Mr. Cudmore was a "vulnerable adult" – along with a holding that such evidence does not even exist in this case,
- a holding that the superior court abused its discretion in entering its 5-year VAPO to "protect" Mr. Cudmore from Mr. Bolliger, because substantial evidence does not support its findings against Mr. Bolliger – that he had "committed acts of abandonment, abuse, neglect, and/or financial exploitation" of Mr. Cudmore,
- an order, therefore, vacating the 5-year VAPO,
- a holding that the superior court abused its discretion in imposing the \$2,714.64 in attorneys' fees and costs against Mr. Bolliger – and an

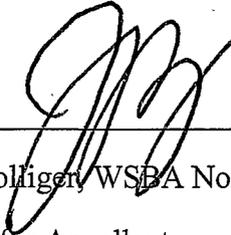
order directing Mr. Meehan to repay that amount to Mr. Bolliger, plus interest,

- a holding expressing this Court's acknowledgment that Mr. Meehan's unprincipled manipulations in this case (see, again, the bullets set forth on pp. 29-31 above) rise to the level of ethical violations by Mr. Meehan under the RPCs,
- an order imposing CR 11 sanctions against Mr. Meehan for filing and pursuing his frivolous VAPO petition against Mr. Bolliger – merely to advance his unscrupulous strategic ploys to wrongfully (1) prevent Mr. Cudmore from being defended by his chosen and hired attorney for the guardianship case, Mr. Bolliger, (2) prevent Mr. Cudmore from enjoying the “least restrictive alternative” as the outcome for the guardianship case, and (3) seek revocation of Mr. Cudmore's legally valid 7/26/13 Will, and
- an order directing Mr. Meehan to disgorge back to Mr. Cudmore's Estate all fees he has been paid therefrom, in connection with this case to date.

DATED this 19 day of July, 2015.

BOLLIGER LAW OFFICES

By: _____


John C. Bolliger, WSPA No. 26378

Attorneys for Appellant

DECLARATION

I, John C. Bolliger, declare as follows:

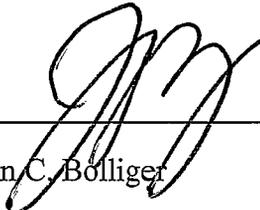
1. I am the appellant in this appeal, I have personal knowledge of the facts set forth above, and, if called to testify about the same, I can and will competently do so.

2. I swear under penalty of perjury under the laws of the state of Washington the foregoing is true and correct.

DATED this 19 day of July, 2015.

Kennewick, WA

City, state where signed



John C. Bolliger

DECLARATION OF SERVICE

STATE OF WASHINGTON)
COUNTY OF BENTON) ss.

I, John C. Bolliger, declare as follows:

On the date set forth below, I caused a true and correct copy of this document to be sent to the following persons and entities in the manner shown:

<u>Shea C. Meehan</u>	<input type="checkbox"/>	regular mail
	<input type="checkbox"/>	e-mail no.
1333 Col. Park Trail, Ste. 220	<input type="checkbox"/>	facsimile no.
Richland, WA 99352	<input checked="" type="checkbox"/>	Pronto Process & Messenger Service, Inc.
	<input type="checkbox"/>	hand-delivery by John C. Bolliger
	<input type="checkbox"/>	Federal Express _____

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

DATED this 20 day of July, 2015.

Kennewick, WA
City, state where signed

Signature 

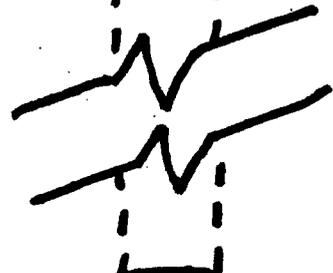
Appendix

Guardianship
Petitioner
(represented by
Mr. Meehan)

VS.

AIP
(Mr. Cudmore)

AIP's GAL
(Mr. May)



AIP's
Chosen and
Hired Attorney
(Mr. Bolliger)

AIP's Wrongly
Appointed Atty.
(Ms. Woodard)

Hand Picked by
Mr. Meehan

Hand Picked by
Mr. Meehan and Mr. May

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SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF BENTON

In re the Guardianship of:

JAMES DONALD CUDMORE,

Alleged Vulnerable Person.

Case No. 13-4-00260-9

DECLARATION OF JOHN C. BOLLIGER

I, John C. Bolliger, declare as follows:

1. I am the attorney of record for the above-named respondents and the above-named alleged vulnerable adult, I have personal knowledge of the facts set forth below, and, if called to testify about the same, I can and will competently do so.

2. On July 2, 2013, I had an initial consultation with James D. Cudmore ("Jim"). He came in the door using a walker; I noticed he takes short and careful steps when walking with his walker. Jim had been brought to the meeting by his and my common friend, Dona Belt. I have

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1 known Dona for almost 50 years. I asked Jim if he wanted Dona to be present during the
2 consultation and he said "yes." This first meeting lasted for 1½ hours. Jim explained that he
3 wanted to change several of his estate planning documents. I asked Jim how old he is. He
4 explained his birthday is coming up on July 17th, and he will be 85. During the meeting, Jim and I
5 asked each other many questions. His questions were always thoughtful and well placed – and his
6 answers to my questions were always responsive and rational. On occasion, he exhibited a minor
7 memory loss. He called me by name – "John" – 3-4 times during our conversation. He explained
8 his wife's name is Annette, she is a year older than him, and she is in rehabilitative care –
9 suffering from a stroke about 6 years ago. When I asked him her birth date, he told me it was July
10 27, 1927. He further explained that Annette doesn't answer questions responsively, that she
11 merely says "yes" to practically any question you might put to her. He informed me he has
12 between \$400,000 and \$500,000 invested through Edward Jones, and he has several thousand
13 dollars in HAPO.¹ Jim elaborated that he and Annette each get Social Security, and he gets a
14 pension. Jim said he owns no real estate, having sold his home after Annette had her stroke. Jim
15 further explained he now resides at The Manor at Canyon Lakes, which is about a block from the
16 facility in which Annette resides. He laughed and said the taxi charges him 75¢ to pick him up
17 and take him to Annette's facility when he goes to visit her. He said the last time he visited her,
18 she was asleep the entire time. He said he and Annette have been married for about 50 years. Jim
19 explained he has no natural children, but he has 4 stepchildren (all of whom are Annette's natural
20 children). When I asked him their names, from oldest to youngest, he told me David Lamberson,
21 Joani Chapman (although he elaborated that Joani recently got married and he is unsure whether
22 she took her new husband's last name, which he thought was something like "Sibolski" (my
23 spelling)), Tim Lamberson, and Traci (he couldn't remember Traci's last name). Jim explained

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25 ¹ In the July 12, 2013 guardianship filing by Jim's stepson, Tim Lamberson, Tim confirms Jim's recollections in these
26 regards as follows: on the subject of "Stocks, Mutual Funds & Bonds," Tim wrote "\$441,883.17 (Joint Account with Timothy
27 A. Lamberson)" – and, on the subject of "Bank Accounts," Tim wrote "\$20,532.45 (5 accounts all held in joint accounts)."

1 the kinds of changes he wanted made to his estate planning documents. This meeting, like each of
2 the meetings I've had with Jim, was not "all business." We also talked casually about common
3 subjects. Each time I've met him, Jim has told a couple of jokes.

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5 3. On **July 3, 2013**, I met for an initial consultation with a completely different potential
6 client. An adult brother and sister (I'd say in their 40's) had come in with their elderly dad,
7 wanting power of attorney documents drafted – for both financial decision making and health care
8 decision making – for their dad to sign, naming them (the brother and sister) as their dad's
9 attorneys in fact. They elaborated that their dad's family doctor, just the day before, had
10 diagnosed him with "dementia" – and that their dad was scheduled to meet with a neurologist on
11 July 14th to follow up on the subject. I then turned to the dad and said "I'd like to ask you some
12 questions." I asked him the following questions, listening for his response after each one: "Do
13 you know what day of the week it is?" "Do you know what today's date is?" "Do you know what
14 month we're in?" "Do you know what year it is?" "Do you know what State we live in?" To
15 each of these questions, the dad was unable to provide anything near a correct response. In fact,
16 his responses to my questions were unintelligible – despite the fact he clearly spoke English.
17 Although he enunciated some sentences during the meeting, the dad was not able to carry on any
18 semblance of a back-and-forth conversation at all. I then told the brother and sister words to the
19 following effect: "I'm not able to say your dad would know the effect and import of the power of
20 attorney documents you'd like me to prepare. So, I can't prepare power of attorney documents for
21 your dad to sign. You can go down the road to another attorney who might be willing to prepare
22 such documents for you, however, it would be unethical for any attorney to do so, given these
23 facts. I'm sorry, but I just can't do it. The better course to take would be for you to file a
24 guardianship action with respect to your dad. And, of course, we need to know what diagnosis the
25 neurologist will provide on July 14th." I then provided them some discussion about the
26 guardianship process. That essentially culminated my meeting with those folks, because they (the
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1 son and daughter) were unhappy with my advice.

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3 4. Back to Jim, I met with Jim for a second time on **July 4, 2013**. As soon as he saw me at
4 the start of that meeting, he said "Hi, John!" He called me by name 2-3 more times during this
5 second meeting. This meeting lasted 2 hours. Again, Jim had Dona in attendance during this
6 meeting. Jim mentioned he had recently been suffering a sinus infection and his doctor had
7 prescribed him a "Z-pack" for the problem. I asked him his doctor's name and he said "Dr.
8 Vaughn, spelled V-A-U-G-H-N." When I asked him if Dr. Vaughn's office is in Kennewick, he
9 said "yes." When asked, Jim told me his SSN without having to look it up. On this occasion, I
10 pointedly asked Jim why he wanted to make the specific changes to his estate planning documents
11 that he had told me (at our first meeting) he wants to make. His answers were thoughtful and
12 responsive. Jim expressed a tender love for his wife, Annette, and said he wants her to live a long
13 time, even saying "I want her to outlive me." The bulk of this meeting was conversational talk,
14 rather than business talk. For example, Jim mentioned how he and Dona used to work together,
15 and how helpful it is for him when she agrees to drive him to the doctor, or the bank, other
16 errands, or to lunch. For another example, Jim told another couple of jokes. Twice during this
17 meeting, Jim thanked me for meeting with him on a holiday (again, it was July 4th).

18
19 5. I met with Jim for the third time on **July 8, 2013**. He called me by name – "John" – a
20 couple of times during this visit, too. On this occasion, I had his new estate planning documents
21 prepared, so he was there to go over them with me and sign them. Here, again, Jim had Dona in
22 attendance – but, also, her husband, Larry, because they were going to provide witness signatures
23 where necessary on the documents. This meeting lasted 2 hours. About half way through, Jim
24 said to all of us "When we're through, remind me to sing 'Happy Birthday' to you backwards."
25 We all said words to the effect of "OK, we can't wait for that." When we were all done with the
26 business at hand and additional friendly conversation, I started to stand up and say "Thanks for
27

5

1 coming, everybody" – in order to signal an end to the meeting. Larry and Dona started to get up,
2 too. At that point, Jim said "Remember, I wanted to sing 'Happy Birthday' to you backwards."
3 We had all forgotten, but Jim hadn't. We all said words to the effect of "Oh, yeah" and began to
4 chuckle. I then said, where did you learn to sing 'Happy Birthday' backwards?" Jim said, "Oh, I
5 learned how to do that a long time ago." I said, "It must've taken you a long time to learn the
6 words backwards, huh?" Jim said "Oh, yes, it took a lot of practice." By then, Jim was standing,
7 facing us, and said, "Are you ready for me to sing 'Happy Birthday' backwards?" – and, of
8 course, we all said "Yes." He then turned around, with his back to us and began singing "Happy
9 Birthday to you, Happy Birthday to you" We all started laughing his joke.

10
11 6. The next day – on **July 9, 2013** – I received a copy of paperwork related to a
12 Vulnerable Adult Protection Order action which Tim Lamberson had filed against Larry & Dona
13 Belt. I was shocked to discover therein a **July 8, 2013** writing from Dr. Vaughn which concludes
14 that Jim is "incapacitated." The reason I was shocked is because that opinion did not comport
15 with my aforementioned observations of Jim during my meetings with him over 3 separate days
16 (in the previous week), covering 5½ hours. After thinking about the matter for awhile, however, I
17 realized that, when asking Dr. Vaughn to write down his opinion, Tim Lamberson apparently
18 didn't ask Dr. Vaughn to opine **specifically on the narrow issue at hand: whether Jim had the**
19 **requisite mental capacity to execute new estate planning documents on July 8, 2013.** That
20 narrow issue was articulated by the Supreme Court of Washington, in In re Bottger's Estate, 14
21 Wn.2d 676, 685, 129 P.2d 518 (1942), as follows (with emphasis added in bold):

22
23 The rules as to what constitutes testamentary capacity have been stated, and the earlier cases
24 collected, in a number of our recent decisions: In re Larsen's Estate, 191 Wn. 257, 71 P.2d
25 47; Dean v. Jordan, 194 Wn. 661, 70 P.2d 331; In re Schafer's Estate, 8 Wn.2d 517, 113
26 P.2d 41; In re Miller's Estate, 10 Wn.2d 258, 116 P.2d 526.

27 Those cases hold that **a person is possessed of testamentary capacity if at the time he**
28 **assumes to execute a will he has sufficient mind and memory to understand the**

6

1 transaction in which he is then engaged, to comprehend generally the nature and extent
2 of the property which constitutes his estate and of which he is contemplating
3 disposition, and to recollect the objects of his bounty.

4 That is the only issue Tim Lamberson should have asked Dr. Vaughn to opine about on **July 8,**
5 **2013.** By providing Dr. Vaughn a copy of this declaration, I hereby ask Dr. Vaughn to prepare a
6 new writing in which he provides his medical opinion regarding that narrow legal issue only.

7
8 7. I have been an attorney for 21 years. I have dealt with elderly clients seeking estate
9 planning documents for the past several years. At no time during my aforementioned 3 visits with
10 Jim, spanning a cumulative 5½ hours, did I get any sense that he wasn't mentally capable of
11 understanding the subject of his estate planning documents or the changes he wanted to make to
12 them – and specifically why he wanted to make those changes. In particular, I was fully satisfied
13 that, during those 3 visits (5½ hours) Jim had “sufficient mind and memory to understand the
14 transaction in which he is then engaged, to comprehend generally the nature and extent of the
15 property which constitutes his estate and of which he is contemplating disposition, and to recollect
16 the objects of his bounty.” In re Bottger's Estate, supra. Of course, the main “property which
17 constitutes his estate” are his Edward Jones investments, his HAPO deposits, and his monthly
18 income sources – and the “objects of his bounty” are his wife, Annette, and his 4 stepchildren:
19 David, Joani, Tim, and Traci. I only know all of that because Jim explained all of that to me
20 himself. Moreover, **at no time during any of my 5½ hours of discussions with Jim (1) did Jim**
21 **suggest that he wanted Dona or Larry ever to have any of his money or (2) did Dona or**
22 **Larry suggest that they ever wanted any of his money (or wanted him to do anything in**
23 **particular with his money); aside from signing as witnesses to the estate planning documents**
24 **I prepared for Jim, Dona and Larry are never so much as even mentioned in any of those**
25 **estate planning documents.**

7

1 8. In each of Jim's visits with me, he has expressed great dissatisfaction with his stepson,
2 Tim Lamberson's, handling of his affairs. Jim says Tim regularly berates him for spending his
3 (Jim's) own money. Jim says Tim yells things at him like "You can't even add 2 + 2!" Jim
4 doesn't like Tim coming to Jim's residence unannounced. Jim has asked Tim to give him his
5 residence key back, but says Tim refuses. Jim says he doesn't trust Tim. Jim alleges that Tim has
6 been monitoring his cell phone records of his incoming and outgoing phone calls – and then
7 interrogates and scolds him for talking to people whom Tim doesn't want him talking to. Jim is
8 very adamant about the fact that he doesn't want Tim having any power of attorney or
9 guardianship power over him.

10
11 9. In each of Jim's visits with me, he acknowledges he needs help with certain things. He
12 can't drive anymore, so he needs rides to and fro. He needs help to be reminded to take his meds
13 on schedule. He needs help balancing his checkbook – and with ensuring his financial affairs are
14 properly looked after. He acknowledges all of things. He just doesn't want Tim Lamberson to be
15 doing those things for him anymore.

16
17 10. I swear under penalty of perjury under the laws of the state of Washington the
18 foregoing is true and correct.

19
20 DATED this 17 day of July, 2013.

21
22
23 Kennewick, WA

24 City, state where signed

25
26
27
28 
John C. Bolliger

8

DECLARATION OF SERVICE

STATE OF WASHINGTON)
COUNTY OF BENTON) ss.

I, John C. Bolliger, declare as follows:

On the date set forth below, I caused a true and correct copy of this document to be sent to the following persons and entities in the manner shown:

Shea C. Meehan

Walker Heye Meehan & Eisinger
1333 Columbia Park Trail, Ste. 220
Richland, WA 99352



regular mail
certified mail, RRR no. _____
facsimile no. _____
Pronto Process & Messenger Service, Inc.
hand-delivery by _____
Federal Express _____

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

DATED this 18 day of July, 2013.

Kennewick, WA

City, state where signed

Signature