

No. 32206-8

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

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Court of Appeals
Division III
State of Washington

In re the Guardianship of:

JAMES D. CUDMORE, Incapacitated Person,

JOHN C. BOLLIGER, Appellant,

and

TIM LAMBERSON, Respondent.

APPELLANT'S BRIEF

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TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 22

1. During The Pertinent 1-Month-And-25-Day Period Following The 7/19/13 Initial Guardianship Hearing, Mr. Bolliger Appropriately Assisted Mr. Cudmore With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue 27

A. Mr. Bolliger Was A Proper Attorney To Assist Mr. Cudmore With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue 27

B. Mr. Bolliger Reasonably Assisted Mr. Cudmore With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue 28

C. In Proper Allegiance To His *Oath Of Attorney*, Mr. Bolliger Was Honor Bound By A Professional Obligation To Assist Mr. Cudmore With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue 29

2. Mr. Cudmore Continually Solicited Mr. Bolliger To Assist Him With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue 30

3. The Order Imposing CR 11 Sanctions Against Mr. Bolliger Contains Misleading/Incorrect (1) Material Findings Which Are Not Supported By Substantial Evidence And (2) Material Conclusions Which Are Erroneous 31

A.	Mr. Meehan’s <u>FF No. 1</u> Contains A Misleading Phrase – As Such, The Court Should Reject Mr. Meehan’s Use Of His Misleading Phrase In <u>FF No. 1</u>	32
B.	Mr. Meehan’s <u>FF No. 2</u> Contains A Phrase Which States An Erroneous Conclusion Of Law – As Such, The Court Should Reject Mr. Meehan’s Merging Of That Erroneous Conclusion Of Law Into His <u>FF No. 2</u>	33
C.	Mr. Meehan’s <u>FF Nos. 12, 13, 14, And 15</u> Contain Misleading Statements – As Such, The Court Should Reject Mr. Meehan’s Use Of His Misleading Statements In <u>FF Nos. 12, 13, 14, And 15</u>	33
D.	Mr. Meehan’s <u>FF No. 5</u> And <u>CL No. 5</u> Are Contrary To The Facts In This Record And The Applicable Law – As Such, The Court Should Reject Mr. Meehan’s <u>FF No. 5</u> And <u>CL No. 5</u> In Their Entireties	35
E.	Mr. Meehan’s <u>FF Nos. 3, 4, 6, 8, And 10</u> And His <u>CL No. 6</u> Contain Misleading Phrases – As Such, The Court Should Reject Mr. Meehan’s Use Of His Misleading Phrases In <u>FF Nos. 3, 4, 6, 8, And 10</u> And <u>CL No. 6</u>	37
F.	Mr. Meehan’s <u>FF No. 9</u> Contains A Factually Incorrect Final Sentence – As Such, The Court Should Reject Mr. Meehan’s Use Of His Factually Incorrect Final Sentence In <u>FF No. 9</u>	39
G.	Mr. Meehan’s <u>CL Nos. 4, 6, 7, And 8</u> Contain Factually And Legally Incorrect Phrases – As Such, The Court Should Reject Mr. Meehan’s Use Of His Factually And Legally Incorrect Phrases In <u>CL Nos. 4, 6, 7, And 8</u>	39
4.	It Make No Sense To Impose CR 11 Fees Against Mr. Bolliger – To “Reimburse” Mr. Cudmore’s Estate For <u>Its</u> Having To Pay Mr. Meehan, Mr. May, And Ms. Woodard For Executing Their Predatory Litigation Tactics To Oppose Precisely Those Legal Services Which Mentally Competent Mr. Cudmore Kept Soliciting Mr. Bolliger To Perform For Mr. Cudmore	41

5. Mr. Bolliger Requests The Recovery Of His Attorneys’ Fees –
From Mr. Meehan, Ms. Woodard, And Their Firms – Pursuant
To CR 11 And RAP 18.1 44

IV. CONCLUSION 45

TABLE OF AUTHORITIES

Decisional Law

ASIC v. Nammathao,
153 Wn.App. 461, 220 P.3d 1283 (Div 3 2009) 9

Behnke v. Ahrens,
172 Wn.App. 281, 294 P.3d 729 (2012) 43

Biggs v. Vail,
124 Wn.2d 193, 876 P.2d 448 (1994) 34, 44-45

Cheek v. ESC,
107 Wn.App. 79, 25 P.3d 481 (Div. 3 2001) 23

Estate of Alsup,
181 Wn.App. 856, 327 P.3d 1266 (Div. 3 2014) 22

Guardianship of Matthews,
156 Wn.App. 201, 232 P.3d 1140 (2010) 22, 25, 41

Guardianship of York,
44 Wn.App. 547, 723 P.2d 448 (Div. 3 1986) 36

In re Bottger’s Estate,
14 Wn.2d 676, 129 P.2d 518 (1942) 19, 20

Pond v. Faust,
90 Wn. 117, 155 P. 776 (1916) 20, 26, 36, 41

PUD No. 1 v. International Ins. Co.,
124 Wn.2d 789, 881 P.2d 1020 (1994) 9

State v. Sanchez,
171 Wn.App. 518, 288 P.3d 351 (Div. 3 2013) 9

Ullman v. Garcia,
645 So.2d 168 (Fla.Ct.App. 1994) 21

United States v. Watson,
87 F.3d 927 (7th Cir. 1996) 9

State Statutes

RCW 2.48.170 5, 12
RCW 2.48.180 5, 12
RCW 2.48.180(3)(a) 6, 12
RCW 2.48.180(6) 6, 12
RCW 11.88.005 13
RCW 11.88.030(1) 22
RCW 11.88.045(1)(a) 6, 10, 13, 23, 25-32, 38-40, 42, 44
RCW 11.88.045(1)(b) 5, 26, 41
RCW 11.88.045(2) 5, 10, 24-25, 29
RCW 11.88.045(4) 13, 26
RCW 18.130.180 6, 12

Court Rules

APR 5(e) 1
CR 11 1, 21, 27, 31-34, 36-37, 40-45
CR 11(a) 45
CR 45(a)(1)(D) 34
CR 45(c) 34
CR 45(d) 34
CR 54(b) 8, 10, 12, 13, 37-40
LGAL 5(a)(2)(A) 3, 4, 24
RAP 2.2(d) 13
RAP 18.1 44-45
RPC 3.7 9, 24

Other

wsba.org 27

The appellants are Mr. Bolliger and his law firm, Bolliger Law Offices (collectively, “Mr. Bolliger”). The AIP below was Mr. Cudmore. The respondent is the guardianship petitioner below, Mr. Lamberson, who was Mr. Cudmore’s stepson – and who at all times material hereto has been represented by his attorney, Mr. Meehan.

I. ASSIGNMENT OF ERROR

The court erred by imposing \$ 9,782.75 in CR 11 sanctions against Mr. Bolliger – to “reimburse” Mr. Cudmore’s Estate for **its** having to pay Mr. Meehan, Mr. May, and Ms. Woodard for executing their predatory litigation tactics to oppose precisely those legal services which mentally competent Mr. Cudmore kept soliciting Mr. Bolliger to perform for Mr. Cudmore. [See § 4]

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 APR 5(e). (He took a similar oath when he became admitted to practice law after passing the bar exams in CA, ID, and OR.) ¶ 8 of the oath states as follows (emph. add.):

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

2. For years before, and all during Mr. Bolliger’s involvement herein, 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 barber-shop, an exercise room, and activities and entertainment. [CP 122] **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. [CP 37] 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 123-24]

3. On 7/2/13, Mr. Cudmore first met with Mr. Bolliger about having new estate planning documents prepared for him, including a new Will. Mr. Cudmore expressed that he wanted a new Will to specifically disinherit his stepchildren. With his several years' experience dealing with elderly clients and their estate planning issues, Mr. Bolliger had no doubt that Mr. Cudmore had **testamentary capacity** to make such decisions. [CP 3-6 and 168-69]

4. Later on 7/2/13, Mr. Lamberson found out directly from 85-year-old Mr. Cudmore that he was planning to disinherit Mr. Lamberson with a new Will. [CP 202 and 266-69] **Mr. Meehan initiated the guardianship case just 10 days later, on 7/12/13, solely to try to nullify Mr. Cudmore disinheriting Mr. Lamberson from Mr. Cudmore's ≈ \$450,000.00 Estate.** [CP 797-98]

5. Mr. Cudmore hired Mr. Bolliger, via a written fee agreement during their second meeting on 7/4/13, to prepare his new estate planning documents. (For those legal services, Mr. Bolliger agreed to reduce his years-old

hourly rate for Mr. Cudmore by 25%: from \$220/hr to \$165/hr.) [CP 162]

6. Mr. Cudmore's first 3 meetings with Mr. Bolliger – on 7/2/13, 7/4/13, and 7/8/13 – cumulated to 5½ hours, with Mr. Cudmore's 35-years-long friend, **Dona Belt, attendant throughout.** [CP 4, 24, & 168] Mr. Bolliger wanted 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.

7. On 7/12/13, Mr. Meehan filed Mr. Lamberson's guardianship petition, [CP 541-49] alleging therein that Mr. Cudmore already was **mentally incapacitated.**¹ [CP 541]

8. Also on 7/12/13, Mr. Meehan **unlawfully** 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 next-in-the-rotation, GAL-selection process, Mr. Meehan instead **unlawfully** secured an ex parte appointment of his own, hand-picked GAL, Mr. May. [CP 296 and 364-70] Despite his foreknow-

¹ Despite that fact, 2½ months later, Mr. Meehan admitted something quite different to Judge Mendoza in 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 don't know.** [9/27/13 RP, p. 6]

Later in the hearing, Mr. Meehan 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 much-earlier affirmative allegation, in his guardianship petition, that Mr. Cudmore **already was mentally incapacitated.**

ledge that Mr. Bolliger already was representing Mr. Cudmore with respect to his new estate planning documents, Mr. Meehan declined to provide Mr. Bolliger notice of his ex parte presentation of his hand-picked-GAL-appointment order, which Judge Spanner signed. [CP 296] Mr. Meehan's hand picking of GAL Mr. May was wrongful because (1) Mr. Meehan was Mr. Cudmore's **polar-opposite attorney** in the guardianship case and, (2) therefore, Mr. Meehan had a **clear conflict of interest** – which prohibits Mr. Meehan from getting involved in any way whatsoever with the GAL-selection process for Mr. Cudmore – and which certainly prohibits Mr. Meehan from hand picking specifically whom he wanted for Mr. Cudmore's GAL. The avoidance of such conflicts clearly is the reason for LGAL 5(a)(2)(A).

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 successfully was treating him for his early-stage Alzheimer's), provided his medical opinion – that Mr. Cudmore had **testamentary capacity** to direct that a new Will be prepared for him [CP 11-16]. A copy of the 7/17/13 *Declaration of John C. Bolliger*, which Dr. Vaughn relied upon in his own declaration, appears in [CP 3-10].

10. Also on 7/18/13 – via a 2nd written fee agreement – Mr. Cudmore hired Mr. Bolliger to defend Mr. Cudmore against the guardianship action. (For those legal services, too, Mr. Bolliger agreed to reduce his years-old hourly rate for Mr. Cudmore by 25%: from \$220/hr to \$165/hr.) [CP 164] Throughout Mr. Bolliger's representation of him, Mr. Cudmore remained adamant that (1) he did not want or need a guardianship imposed on him, (2)

he wanted Mr. Bolliger, and not Ms. Woodard, to defend him against the case, and (3) he wanted to protect his new Will. [CP 170-71 and 296]

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 AIP Mr. Cudmore in a guardianship case.² [CP 17-20]

12. Also on 7/18/13, Mr. Meehan’s hand-picked GAL, Mr. May, in turn, **wrongfully** and **unlawfully** filed a court petition to appoint Mr. May’s own, hand-picked attorney – Ms. Woodard – to represent Mr. Cudmore. [CP 1-2] Mr. May’s hand picking of Ms. Woodard to be Mr. Cudmore’s attorney in this guardianship case, via a court-filed petition, 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 attorney³ – and
- b. **unlawful** because, pursuant to RCW 2.48.170 and .180, Mr. May is

² 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 [the AIP, Mr. Cudmore]. . . .**

In his petition, Mr. Bolliger declared as follows (with emphasis added):

. . . . 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!”**

However, attorney Ms. Woodard never filed a required RCW 11.88.045(2) petition to be appointed Mr. Cudmore’s attorney in the guardianship case.

³ RCW 11.88.045(1)(b) clearly sets forth that distinction as follows (with emphases added):

Counsel for an [AIP] 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 [AIP], rather than the [AIP’s] expressed preferences.**

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.”

13. Those unprincipled hand pickings by Mr. Meehan (of Mr. May) and by Mr. May (of Ms. Woodard) were effective for Mr. Meehan. As shown below, throughout this guardianship case, those three team members tacitly colluded and cooperated with each other to force a guardianship over Mr. Cudmore – that Mr. Cudmore neither needed nor wanted – solely to unlawfully [fn. 13] try to nullify Mr. Cudmore disinheriting Mr. Lamberson from Mr. Cudmore’s ≈ \$450,000.00 Estate. The participants’ relationship in this case is pictorially represented in [App., p. 1].

14. At the 7/19/13 initial guardianship hearing, Mr. Bolliger explained to Judge Mendoza [7/19/13 RP, p. 10] that – under RCW 11.88.045(1)(a),

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

(Emph. add.) Mr. Bolliger also explained to Judge Mendoza [*id.*, p. 13] that Mr. Cudmore had been declared by Dr. Vaughn the day before to have **testamentary capacity** and [*id.*, p. 10] that “Mr. Cudmore unequivocally wants me to be his attorney in this action.”

15. At the 7/19/13 initial guardianship hearing, during his oral argument, **Mr. Meehan delivered his material factual lie to Judge Mendoza.** Mr. Meehan’s lie – and his 5-months-long propagation of it in this case – are unveiled in the following fn.⁴

⁴ On 7/19/13, the initial guardianship hearing took place prior to a VAPO hearing which Mr. Meehan wrongfully commenced against Dona and Larry Belt. [CP 393-94 and 683] At the guardianship hearing, **without providing any declaration from Edward Jones so alleging**, Mr. Meehan dishonestly represented to Judge

Mendoza as follows about Mr. Cudmore's visit with his Edward Jones financial advisor – after he and Dona Belt left Mr. Bolliger's office on 7/2/13 (with emphases added):

MR. MEEHAN: A few weeks ago as shown by the declarations Your Honor, Edward Jones called and said we've got some real concerns because **this person that we don't recognize has Mr. Cudmore here at our office changing his beneficiary designations on his accounts.** [7/19/13 RP, p. 3]

MR. MEEHAN: . . . Greg Belt and Donna and Larry Belt and you're going to have VAPO hearing on that on your 9:30 docket. And **they were taking Mr. Cudmore out to make all of these different financial arrangements and adjustments.** [7/19/13 RP, p. 5]

Mr. Meehan delivered his blatant lie to Judge Mendoza in order to propagate an innuendo against Mr. Bolliger – to persuade Judge Mendoza to force Mr. Meehan's **polar-opposite party**, Mr. Cudmore, to be defended against Mr. Meehan's guardianship case by Mr. Meehan's and Mr. May's chosen attorney for him (Ms. Woodard), rather than by Mr. Cudmore's own chosen and hired attorney for himself (Mr. Bolliger). The innuendo was to the effect that, because the Edward Jones visit occurred on 7/2/13 – after Mr. Cudmore and Dona Belt left Mr. Bolliger's office – Mr. Bolliger must have been aware that Dona Belt was taking Mr. Cudmore to Edward Jones to get Mr. Cudmore to change his beneficiary designation on his Edward Jones account(s) to her. Again, **all of that is absolutely false and it all is unsupported by any admissible evidence.** The sole reality is neither Gregg, Dona, nor Larry Belt ever tried to get Mr. Cudmore (Dona's friend of 35 years) to change his beneficiary designation on his Edward Jones account(s) to her (or to anybody else) – and Mr. Bolliger had no connection whatsoever with the subject.

This Court will find it revealing that Mr. Meehan provided Judge Mendoza **no declaration from any Edward Jones representative** upon which to base Mr. Meehan's scandalous lie which he delivered to the judge. Mr. Bolliger made evidentiary objections to Mr. Meehan's false statements, but **Judge Mendoza ignored ruling upon Mr. Bolliger's objections.** [7/19/13 RP, p. 3, line 21 to p. 5, line 23] The reason Mr. Meehan did not provide an Edward Jones declaration is because he already knew, from communicating with Edward Jones, that no financial exploitation of Mr. Cudmore ever occurred or was attempted. See Mr. Meehan's following billing entries, which reveal that Mr. Meehan had been communicating with Edward Jones between 7/2/13 and 7/19/13: [CP 703-04]

- 7/10/13 – “Prepare letter for Edward Jones.”
- 7/12/13 – “Review correspondence from Edward Jones.”
- 7/12/13 – “Review and respond to email from Edward Jones. Review additional correspondence from Edward Jones.”
- 7/15/13 – “Review correspondence from Edward Jones.”

Thus, with 17 days to engage in due diligence (during which he actually communicated with Edward Jones), Mr. Meehan knew (and had the duty to know), before the 7/19/13 hearings, that his accusation – that the Belts took Mr. Cudmore to Edward Jones on 7/2/13 to get Mr. Cudmore to change his beneficiary designation on his account(s) to Dona Belt – was **absolutely false.**

Also on 7/19/13, Mr. Meehan's initial VAPO hearing against Dona and Larry Belt next took place – in the same courtroom, with the same two attorneys presenting opposing argument (i.e., Mr. Bolliger and Mr. Meehan), and **with the same Judge Mendoza. Mr. Meehan volunteered in open court to dismiss Mr. Lamberson's VAPO case against Dona and Larry Belt (case no. 13-2-01677-7).** [CP 394 and 683] The **only reason** Mr. Meehan volunteered to dismiss his VAPO case against Dona and Larry Belt is because **Mr. Meehan already knew by then that there was no attempted financial exploitation of Mr. Cudmore by any of the Belts at Edward Jones on 7/2/13. There is no other explanation for Mr. Meehan's voluntary dismissal.** The point is, by the time of the Dona and Larry Belt VAPO hearing, **Mr. Meehan already had profited from the frivolous lie he had delivered to the same Judge Mendoza** merely an hour earlier in the initial guardianship hearing – by persuading Judge Mendoza to force Mr. Meehan's **polar-opposite party**, Mr. Cudmore, to be defended against Mr. Meehan's guardianship case by Mr. Meehan's and Mr. May's chosen attorney for him (Ms. Woodard), rather than by Mr. Cudmore's own chosen and hired attorney for himself (Mr. Bolliger). Thus, Mr. Meehan no longer needed to prosecute his specious VAPO against Dona and Larry Belt – so Mr. Meehan voluntarily dismissed his VAPO case against them.

Three months later – during his 10/16/13 deposition of Dona Belt in the guardianship case – Mr. Meehan admitted on the record that his Edward-Jones-financial-exploitation accusation (which he had delivered to Judge

Thus, even from the very onset of the guardianship case, Mr. Meehan knew that the Edward-Jones-financial-exploitation accusation he delivered to Judge Mendoza at the 7/19/13 initial guardianship hearing was **patently false** – and **Mr. Meehan dishonorably never sought to correct the record.**

16. Also at the 7/19/13 initial guardianship hearing, Mr. Meehan made a **frivolous legal argument – without providing any supporting briefing on the subject.** Mr. Meehan argued that Mr. Bolliger should not be appointed to represent Mr. Cudmore because Mr. Bolliger “might have to be a testifying witness” in the case. [7/19/13 RP, pp. 9 and 18] The certainty that that argument was **frivolous** is revealed by the briefing contained in Mr. Cudmore’s guardianship case CR 54(b) motion for revision. [CP 28-31] In

Mendoza at the 7/19/13 initial guardianship hearing) was “a lie,” as follows (with emphases added):

MR MEEHAN: Okay. Are you aware that Tim Lamberson had received a phone call from Edward Jones and that **rightfully or wrongfully** they were suggesting that you were having Mr. Cudmore change his beneficiary designation to your name?

DONA BELT: **That is a lie. That is a big lie.**

MR MEEHAN: Okay, okay, okay. **I understand that,** but what I’m asking you is were you aware, even though **I accept that that’s a lie,** and I will tell you **Edward Jones has told me that their initial reaction was wrong.** So **I understand that it’s not true. I get that.** [CP 203]

However – **never, in any post-7/19/13 court filings or courtroom argument in any of the 3 trial court cases now linked on appeal – did Mr. Meehan ever acknowledge to the trial court that Mr. Meehan’s Edward-Jones-financial-exploitation accusation was untrue.** Rather, Mr. Meehan remained content to cling to his 7/19/13 false accusation and let it continue to resonate in the court’s mind for over 5 more months, as follows:

- In his 12/13/13 memorandum in support of order to show cause (seeking attorneys’ fees against Mr. Bolliger in this case), **Mr. Meehan dishonestly promoted his innuendo of a Dona-Belt-financial-exploitation-of-Mr.-Cudmore during Mr. Cudmore’s 7/2/13 visit to Edward Jones,** as follows:
 - On [7/2/13] Mr. Lamberson received a call from Edward Jones telling him that a former co-worker of Mr. Cudmore named Dona Belt had arrived at the financial advisor’s office with Mr. Cudmore and that they were making inquiries about the accounts and beneficiaries. [CP 682]
- At the 12/27/13 final guardianship hearing, Mr. Meehan handed up for the court’s signature a final guardianship order – in which he, Mr. May, and Ms. Woodard had inserted “findings of fact” into the order that Mr. Cudmore was overcome by “undue influence” when he executed, and that he “lacked the capacity” to execute, the power of attorney documents he instructed Mr. Bolliger to prepare for him 5 months earlier. [CP 380 and 387-88] However, **the subjects of “undue influence” and “lack of capacity” never were litigated in this case.**

that briefing, Mr. Bolliger discussed the following decisions: State v. Sanchez, 171 Wn.App. 518, 288 P.3d 351 (Div. 3 2013), ASIC v. Nammathao, 153 Wn.App. 461, 466-67, 220 P.3d 1283 (Div. 3 2009), United States v. Watson, 87 F.3d 927, 932 (7th Cir. 1996), and PUD No. 1, 124 Wn.2d 789, 881 P.2d 1020 (1994).⁵

17. At the 7/19/13 initial guardianship hearing [RP 9], Mr. Meehan's efforts to get Ms. Woodard appointed as Mr. Cudmore's attorney were wrongful because (1) Mr. Meehan was Mr. Cudmore's **polar-opposite attorney** in the guardianship case and, (2) therefore, Mr. Meehan (like his hand-picked GAL, Mr. May) had a **clear conflict of interest** – which prohibits Mr. Meehan from getting involved in any way whatsoever with Mr. Cudmore's attorney-selection process – and which certainly prohibits Mr. Meehan from hand picking specifically whom he wanted for Mr. Cudmore's attorney.

18. At the 7/19/13 initial guardianship hearing, with his aforementioned (1) **material factual lie** [¶ 15 and its fn. 4] and (2) **frivolous legal argument** [¶ 16 and its fn. 5], Mr. Meehan **deliberately and materially misled and**

⁵ The gist of those decisions is as follows. RPC 3.7, the lawyer-witness rule, does not bar an attorney (here, Mr. Bolliger) who conversed with a witness (here, Mr. Cudmore) from representing Mr. Cudmore in his case when the conversations were conducted in the presence of a third person (here, Dona Belt) who is available to testify as to Mr. Bolliger's version of the conversations. When that occurs, Mr. Bolliger is not an RPC 3.7 "necessary witness" for Mr. Cudmore's case.

Also, in this case, as in ASIC, the trial court failed to make the requisite PUD No. 1 findings before making a "decision to disqualify" Mr. Bolliger. Moreover, Mr. Meehan is not entitled to such findings – because not one of the three PUD No. 1 findings is here evident: (1) Mr. Bolliger never was going to call himself to testify regarding Mr. Cudmore's **testamentary capacity or mental competence**, (2) evidence of Mr. Cudmore's **testamentary capacity and mental competence** was obtainable elsewhere: (a) by Dr. Vaughn (an expert witness) and (b) by Dona Belt and others (lay witnesses), and, (3) even if Mr. Bolliger hypothetically would be called by Mr. Meehan to testify about Mr. Cudmore's **testamentary capacity or mental competence** (a circumstance which never actually occurred in the case), Mr. Bolliger's testimony would not have been prejudicial to Mr. Cudmore – because Mr. Bolliger's opinion was that Mr. Cudmore did, indeed, have **testamentary capacity** and was, indeed, **mentally competent**. As such, there was no basis to disqualify Mr. Cudmore's chosen and hired attorney, Mr. Bolliger, from defending Mr. Cudmore against this case on grounds of an RPC 3.7 "conflict of interest" because Mr. Bolliger "might have to be at testifying witness" in the case. That never was going to happen and it never did happen.

confused Judge Mendoza into erroneously (in violation of RCW 11.88.045(1)(a)) appointing an attorney for Mr. Cudmore: Ms. Woodard – (1) who had not filed the required RCW 11.88.045(2) petition to be so appointed, (2) who was not even at the hearing, and (3) with whom Mr. Cudmore never had met or communicated [CP 21-22 and 37].

19. Yet, in the **very same sentence** announcing Ms. Woodard's appointment to represent Mr. Cudmore, Judge Mendoza stated as follows (with emphasis added): [7/19/13 RP, p. 20]

At some point later perhaps **Mr. Bolliger you might be involved . . . as the attorney with motions and briefing**

20. After the **7/19/13** initial guardianship hearing, Mr. Cudmore was aggrieved that Judge Mendoza was forcing him to be defended against Mr. Meehan's guardianship case by Mr. Meehan's team member, Ms. Woodard – and Mr. Cudmore remained adamant that (1) he did not want or need a guardianship imposed on him, (2) he wanted Mr. Bolliger, and not Ms. Woodard, to defend him against the case, and (3) he wanted to protect his new Will. [CP 170-71] So, on **7/22/13**, Mr. Bolliger filed Mr. Cudmore's *Motion for Reconsideration*. [CP 23-34] In that motion, Mr. Cudmore also requested, in the event Judge Mendoza was going to deny the motion, that Judge Mendoza certify his denial for immediate appeal under CR 54(b). On **7/24/13**, Judge Mendoza denied Mr. Cudmore's *Motion for Reconsideration* – however, **Judge Mendoza refused to expressly address the specific content (merits) of the motion, as well as the CR 54(b) request.** [CP 45-47]

21. 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 [App., pp. 2-11]. The trust provision related only to Mr. Cudmore’s comatose wife. Mr. Cudmore always was very specific with Mr. Bolliger and Dona Belt about the changes he wanted implemented with his new Will (i.e., to disinherit his stepchildren, provide for his wife’s care, and, after she passed, bequeath his Estate to two, local charities specified by Mr. Cudmore: (1) a hospice and (2) a battered women’s shelter). Mr. Cudmore did not want his new Will to be provided to Mr. Lamberson or to Mr. Meehan. [CP 167-71 and 187-92] See, also, ¶ 37.

22. Also on 7/26/13, Mr. Cudmore filed his *Declaration of James D. Cudmore*, in which he stated in pertinent part as follows (with emphases added):

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.** [CP 36-38]

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

23. With his own 7/29/13 declaration, Mr. May actually corroborated Mr.

Cudmore's just-mentioned deception allegation. Mr. May unabashedly declared as follows about his meeting with Mr. Cudmore (emph. add.):

8) **I discussed with Mr. Cudmore that it was (and still is) my belief and position that Mr. Bolliger had a conflict and should not be his legal counsel in this matter.** Mr. Cudmore seemed to understand and then inquired who would be his attorney. [CP 40]

With that admission, Mr. May acknowledged that, for a second time, he was engaging in the unauthorized practice of law in Mr. Cudmore's guardianship case. Here, although he is not an attorney, Mr. May was purporting to give legal advice to Mr. Cudmore: that Mr. Bolliger had a "conflict of interest" because he "might have to be a testifying witness" in the case. Mr. May's legal advice to Mr. Cudmore was

- a. **wrongful** because, clearly, Bolliger had no such "conflict" [¶ 16 and its fn. 5] and
- b. **unlawful** because, pursuant to RCW 2.48.170 and .180, Mr. May is prohibited from practicing law (i.e., providing such legal advice to Mr. Cudmore) 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."

24. Because Judge Mendoza had refused to expressly address Mr. Cudmore's CR 54(b) request in his *Motion for Reconsideration*, on behalf of Mr. Cudmore [¶ 20], 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 on his CR 54(b) motion for revision [CP 49, 59-60, and 171].⁶

⁶ 1. Mr. Bolliger communicated with Court Administration to get a "special setting," with Judge Mendoza, for hearing Mr. Cudmore's CR 54(b) motion for revision. On 8/7/13, after receiving an 8/5/13 email from Court Administration (Tiffany) explaining that the Judge Mendoza wouldn't be available until 9/6/13 for the special setting [App., pp. 12-13], Mr. Bolliger filed the *Note for Motion Docket* for Mr. Cudmore's CR 54(b) motion for revision. [CP 42-44] Thus, **Mr. Cudmore was going to have to wait another month to testify to Judge Mendoza.**

25. Along with the events described in the preceding paragraph (and its fn.

2. 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 Bolliger for my attorney and not Rachel Woodard. [CP 52]

3. On 8/29/13, Mr. Bolliger filed Mr. Cudmore's CR 54(b) motion for revision. [CP 54-75] (Mr. Cudmore's CR 54(b) motion for revision actually was 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.*)

4. On 9/5/13 (i.e., the day before the calendared hearing for Mr. Cudmore's CR 54(b) motion for revision), Judge Mendoza suddenly struck the 9/6/13 hearing. Mr. Bolliger received notice of the striking via an email from Court Administration (Tiffany). [CP 499] Thus, Mr. Cudmore's desire to get into court – in order to express himself in person to Judge Mendoza – was indefinitely postponed by Judge Mendoza.

5. 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. [CP 118-20]

6. On 9/12/13, Mr. Cudmore filed another *Declaration of James D. Cudmore*, in which Mr. Cudmore set forth the care he was receiving at The Manor, his limitations, his impressive 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): [CP 121-28]

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.**

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.**

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 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.**

7. The following day – 9/13/13 – Judge Spanner entered Mr. Meehan's temporary VAPO against Mr. Bolliger. Two weeks later – on 9/27/13 – Judge Mendoza extended the VAPO against Mr. Bolliger for 5 years [¶ 28].

Even to the end of the case, GAL Mr. May wrongfully ignored complying with Mr. Cudmore's aforementioned RCW 11.88.045(4) request that the medical report for the case is prepared by Mr. Cudmore's Dr. Vaughn.

6), Mr. Bolliger engaged Ms. Woodard in an email exchange – described in the following footnote – in an effort to invite Ms. Woodard to join Mr. Bolliger, together with Mr. Cudmore, to resolve the issue of which attorney Mr. Cudmore wanted to defend him against Mr. Meehan’s guardianship case.⁷

26. Contemporaneous with the events described in the preceding two paragraphs (and their respective fns. 6 and 7), Mr. Bolliger and the 2013 Administrative Presiding Judge exchanged letters – described in the

⁷ 1. On 8/20/13, Mr. Bolliger emailed Ms. Woodard in pertinent part as follows: [CP 300]

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[m] 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.

2. On 8/21/13, Ms. Woodard emailed Mr. Bolliger back, saying, “I know that you will continue to fight to become [Mr. Cudmore’s] counsel” – but otherwise declining to meet with Mr. Cudmore and Mr. Bolliger. [CP 300]

3. On 8/21/13, Mr. Bolliger replied to Ms. Woodard by email, as follows (with original emphasis): [CP 300-01]

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.

(Original emphases.) Ms. Woodard ignored replying to that email from Mr. Bolliger.

following footnote – regarding the practice of guardianship-case GALs in our superior court system unlawfully hand picking attorneys for the AIPs.⁸

27. Throughout the foregoing time periods, Mr. Bolliger and Mr. Cudmore

⁸ 1. The 2013 Administrative Presiding Judge was Judge Spanner. Because of Mr. May's unlawful hand picking of Ms. Woodard, Mr. Bolliger wrote an 8/30/13 letter to Judge Spanner, which began and ended as follows (with original emphases):

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. [CP 302 and App., pp. 14-18]

Judge Spanner was not pre-assigned to Mr. Cudmore's guardianship case and no hearings in the case were pending before Judge Spanner. [CP 302] Besides the 2013 Administrative Presiding Judge, there was no other person/entity to whom/which Mr. Bolliger could direct his concerns about the foregoing wrongdoing that was occurring in our local superior court system.

2. On 9/3/13, Mr. Bolliger wrote Judge Spanner a second letter, which began as follows (with emphases added):

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. [CP 302 and App., pp. 19-25]

With those two letters, it was Mr. Bolliger's hope that the 2013 Administrative Presiding Judge – Judge Spanner – would (1) appreciate Mr. Bolliger raising this institutional problem which was occurring in our superior court system and (2) recuse himself from hearing any matters in the identified cases 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, addressing the problem could best be handled "in house" (i.e., within the superior court), rather than having to reveal the problem in an appeal to the Court of Appeals. Mr. Bolliger still cannot think of any person/entity with whom/which to raise that issue other than the 2013 Administrative Presiding Judge – Judge Spanner. [CP 302-03]

3. On 9/4/13, Judge Spanner wrote Mr. Bolliger in response to his two letters. Judge Spanner unnecessarily chose to avoid addressing the problem Mr. Bolliger had identified for him as follows (with emphasis added):

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.** [CP 303 and App., p. 26]

were in telephone contact about 2-3 times per week and Mr. Bolliger visited with Mr. Cudmore about once a week. Mr. Cudmore repeatedly thanked Mr. Bolliger for all he was doing on his case and expressed that he thought Mr. Bolliger was doing a great job for him. [CP 306]

28. Starting on 9/13/13, Judges Spanner and Mendoza erroneously foreclosed Mr. Cudmore from further communicating and consulting with his own chosen and hired attorney, Mr. Bolliger – by granting Mr. Meehan’s frivolous petition for a 5-year VAPO to “protect” Mr. Cudmore from Mr. Bolliger.⁹ Mr. Meehan’s frivolous VAPO had two, disastrous effects for Mr. Cudmore. *First*, it expressly prevented Mr. Bolliger from bringing Mr. Cudmore to the previously scheduled 9/20/13 hearing (on Mr. Cudmore’s oft-continued motion for revision [¶ 24 and its fn. 6] – so that Mr. Cudmore personally could testify that he wanted Mr. Bolliger to defend him against Mr. Meehan’s guardianship case. *Second*, on 9/15/13, with respect to the pile of VAPO papers Mr. Meehan had served on Mr. Cudmore two days earlier, Mr. Cudmore left the following (still preserved) voice message on Mr. Bolliger’s cell phone with respect to the VAPO papers which had been served on him:

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. [1/10/14 RP, pp. 33-34]

However, because of Mr. Meehan’s temporary VAPO which Judge Spanner had entered ex parte against Mr. Bolliger two days earlier, Mr. Bolliger was forced to ignore responding to Mr. Cudmore’s telephone call seeking

⁹ That VAPO is the subject of companion appeal no. 32024-3.

additional legal advice from Mr. Bolliger. Thus, **ever since 9/13/13, Mr. Cudmore was left to believe that Mr. Bolliger silently had deserted Mr. Cudmore and forsaken his defense against the case.**

29. At the **9/27/13** hearing, Ms. Woodard admitted the following to Judge Mendoza (with emphasis added): [RP 11]

When I go and see [Mr. Cudmore], 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.**

30. In **October of 2013**, Mr. Meehan (with Mr. May and Ms. Woodard attendant) took deposition testimony from Mr. Bolliger, Gregg Belt, Dona Belt, and Larry Belt on the subjects of Mr. Cudmore's new Will. [CP 173-285]

31. On **11/20/13**, Ms. Woodard filed a declaration from Mr. Cudmore, which is described in the following footnote.¹⁰

¹⁰ 1. Mr. Cudmore's **11/20/13** declaration came **2 months and 1 week after** Judge Spanner and Judge Mendoza – with their respective **9/13/13** and **9/27/13** VAPOs against Mr. Bolliger – erroneously and absolutely foreclosed Mr. Cudmore from communicating and consulting any further with his own chosen and hired attorney, Mr. Bolliger [fn. 2] (and it came just **5 weeks before** Mr. Cudmore's final guardianship hearing on **12/27/13**). As a result, by the time he signed the declaration, **Mr. Cudmore had been left to believe that, long ago, Mr. Bolliger silently had deserted Mr. Cudmore and forsaken his defense against the case.** In the declaration:

A. Mr. Cudmore asserted he was **mentally competent**. Thus, consistent with her preparation of the declaration for him, **Ms. Woodard obviously also believed that Mr. Cudmore still was mentally competent.**

B. Mr. Cudmore curiously pretended that his **7/26/13 Will didn't exist**. Consistent with her preparation of the declaration for him, **Ms. Woodard clearly had some purpose in having Mr. Cudmore pretend that his 7/26/13 Will didn't exist.**

C. Mr. Cudmore suddenly assented to Mr. Lamberson having a guardianship over him, so that "[t]his court proceeding" can "be over as quickly as possible." However, **Ms. Woodard did not have Mr. Cudmore acknowledge in the declaration that he understood any of the adverse consequences of an approved guardianship** (e.g., loss of his right to vote, to remarry, to make important decisions about his own life, etc.). [CP 132-33]

2. In her declaration describing Mr. Cudmore's **11/20/13** declaration, Dona Belt asserted as follows (with emphases added): [CP 170-71]

11. Between the period of [7/2/13] and [11/24/13],

- I spoke on the telephone with Jim approximately 3-4 times each week and
- I visited Jim at his residence nearly every Sunday, after church (in fact, in October-November of 2013, I attended church with Jim approximately 5 times).

32. At the 12/27/13 final guardianship hearing, Mr. Meehan and Ms. Woodard together made **17, separate references to Mr. Cudmore's still-existing mental competence.**¹¹ Yet, they each dishonestly declined to

All throughout Mr. Bolliger's representation of Jim (i.e., from [7/2/13] to [9/13/13], when the VAPO got entered against Mr. Bolliger), Jim repeatedly (and always) expressed his emphatic wishes to me about his legal matters, as follows:

- **Jim wanted Mr. Bolliger to be his attorney in the guardianship action, not Ms. Woodard** – and he desperately wanted to get into court to personally so inform a judge,
- Jim did not want his [7/26/13] Will released to anybody,
- **Jim did not want Tim Lamberson to obtain a guardianship over him – and he wanted Mr. Bolliger to vigorously defend against the guardianship, many times expressing to me “I don't want anything further to do with Tim Lamberson”** and
- **Jim did not want or need a VAPO order of protection against Mr. Bolliger.**

12. On [11/20/13], Jim filed a declaration – which contradicts everything he had been telling me about his legal matters (his estate planning documents and the guardianship action) since June of 2013. Mr. Bolliger called me on [11/22/13] and told me about Jim's new declaration. I wanted a copy of it, so I went to Mr. Bolliger's office to obtain one.

13. On [11/24/13], I again met and sat with Jim at church. I had my copy of his [11/20/13] declaration with me – and I showed it to him. I asked Jim if he'd read it before signing it. Jim gave me a sheepish look, but otherwise didn't answer my question. I then asked him, “Why did you sign this declaration?” Jim responded by saying that **Rachel Woodard told him “this whole thing can be over with if you sign the declaration.”**

¹¹ The 12/27/13 final guardianship hearing occurred 3½ months after Judge Spanner and Judge Mendoza – with their respective 9/13/13 and 9/27/13 VAPOs against Mr. Bolliger – erroneously and absolutely foreclosed Mr. Cudmore from communicating and consulting any further with his chosen and hired attorney, Mr. Bolliger. Since 9/13/13, then, **Mr. Cudmore was left to believe that Mr. Bolliger silently had deserted Mr. Cudmore and forsaken his defense against the case.** At this final guardianship hearing, Mr. Meehan and Ms. Woodard delivered their 17, separate oral assertions affirming Mr. Cudmore's still-existing mental competence, as follows (emphases added): [12/27/13 RP, pp. 4-9]

i. Mr. Meehan represented to the court that “Mr. Cudmore **says he wants** Mr. Lamberson as his power of attorney, but would also **accept** Mr. Lamberson as his [guardian],” “Mr. Cudmore **does not desire** a jury trial,” “based on the **wishes** that Mr. Cudmore has given to Ms. Woodard that are included in his [11/20/13] **declaration** for you, we are asking, as part of this order, that the court find that the will that was executed after the initiation of this guardianship at Mr. Bolliger's office, be found invalid,” “Mr. Cudmore can **speak** to this,” and “what Mr. Cudmore has **expressed** to Ms. Woodard” and

ii. Ms. Woodard represented to the court that “[Mr. Cudmore] **thinks** his son is doing a great job,” “[Mr. Cudmore]’d be happy to . . . **tell** you what he **wants**,” [Mr. Cudmore] **finds** that [Mr. Lamberson] is taking care of what he **needs** [him] to take care of,” [Mr. Cudmore] would **like** the power of attorney, but if the guardianship is necessary, he's **fine** with both of those,” and “[a]bsolutely, Your Honor, that is what my client's **wishes** are is to follow the will that he created in 2008. I've discussed that with him at length and he would be **happy to talk** with you about that.”

Clearly, with those 17 attributions to Mr. Cudmore shown in bold, Mr. Meehan and Ms. Woodard were acknowledging their beliefs that Mr. Cudmore still was mentally competent as of the 12/27/13 final guardianship hearing.

announce that the final guardianship order, which they were handing up for entry, instead judicially established Mr. Cudmore as **mentally incapacitated**. [CP 378-88] Thus – with their carefully spoken words during the hearing, they dishonestly were deceiving Mr. Cudmore and the court into believing they were presenting their final guardianship order **with Mr. Cudmore’s competent assent** – while they handed up for entry an order which instead judicially established Mr. Cudmore to be **mentally incapacitated**.

33. The 12/27/13 final guardianship order also contains language that Mr. Meehan, Mr. May, and Ms. Woodard **dishonestly drafted** into it. *First*, the three drafted false findings of fact into the order, stating that Mr. Cudmore was overcome by “undue influence” when he executed, and that he “lacked the capacity” to execute, the power of attorney documents he instructed Mr. Bolliger to prepare for him 5 months earlier. [CP 380 and 387-88] However, **not only are those findings of fact contrary to the overwhelming weight of the evidentiary record described above, the issues of “undue influence” and “lack of capacity” never were litigated in this case.**¹²

¹² See, e.g., In re Bottger’s Estate, *supra*, at 699-701, in which the Supreme Court of Washington held as follows (with emphases added.):

It is the universal rule that a will procured by undue influence is invalid, but the courts have always recognized that a will cannot be overthrown upon this ground unless the influence complained of was, in fact, undue influence. Our decisions clearly hold that influence may be exerted upon a testator in the form of advice, persuasion, or even importunity, directed to the end of affecting the testamentary disposition of his property, without in any way invalidating the will induced by these means. Converse v. Mix, 63 Wn. 318, 115 P. 305; In re Patterson’s Estate, 68 Wn. 377, 123 P. 515; In re Larsen’s Estate, [191 Wn. 257, 71 P. 2d 47]. This was recognized in Roe v. Duty, 115 Wn. 313, 197 P. 47, 49, where we said:

To vitiate a will there must be more than influence. It must be undue influence. It was not undue influence for the son to persuade or solicit his mother to award him the greater part of the estate, rather than to award it to the daughter. **Influence becomes undue only when it overcomes the will of the testator or testatrix, when the act of making the will is the result of such coercion that free agency is destroyed.** The disposition of the property may be changed by the influence exercised, but so long as the mind of the testator or testatrix is not overborne by the mind of another it does not amount to undue influence.

.....

Second, the three drafted decree language into the order which purports, but is **legally ineffective, to invalidate his new Will** which Mr. Cudmore, with his **testamentary capacity**, had instructed Mr. Bolliger to prepare for him 5 months earlier, as follows:

The Last Will and Testament of James D. Cudmore executed on July 26, 2013 . . . [is] hereby declared to be invalid. The Last Will and Testament of James D. Cudmore executed on January 30, 2008 is valid and is Mr. Cudmore's last will and testament.¹³ [CP 387-88]

In the case of *In re Adams' Estate*, 120 Wn. 189, 206 P. 947, we said that **undue influence which will operate to avoid a will must be an influence tantamount to force or fear which destroys the testator's free agency and constrains him to do what is against his will. . . .**

The essence of all these various formulae is that in order to constitute ground for invalidating a will, **the influence allegedly exerted over the testator must have been such as to override his will power and substitute the will of the person exercising the influence.** In other words, **the person accused of dominating the testator must have imposed his wishes upon the latter**, not by persuasion directed to his intellect or by appeal to sentiment, but by coercion of his mind by threats, force, or unbearable insistence, so that the testament, though in form of that of the testator, is in fact that of another who has established ascendancy over the mind of the former.

Mr. Meehan proffered no such evidence of undue influence in this case. Surely, the **material factual lie**, which Mr. Meehan delivered to the court at the 7/19/13 initial guardianship hearing and propagated for 5 more months [fn. 4], cannot count. Aside from Mr. Meehan's **material factual lie** – which, as shown, he later in this case acknowledged was a lie – there is no evidence in this record that anybody, ever, even mildly suggested to Mr. Cudmore the disposition which Mr. Cudmore set forth in his new Will – because that never happened. More to the point, there is no evidence in this record that anybody, ever, “by threats, force, or unbearable insistence” influenced Mr. Cudmore into making his new Will – because that never happened. In this case, Mr. Meehan never answered two, crucial questions: (1) **who** unduly influenced Mr. Cudmore into making his new Will and (2) **by what means**, which satisfy the foregoing *In re Bottger's Estate* proscriptions, did that person do so? It simply never happened.

¹³ The issue of Mr. Cudmore's **testamentary capacity could not legally have been before the court for adjudication in this guardianship case.** Prior to the death of a testator, a guardianship court has no jurisdiction to inquire into the validity of the testator's Will, in order to determine the testamentary capacity of the testator or whether the testator was subject to undue influence. See, e.g., *Pond v. Faust*, 90 Wn. 117, 155 P. 776 (1916). In that case, the guardian of Ms. Pond sued to compel the surrender of Ms. Pond's Will – and the guardian sought to have it “annulled and canceled, on the ground that [Ms. Pond] was insane and incompetent at the time of its execution.” The guardian further alleged that Ms. Pond's Will was the product of undue influence. The guardian “also prayed for alternative relief that, if the court refused to cancel the instrument, the testimony relating to the mental condition of [Ms. Pond] when the instrument was executed be taken and perpetuated.” The trial court ruled that Ms. Pond was insane at the time of the making of her Will, ordered it taken from the possession of its holder, and annulled the Will. All of that occurred while Ms. Pond still was living. On appeal, our Supreme Court held as follows (with original emphasis only in italics):

“The last will and testament of the ward is not an asset. Neither is it an instrument which the guardian could use in the recovery of an asset. It cannot in any way relate to any matter within [the guardian's] power or duties, or in any manner affect his action as a guardian, because it cannot take effect until after [the guardian's] authority has ceased. [The guardian] certainly cannot annul, revoke, destroy, or in any way dispose of [the Will], nor can the court authorize him to do so.” *Mastick v. Superior Court*, 94 Cal. 347, 29 P. 869.

34. On 2/12/14, Mr. Bolliger faxed Mr. Meehan and Ms. Woodard letters, explaining he would be seeking CR 11 fees against them. [App., pp. 27-32]

35. On 3/28/14, Mr. Cudmore's wife of nearly 51 years passed away.

36. On 7/22/14, the court entered a judgment imposing \$ 9,782.75 in CR 11 sanctions against Mr. Bolliger – to “reimburse” Mr. Cudmore's Estate. [CP 934-40] In April-May of 2015, because of the Estate's CR 11 judgment, Mr. Meehan garnished \$ 3,575.32 from Mr. Bolliger. [CP 1004-19]

37. On 11/5/15, Mr. Cudmore passed away. As shown by Mr. Meehan's 1/12/16 and 1/19/16 filings with this Court (“motion to confirm authority of trial court to preside over probate”), Mr. Meehan presently is in the process of trying to probate Mr. Cudmore's **revoked** 2008 Will [¶ 21] – in which Will Mr. Lamberson is a named beneficiary and in which probate Mr. Meehan got Mr. Lamberson appointed as the Personal Representative.¹⁴ [CP 1020-32]

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.... The court had no jurisdiction whatsoever, either to “compel a surrender and cancellation of the will, or to perpetuate testimony as to the mental condition of [the testator] at the time the will was executed[.]” [C]ourts have no power to inquire into the validity of wills prior to the death of the maker, to determine *incompetency* of the maker.

....

... [T]he guardian has ... no interest whatever either in establishing or disestablishing a will of his ward. He has no authority in the matter. The law ... does not notice wills during the lifetime of their makers.

The judgment is reversed, and the proceeding is dismissed.

Id. at 120-22. See, also, Ullman v. Garcia, 645 So.2d 168, 170 (Fla.Ct.App. 1994) (citing Pond, guardian cannot contest validity of revocable trust during settlor's life based on alleged undue influence). Simply stated, a Will doesn't even begin to speak until the moment of the testator's death. The validity of a Will – and the testamentary capacity or undue influence of the testator – have no relevance in a testator's guardianship proceeding (and the court therefore has “no jurisdiction” to address those topics – or to invalidate the testator's Will – in a guardianship case). It is ultra vires (beyond its authority) for the court to make probate decisions in a guardianship case.

¹⁴ The foregoing facts confirm what Mr. Cudmore and Mr. Bolliger saw from the very start of this case: that Mr. Meehan, Mr. May, and Ms. Woodard together were prosecuting this guardianship case against Mr. Cudmore – from its inception – solely to unlawfully [fn. 13] try to nullify Mr. Cudmore disinherit Mr. Lamberson from Mr. Cudmore's ≈\$450,000.00 Estate.

III. ARGUMENT

The foregoing facts definitively reveal five conclusions as prefaces to the argument §§ 1-5 below. *First*, Mr. Cudmore had **testamentary capacity** to choose, hire, and instruct Mr. Bolliger to prepare a new Will for him. See, also, Estate of Alsup, 181 Wn.App. 856, 869, 327 P.3d 1266 (Div. 3 2014). In Alsup, testator Mr. Alsup executed his Will 3½ years after the trial court entered a full guardianship over Mr. Alsup's person and estate. Notwithstanding, this Court held as follows (with emphasis added), id. at 860:

[f]indings of incapacity supporting appointment of a guardian **do not compel a conclusion that an individual lacks testamentary capacity.**

Second, Mr. Meehan filed Mr. Lamberson's guardianship case only **after** Mr. Cudmore informed Mr. Lamberson that Mr. Cudmore was going to disinherit Mr. Lamberson.

Third, Mr. Meehan, Mr. May, and Ms. Woodard prosecuted the guardianship case solely to unlawfully [fn. 13] try to nullify Mr. Cudmore disinheriting Mr. Lamberson.

Fourth, in Mr. Meehan's, Mr. May's, and Ms. Woodard's over-the-top zeal solely to unlawfully [fn. 13] try to nullify Mr. Cudmore disinheriting Mr. Lamberson, they executed an array of predatory litigation tactics against Mr. Cudmore and Mr. Bolliger, even from week one, to divide Mr. Cudmore from Mr. Bolliger. In Mr. Meehan's case – he grossly exceeded his role as a guardianship petitioner's attorney. See, e.g., Guardianship of Matthews, 156 Wn.App. 201, 209-10, 232 P.3d 1140 (2010), which holds as follows (with emphasis added):

A guardianship petitioner's duties and responsibilities in these proceedings are **extremely limited**. Under former RCW 11.88.030(1)

(1996) [as well as its current wording], a guardianship petitioner must provide certain statutorily required information in a petition and file the petition in “good faith and upon reasonable basis.” **The guardianship petitioner’s role is essentially to alert the trial court of the potential need and reasons for a guardianship of an incapacitated person and to respond to any inquiries from the trial court. . . . Once a trial court accepts a guardianship petition for review, the petitioner’s role in the process essentially ends.**

The real party at interest in a guardianship [case] is the [AIP,] [i.e., not the guardianship petitioner].

Prior to (and at) the 7/19/13 initial guardianship hearing, Mr. Bolliger was Mr. Cudmore’s sole attorney of record for the guardianship case [¶¶ 3, 5-6, 9-10, 11 (and its fn. 2), 12 (and its fn. 3), & 14]. See Cheek v. ESC, 107 Wn.App. 79, 84, 25 P.3d 481 (Div. 3 2001) (defining “attorney of record”). Thereafter, Mr. Bolliger was the attorney for Mr. Cudmore in Mr. Cudmore’s effort to persuade Judge Mendoza to allow him to be defended against Mr. Meehan’s guardianship case by his own chosen and hired attorney, pursuant to RCW 11.88.045(1)(a). Throughout the time Mr. Bolliger assisted Mr. Cudmore with that effort, Mr. Cudmore remained adamant that (1) he did not want or need a guardianship imposed on him, (2) he wanted Mr. Bolliger, and not Ms. Woodard, to defend him against the case, and (3) he wanted to protect his new Will [¶10].

Mr. Meehan and Mr. Bolliger have practiced law in the same locality for many years. Mr. Meehan knew from experience that Mr. Bolliger capably would advocate for Mr. Cudmore’s desired outcomes. In addition – given (1) Mr. Cudmore’s very impressive physical and mental independencies [¶ 2] and (2) Dr. Vaughn’s declaration that Mr. Cudmore possessed **testamentary capacity** [¶ 9] – Mr. Meehan knew he did not have a sufficient factual basis to impose a guardianship over Mr. Cudmore (and thereby try to nullify Mr.

Cudmore disinheriting Mr. Lamberson). Mr. Meehan and his team therefore made the disastrous decision to execute an array of predatory litigation tactics to wrongfully separate Mr. Bolliger from his lawful client, Mr. Cudmore.

Before the 7/19/13 initial guardianship hearing. On 7/12/13, **Mr.**

Meehan unlawfully hand picked GAL Mr. May for the case, by ignoring the next-in-the-rotation, GAL-selection process set forth in LGAL 5(a)(2)(A). Then, despite knowing that Mr. Bolliger was Mr. Cudmore’s attorney – **Mr. Meehan dishonestly presented** his unlawful GAL-appointment order ex parte, without providing Mr. Bolliger any notice thereof [¶ 8].¹⁵

At the 7/19/13 initial guardianship hearing. During oral argument before Judge Mendoza, **Mr. Meehan delivered his material factual lie – which he knew was absolutely false** – that Mr. Bolliger’s separate clients Gregg, Dona, and Larry Belt had tried to financially exploit Mr. Cudmore at Edward Jones by “changing his beneficiary designations on his accounts” and “mak[ing] all of these different financial arrangements and adjustments” [¶ 15 and its fn. 4]. Also – without providing any prior briefing on the subject – **Mr. Meehan frivolously argued** that, pursuant to RPC 3.7, Mr. Bolliger should not be appointed to represent Mr. Cudmore because Mr. Bolliger “might have to be a testifying witness” in the case [¶ 6 and ¶ 16 and its fn. 5]. Further, **Mr. Meehan dishonestly advocated** for Mr. Cudmore to be forced to be defended against Mr. Meehan’s guardianship case by Mr. Meehan’s team member, Ms. Woodard – (1) who had not filed the required RCW 11.-

¹⁵ Because Mr. Meehan was Mr. Cudmore’s **polar-opposite attorney** in the guardianship case, Mr. Meehan there engaged in an **unethical conflict of interest** – which prohibits Mr. Meehan from getting involved in any way whatsoever with the GAL-selection process for Mr. Cudmore – and which certainly prohibits Mr. Meehan from hand picking specifically whom he wanted as Mr. Cudmore’s GAL. Obviously, the avoidance of such conflicts is the reason for LGAL 5(a)(2)(A).

88.045(2) petition to be appointed, (2) who was not even at the hearing, and (3) with whom Mr. Cudmore never had met or communicated [¶¶ 17-18].¹⁶

Thus, with his predatory litigation tactics against Mr. Cudmore and Mr. Bolliger during the very first week of the case, (1) **Mr. Meehan grossly exceeded his extremely limited** role as a guardianship petitioner's attorney under Guardianship of Matthews, supra, (2) **Mr. Meehan unethically** got his team members Mr. May and Ms. Woodard assigned to oversee and control Mr. Cudmore going forward, and, (3) with his aforementioned **material factual lie and frivolous legal argument, Mr. Meehan deliberately and materially misled and confused Judge Mendoza** into denying Mr. Cudmore's RCW 11.88.045(1)(a) right to be defended against the case by his own chosen and hired attorney – all in Mr. Meehan's overzealous desire solely to try to nullify Mr. Cudmore disinherit Mr. Lamberson.¹⁷ **That is** what Mr. Cudmore was up against by the end of just the very first week of the case (i.e., by the end of the **7/19/13** initial guardianship hearing).¹⁸

¹⁶ Because Mr. Meehan was Mr. Cudmore's **polar-opposite attorney** in the guardianship case, Mr. Meehan there engaged in another **unethical conflict of interest** – which prohibits Mr. Meehan from getting involved in any way whatsoever with the attorney-selection process for Mr. Cudmore – and which certainly prohibits Mr. Meehan from advocating specifically for whom he wanted as Mr. Cudmore's attorney.

¹⁷ During that first week, the following also happened. **Mr. May, a non-attorney, (1) wrongfully and unlawfully filed a court petition** to force Mr. Cudmore to be defended against the case by his team member, Ms. Woodard [¶ 12 and its fn. 3] and (2) **wrongfully and unlawfully provided legal advice to Mr. Cudmore** to the effect that Mr. Cudmore couldn't be defended against the case by his own chosen and hired attorney, because Mr. Bolliger had a "conflict of interest" as he "might have to be a testifying witness" in the case [¶¶ 22-23].

¹⁸ Thereafter, Mr. Meehan continued to **grossly exceed his extremely limited** role as a guardianship petitioner's attorney under Guardianship of Matthews, supra – and Mr. May and Ms. Woodard proudly heralded their Mr.-Meehan-team-membership status. (1) Mr. Meehan prevented Mr. Bolliger from bringing Mr. Cudmore to court (so that Mr. Cudmore personally could testify that he wanted Mr. Bolliger – and not Mr. Meehan's team member, Ms. Woodard – to defend him against Mr. Meehan's guardianship case), he permanently foreclosed Mr. Cudmore from further communicating and consulting with his own chosen and hired attorney, Mr. Bolliger, and he left Mr. Cudmore to believe that Mr. Bolliger silently had deserted Mr. Cudmore and forsaken his defense against the case – all by **frivolously filing** his VAPO case to "protect" Mr. Cudmore from Mr. Bolliger [¶ 28]. (2) Mr. Meehan **frivolously subpoenaed** irrelevant deposition testimony about Mr. Cudmore's new Will from Mr. Bolliger, Gregg Belt, Dona Belt, and Larry Belt – all of which depositions Mr. May and Ms. Woodard attended [¶ 30]. (3)

Fifth, at the 7/19/13 initial guardianship hearing, Mr. Bolliger explained to Judge Mendoza that – under RCW 11.88.045(1)(a) (with emphasis added),

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

[¶ 14] Mr. Bolliger also explained to Judge Mendoza that Mr. Cudmore had been declared by Dr. Vaughn the day before to have **testamentary capacity** and that “Mr. Cudmore unequivocally wants me to be his attorney in this action” [¶ 14]. Yet, Mr. Meehan and Mr. May executed their predatory litigation tactics against Mr. Cudmore and Mr. Bolliger, up through the end of the 7/19/13 initial hearing [p. 22, starting with “*Fourth*, . . .,” through p. 25 – and their fns. 15-17], to **deliberately and materially mislead and confuse**

Mr. Meehan **frivolously subpoenaed** Mr. Bolliger’s client-confidential Mr. Cudmore files [CP 587-90]. (4) Ms. Woodard **unprofessionally refused** to resolve with Mr. Cudmore and Mr. Bolliger, in person, the issue of whom Mr. Cudmore wanted for his attorney [¶ 25 and its fn. 7]. (5) Ms. Woodard had the duty under RCW 11.88.045(1)(b) to “act as an advocate for,” and carry out the “expressed preferences” of, Mr. Cudmore. However, she sat on her hands throughout the case, never once defending Mr. Cudmore against the guardianship case [¶¶ 14, 17, 19, and 22-23, all in fn. 6]. (6) Ms. Woodard filed her 11/20/13 declaration from Mr. Cudmore – in which she acknowledged her belief that **Mr. Cudmore still was mentally competent** – but in which she **disingenuously drafted** language to the effect that Mr. Cudmore should pretend his 7/26/13 Will doesn’t exist and (without having Mr. Cudmore acknowledge in his declaration that he understood the adverse consequences of an approved full guardianship against him) that Mr. Cudmore suddenly should assent to Mr. Lamberson having a full guardianship over him, so that “[t]his court proceeding” can “be over as quickly as possible” [¶ 31 and its fn. 10]. (7) RCW 11.88.045(4) requires the GAL to obtain a medical report for the case from Mr. Cudmore’s chosen doctor: “the [GAL] shall use the [doctor] selected by the [AIP, Mr. Cudmore].” Mr. Cudmore declared he wanted a medical report from his personal physician of 14 years, Dr. Vaughn [¶ 19 in fn. 6]. However, Mr. May **unlawfully refused** to obtain a medical report from Mr. Cudmore’s Dr. Vaughn [final sentence of fn. 6]. (8) At the 12/27/13 final guardianship hearing, Mr. Meehan and Ms. Woodard (while Mr. May signified his approval thereof with his silence) both **deceptively argued** before Mr. Cudmore and the court that they were presenting their final guardianship order **with (their 17, separate references to) Mr. Cudmore’s competent assent** – while the order they actually handed up for entry instead judicially established Cudmore as **mentally incapacitated** [¶ 32 and its fn. 11]. (9) Mr. Meehan, Mr. May, and Ms. Woodard **dishonestly drafted** into the final guardianship order false findings of fact, stating that Mr. Cudmore was overcome by “undue influence” when he executed, and that he “lacked the capacity” to execute, the power of attorney documents he instructed Mr. Bolliger to prepare for him 5 months earlier. However, **not only are those findings of fact contrary to the overwhelming weight of the evidentiary record described above, the issues of “undue influence” and “lack of capacity” never were litigated in this case** [¶ 33 and its fn. 12]. (10) Mr. Meehan, Mr. May, and Ms. Woodard **dishonestly drafted** into the final guardianship order decree language which purports, but is **legally ineffective, to invalidate his new Will** which Mr. Cudmore had instructed Mr. Bolliger to prepare for him 5 months earlier [¶ 33 and its fn. 13: Pond v. Faust, supra, et al.]. (11) Now, Mr. Meehan is in the process of **probating Mr. Cudmore’s revoked (2008) Will** on behalf of Mr. Lamberson [¶¶ 21 and 37]. Those facts couldn’t make it any clearer that, in pursuing Mr. Meehan’s guardianship case against Mr. Cudmore, the three team members executed predatory litigation tactics all along, solely to unlawfully try to nullify Mr. Cudmore, with his **testamentary capacity**, disinheriting Mr. Meehan’s client, Mr. Lamberson.

Judge Mendoza into erroneously denying Mr. Cudmore the attorney of his own choice and hire, Mr. Bolliger.

As such, after the **7/19/13** initial hearing, Mr. Cudmore properly was aggrieved that – in violation of RCW 11.88.045(1)(a) – Judge Mendoza erred on the case’s **seminal issue** by forcing Mr. Cudmore to be defended against Mr. Meehan’s case by his and Mr. May’s team member, Ms. Woodard.

1. During The Pertinent 1-Month-And-25-Day Period Following The 7/19/13 Initial Guardianship Hearing, Mr. Bolliger Appropriately Assisted Mr. Cudmore With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue

For the next 1 month and 25 days after the **7/19/13** initial guardianship hearing (i.e., until Mr. Meehan frivolously obtained his 5-year VAPO to “protect” Mr. Cudmore from Mr. Bolliger [fn.9]), Mr. Bolliger assisted Mr. Cudmore with redressing his grievance about the case’s RCW 11.88.045(1)(a) seminal issue. The CR 11 sanctions against Mr. Bolliger pertain only to that 1-month-and-25-day period.

A. Mr. Bolliger Was A Proper Attorney To Assist Mr. Cudmore With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue

There are nearly 35,000 lawyers in Washington State. wsba.org. Clearly, any of those 35,000 attorneys (including Mr. Bolliger) could have assisted Mr. Cudmore with pursuing his RCW 11.88.045(1)(a) right to be defended against the guardianship case by his own chosen and hired attorney. Stated another way, it destroys reason for Mr. Meehan to suggest that any attorney who is admitted to practice law in Washington State – **except Mr. Bolliger** – could so assist Mr. Cudmore. Thus, Mr. Bolliger **was a proper attorney to**

assist **Mr. Cudmore** with redressing his grievance about the case's RCW 11.88.045(1)(a) seminal issue during the 1 month and 25 days following the 7/19/13 initial guardianship hearing.

B. Mr. Bolliger Reasonably Assisted Mr. Cudmore With Redressing His Grievance About Judge Mendoza's Erroneous Initial Ruling On The Case's RCW 11.88.045(1)(a) Seminal Issue

It is axiomatic that, because Mr. Cudmore was aggrieved by Judge Mendoza's erroneous ruling to force Mr. Cudmore to be defended against Mr. Meehan's guardianship case by Mr. Meehan's team member, Ms. Woodard, the Civil Rules provide means for Mr. Cudmore to pursue correcting Judge Mendoza's error – via a motion for reconsideration, a motion for revision, supporting declarations, etc. Thus, by undertaking those civil procedure actions on Mr. Cudmore's behalf [¶¶ 20 and 24-27 (with their fns. 6-8)], Mr. Bolliger **reasonably assisted Mr. Cudmore** with redressing his grievance about the case's RCW 11.88.045(1)(a) seminal issue during the 1 month and 25 days following the 7/19/13 initial guardianship hearing.

Moreover, in his order erroneously forcing Mr. Cudmore to be defended against Mr. Meehan's guardianship case by Mr. Meehan's team member, Ms. Woodard [¶ 18], Judge Mendoza did not prohibit Mr. Bolliger from later assisting Mr. Cudmore with motions and briefing in the case. Instead, at the very end of the 7/19/13 initial guardianship hearing, Judge Mendoza actually expressed an opposite sentiment (with emphases added) [¶ 19]:

At some point later perhaps **Mr. Bolliger you might be involved . . . as the attorney with motions and briefing**

Mr. Bolliger still understands those words to have meant that Judge Mendoza allowed that Mr. Bolliger may be involved “with motions and briefing” on

Mr. Cudmore's behalf in the case. Thus, Judge Mendoza's own words also support Mr. Bolliger's position that he **reasonably assisted Mr. Cudmore** with redressing his grievance about the case's RCW 11.88.045(1)(a) seminal issue during the 1 month and 25 days following the 7/19/13 initial hearing.

C. In Proper Allegiance To His Oath Of Attorney, Mr. Bolliger Was Honor Bound By A Professional Obligation To Assist Mr. Cudmore With Redressing His Grievance About Judge Mendoza's Erroneous Initial Ruling On The Case's RCW 11.88.045(1)(a) Seminal Issue

As shown, for the 7/19/13 initial guardianship hearing, (1) Mr. Bolliger already was operating under Mr. Cudmore's written fee agreement to prepare new estate planning documents, including a new Will, for him, (2) Mr. Cudmore had hired Mr. Bolliger (with a separate written fee agreement) to defend him against the case, (3) Mr. Bolliger's filings, etc. on Mr. Cudmore's behalf had rendered him Mr. Cudmore's attorney of record, (4) Mr. Cudmore had spent approximately 10 hours of time consulting with Mr. Bolliger, (5) Mr. Bolliger had filed the required RCW 11.88.045(2) petition to be officially appointed to defend Mr. Cudmore against Mr. Meehan's guardianship case, and (6) RCW 11.88.045(1)(a) entitled Mr. Cudmore to be defended against Mr. Meehan's guardianship case by the attorney of Mr. Cudmore's own choice and hire. In stark contrast, Ms. Woodard (1) never had met or communicated with Mr. Cudmore, (2) had not filed the required RCW 11.88.045(2) petition to be appointed, and (3) was not even at the hearing. Thus, **it should have been a mere ministerial act** for Judge Mendoza to appoint Mr. Cudmore's own chosen and hired attorney, Mr. Bolliger, to defend Mr. Cudmore against Mr. Meehan's guardianship case.

However, Mr. Meehan and Mr. May executed predatory litigation tactics

against Mr. Cudmore and Mr. Bolliger, up through the end of the 7/19/13 initial hearing [p. 22, starting with “*Fourth, . . .*,” through p. 25 – and their fns. 15-17], to **deliberately and materially mislead and confuse Judge Mendoza** into erroneously forcing Mr. Cudmore to be defended against Mr. Meehan’s guardianship case by their team member, Ms. Woodard. Thus, Mr. Meehan and Mr. May callously rendered Mr. Cudmore – an 85-year-old gentleman and WWII-era veteran – both **defenseless and oppressed** within the meaning of Mr. Bolliger’s *Oath of Attorney* [¶ 1]:

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

(Emphases added.) Therefore, in proper allegiance to his *Oath of Attorney*, Mr. Bolliger **was honor bound by a professional obligation to assist Mr. Cudmore** with redressing his grievance about the case’s RCW 11.88.045-(1)(a) seminal issue during the 1 month and 25 days following the 7/19/13 initial guardianship hearing.

2. Mr. Cudmore Continually Solicited Mr. Bolliger To Assist Him With Redressing His Grievance About Judge Mendoza’s Erroneous Initial Ruling On The Case’s RCW 11.88.045(1)(a) Seminal Issue

After the 7/19/13 initial guardianship hearing, because Mr. Cudmore was aggrieved that Judge Mendoza erred on the RCW 11.88.045(1)(a) seminal issue, Mr. Bolliger wanted Mr. Bolliger to take corrective action for him. With his 7/18/13 hiring of Mr. Bolliger with a separate written fee agreement to defend Mr. Cudmore against the case [¶ 10], his 7/26/13 declaration [¶ 22], his 8/18/13 handwritten statement [¶ 2 in fn. 6], his 9/12/13 declaration [¶ 17 in fn. 6] – and his statements to Mr. Bolliger [fn. 2 and ¶ 28], Dona Belt [¶ 2 in fn. 10], and Ms. Woodard herself [¶ 29] – the record clearly shows Mr.

Cudmore **continually solicited** Mr. Bolliger to rectify the case's RCW 11.88.045(1)(a) seminal issue for him.

Moreover, even **after** Mr. Meehan permanently foreclosed Mr. Cudmore from further communicating and consulting with his own chosen and hired attorney – by frivolously filing his VAPO case to “protect” Mr. Cudmore from Mr. Bolliger [¶ 28] – Mr. Cudmore left the following (still preserved) **9/15/13** voice message on Mr. Bolliger's cell phone with respect to the VAPO papers which Mr. Meehan served on Mr. Cudmore, demonstrating that **Mr. Cudmore still was soliciting** Mr. Bolliger's legal help [¶ 28]:

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.

Thus, Mr. Cudmore **continually solicited** Mr. Bolliger to assist him with redressing his grievance about the case's RCW 11.88.045(1)(a) seminal issue during the 1 month and 25 days after the **7/19/13** initial guardianship hearing.

3. The Order Imposing CR 11 Sanctions Against Mr. Bolliger Contains Misleading/Incorrect (1) Material Findings Which Are Not Supported By Substantial Evidence And (2) Material Conclusions Which Are Erroneous

Mr. Bolliger here draws the distinction between findings of fact (“FF”) and conclusions of law (“CL”) which are **immaterial** to the result of imposing CR 11 sanctions against Mr. Bolliger and those which are **material** to that result. For example, the following portion of FF No. 1,

James Cudmore . . . initially hired attorney John C. Bolliger to represent him in the guardianship proceedings after previously hiring Mr. Bolliger to prepare estate planning documents[,]

and the following CL No. 1,

CR 11 requires that all pleadings, motions, and legal memorandums submitted by an attorney or party be: (1) Well-grounded in fact; (2) Warranted by existing law or a good faith argument for the alteration of existing law; and (3) Not be interposed for an improper purpose[.]

essentially are immaterial. That is because findings and conclusions like those obviously do not, alone or together, justify imposing CR 11 sanctions against Mr. Bolliger. The majority of the FFs and CLs fall into that immaterial category. Thus, after crossing out the material language from FFs and CLs [934-38] (which is factually or legally misleading/incorrect, as next discussed), the remaining **immaterially** worded FFs and CLs do not justify imposing CR 11 sanctions against Mr. Bolliger. [App., pp. 37-41]

A. Mr. Meehan's FF No. 1 Contains A Misleading Phrase – As Such, The Court Should Reject Mr. Meehan's Use Of His Misleading Phrase In FF No. 1

Mr. Meehan's FF No. 1 contains the phrase “at that point an allegedly incapacitated person.” Mr. Meehan's insertion of that phrase into FF No. 1 wrongfully implies there was something wrong with Mr. Cudmore hiring Mr. Bolliger to defend him against Mr. Meehan's guardianship case – at a time when Mr. Meehan first labeled Mr. Cudmore an AIP (indeed, just six days after Mr. Meehan filed his guardianship case against Mr. Cudmore).

However, RCW 11.88.045(1)(a) clearly provides that

[AIPs] shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. . . .

Clearly, then, there was nothing wrong with Mr. Cudmore hiring Mr. Bolliger, at the very advent of Mr. Meehan's guardianship case against him, to defend him against Mr. Meehan's guardianship case. Therefore, Mr. Bolliger respectfully requests that the Court reject Mr. Meehan's use of his misleading phrase in FF No. 1.

B. Mr. Meehan's FF No. 2 Contains A Phrase Which States An Erroneous Conclusion Of Law – As Such, The Court Should Reject Mr. Meehan's Merging Of That Erroneous Conclusion Of Law Into His FF No. 2

Mr. Meehan's FF No. 2 contains the phrase "because Mr. Bolliger was going to have to be a witness in the case." However, as discussed in [¶ 16 and its fn. 5], it was clear error for Judge Mendoza to deny Mr. Cudmore's own choice for his attorney on grounds that Mr. Bolliger "might have to be a testifying witness" in the case. Mr. Meehan's insertion of that phrase into FF No. 2 wrongfully suggests it is appropriate to include an erroneous conclusion of law as part of the wording of a finding of fact. As such, Mr. Bolliger respectfully requests that the Court reject Mr. Meehan's merging of that erroneous conclusion of law into his FF No. 2.

C. Mr. Meehan's FF Nos. 12, 13, 14, And 15 Contain Misleading Statements – As Such, The Court Should Reject Mr. Meehan's Use Of His Misleading Statements In FF Nos. 12, 13, 14, And 15

Mr. Meehan's FF No. 12 contains the following misleading statement: "The Court quashed the subpoenas issued by Mr. Bolliger as invalid." Yet, as discussed below, that hearing wasn't even necessary. Also, Mr. Meehan's FF Nos. 13, 14, and 15 state unjustifiable CR 11 dollar amounts imposed against Mr. Bolliger – to "reimburse" Mr. Cudmore's Estate for it having to pay Mr. Meehan (\$ 3,725.75), Ms. Woodard (\$ 3,445.50), and Mr. May (\$ 2,550.00) to oppose Mr. Cudmore and Mr. Bolliger fending off the three team members' predatory litigation tactics against Mr. Cudmore and Mr. Bolliger. That concept makes no sense. [See § 4 below.]

Here, Mr. Cudmore kept asking Mr. Lamberson, and Mr. Lamberson kept refusing to inform Mr. Cudmore, about some back details of his bank account

at HAPO and his investment account(s) with Edward Jones. Mr. Cudmore then asked Mr. Bolliger to obtain that information for him. Remember, at the very end of the 7/19/13 initial guardianship hearing, Judge Mendoza actually expressed the following (with emphases added) [¶ 19]:

At some point later perhaps **Mr. Bolliger you might be involved . . . as the attorney with motions and briefing**

So, on 9/9/13, Mr. Bolliger issued subpoenas to HAPO and Edward Jones. In response, **without calling Mr. Bolliger to discuss the matter**, Mr. Meehan filed his *Motion to Quash Subpoenas and/or Confirm Invalidity of Subpoenas* – which Mr. Bolliger received on 9/13/13. After reading the same, Mr. Bolliger realized that Mr. Meehan was correct that the subpoenas were not compliant with CR 45(a)(1)(D) – because they did not set forth therein the text of CR 45(c) and (d). Acknowledging his mistake, on 9/15/13, Mr. Bolliger faxed Mr. Meehan a letter, in which he stated in full as follows:

This notifies you I will stipulate to an order quashing the subpoenas. As such, at your earliest opportunity, please email me your proposed order therefor – so I can sign it and get it back to your right away. This will obviate the need for any hearing on the subject next Friday. Thank you for your professional courtesies. [CP 454-56]

Thus, this subpoena issue promptly became an irrelevant issue below, anyway. Mr. Bolliger submits that CR 11 would prefer things to unfold as follows: if Attorney 1 perceives Attorney 2 has made an offending filing, Attorney 1 should make informal contact with Attorney 2 to discuss the matter straight away; in response, if Attorney 2 offers to remove the offending filing, the issue is resolved, without the need for conjuring CR 11. See, e.g., Biggs v. Vail, 124 Wn.2d 193, 198-200, 876 P.2d 448 (1994). Here, Mr. Meehan skipped the first step (informally contacting Mr. Bolliger) – and went

straight to incurring an unnecessary expense by filing his motion to quash. Then, after quickly receiving a letter from Mr. Bolliger that he would sign an order to quash, Mr. Meehan ignored that approach and, instead, undertook the additional unnecessary expense of going to a hearing on the matter.

In any event, as Mr. Meehan's billings demonstrate [CP 710-12], between **9/10/13** and **9/23/13** inclusive, he unnecessarily attributed up to \$2,000.00 of time to this issue. However, with a simple phone call to Mr. Bolliger (which would have lasted only 5 minutes), Mr. Meehan could have spent no more than 1-2 hours on this issue. At his rate of \$205/hr., Mr. Meehan ended up billing about 5-10 times what he should have for this issue. Mr. May and Ms. Woodard needn't have spent any appreciable time on this issue, at all. As such, Mr. Bolliger respectfully requests that the Court reject Mr. Meehan's use of his misleading statements in FF Nos. 12, 13, 14, And 15. Further on the subject of the aforementioned three dollar amounts, see [§ 4 below].

D. Mr. Meehan's FF No. 5 And CL No. 5 Are Contrary To The Facts In This Record And The Applicable Law – As Such, The Court Should Reject Mr. Meehan's FF No. 5 And CL No. 5 In Their Entireties

With his FF No. 5 and his CL No. 5, Mr. Meehan essentially asserts wrongdoing on Mr. Bolliger's part for declining to produce Mr. Cudmore's new Will to Mr. Meehan and/or Ms. Woodard. That issue started below when Mr. Meehan issued to Mr. Bolliger a **7/26/13** subpoena duces tecum seeking for himself, inter alia, a copy of Mr. Cudmore's new Will. Mr. Bolliger then brought his **8/16/13** *Motion for Protective Order* [CP 574-86] – and Mr. Meehan then filed his **8/23/13** *Motion to Compel* [CP 587-91]. After receiving an adverse ruling, Mr. Bolliger then filed his **9/9/13** *Motion for*

Reconsideration [CP 101-14].

The law on this issue is very clear. Mr. Meehan (in his role as attorney for the guardianship petitioner and eventual guardian, Mr. Lamberson) was not entitled to have production of Mr. Cudmore's new Will. See, again, Pond v. Faust, supra [fn. 13 above]. See, also, Guardianship of York, 44 Wn.App. 547, 552, 723 P.2d 448 (Div. 3 1986), which holds as follows with emphases added):

. . . . First, **a will has no legal significance before the testator's death**, nor is it an asset of the ward's estate. Thus, **prior to the initiation of probate proceedings, a court has no jurisdiction to compel surrender of a will at the guardian's request.**

Moreover, Mr. Cudmore did not want his new Will produced to Mr. Meehan, or anybody else [CP 171]. Thus, Mr. Bolliger's declining to produce Mr. Cudmore's new Will to **Mr. Meehan** was in accordance with Mr. Cudmore's instructions and the law – and does not justify CR 11 sanctions against Mr. Bolliger.

In parallel with the foregoing, Ms. Woodard's **8/15/13** letter requested that Mr. Bolliger produce a copy of Mr. Cudmore's new Will to her. However, Mr. Cudmore countermanded that request – with his following **8/18/13** handwritten instruction (with emphasis added):

I, James Cudmore, want John Bolliger for my attorney and not Rachel Woodard. [CP 52]

Mr. Bolliger explained that to Ms. Woodard in his aforementioned 8/20/13 email to her. Ms. Woodard never filed a motion to compel, or in any other way ever complained to Mr. Bolliger, about his declination to produce Mr. Cudmore's new Will to her.

Later, on **10/15/13** (i.e., more than a month after Mr. Bolliger no longer

was assisting Mr. Cudmore in the case, because of Mr. Meehan's frivolous VAPO filing against Mr. Bolliger [¶ 28]), Mr. Bolliger received written notice from Mr. Cudmore that he now wanted Mr. Bolliger to release a copy of his new Will to Ms. Woodard, after all. So, Mr. Bolliger appropriately provided it to Ms. Woodard **the very next day**. Thus, Mr. Bolliger's temporarily declining to produce Mr. Cudmore's new Will to **Ms. Woodard** also was in accordance with Mr. Cudmore's instructions and the law – and also does not justify CR 11 sanctions against Mr. Bolliger.

Finally, Mr Bolliger was not found in contempt for declining to ever produce Mr. Cudmore's new Will to Mr. Meehan – or temporarily declining to produce it to Ms. Woodard. As such, Mr. Bolliger respectfully requests that the Court reject Mr. Meehan's FF No. 5 and CL No. 5 in their entireties.

E. Mr. Meehan's FF Nos. 3, 4, 6, 8, And 10 And His CL No. 6 Contain Misleading Phrases – As Such, The Court Should Reject Mr. Meehan's Use Of His Misleading Phrases In FF Nos. 3, 4, 6, 8, And 10 And CL No. 6

Mr. Meehan's FF No. 3 contains the phrase "the Court denied Mr. Bolliger's motion for reconsideration to be appointed Mr. Cudmore's attorney for the guardianship." Mr. Meehan's FF Nos. 4, 6, 8, and 10 word it as follows: "Mr. Bolliger knew at the time of this action that his motion to be appointed Mr. Cudmore's attorney and his motion for reconsideration had been denied." For good measure, Mr. Meehan added to his FF Nos. 6 and 8 the following: "Mr. Bolliger knew that the request to certify for appeal had already been denied by the Court." In his CL No. 6, Mr. Meehan states "[Mr. Cudmore's CR 54(b) motion for revision] requested the same relief recently considered and denied by the Court."

Here are the facts. Mr. Cudmore's *Motion for Reconsideration* actually contained an alternative request that the issue be certified for immediate appeal under CR 54(b) [¶ 20]. However, in his order on reconsideration, Judge Mendoza **expressed absolutely nothing** about Mr. Cudmore's CR 54(b) request for an immediate appeal [¶ 20]. Thus, Mr. Cudmore and Mr. Bolliger reasonably understood that the CR 54(b)-request portion of Mr. Cudmore's *Motion for Reconsideration* was not **denied** by Judge Mendoza – rather, it just **wasn't addressed** by Judge Mendoza. That left Mr. Cudmore no choice but to re-seek that relief under the following separate motion-for-revision language of CR 54(b) (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 fewer than 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.

The point here is that – with his *Motion for Reconsideration* and his subsequent CR 54(b) motion for revision – Mr. Cudmore was seeking to redress his grievance that, at the 7/19/13 initial guardianship hearing, Judge Mendoza erred by forcing Mr. Cudmore to be defended against Mr. Meehan's guardianship case by Mr. Meehan's and Mr. May's hand-picked attorney, Ms. Woodard – instead of by Mr. Cudmore's own chosen and hired attorney, Mr. Bolliger. Because Judge Mendoza's error in that regard was in clear violation of RCW 11.88.045(1)(a), it was proper for Mr. Cudmore to feel so aggrieved and seek to redress his grievance. As discussed, Mr. Bolliger appropriately assisted Mr. Cudmore with that [§ 1, pp. 27-30]. However, Mr. Meehan's misleading phrases identified above wrongly assert otherwise. Therefore, Mr.

Bolliger respectfully requests that the Court reject Mr. Meehan's use of his misleading phrases in FF Nos. 3, 4, 6, 8, and 10 and in CL No. 6.

F. Mr. Meehan's FF No. 9 Contains A Factually Incorrect Final Sentence – As Such, The Court Should Reject Mr. Meehan's Use Of His Factually Incorrect Final Sentence In FF No. 9

In his FF No. 9, Mr. Meehan asserts that, on **9/9/13**, he filed a declaration in support of striking the **9/13/13** hearing. OK, fine. However, Mr. Meehan concludes his FF No. 9 with a factually incorrect sentence: "The Court struck the hearing in question." However, Mr. Meehan never filed a **motion** to strike the **9/13/13** hearing – and, so, no such motion ever was heard. Mr. Meehan's final sentence is misleading because it misrepresents that the hearing eventually was stricken **by the court** because of some substantive wrongdoing on Mr. Bolliger's part. However, the hearing was stricken **by the Clerk** – and only because of a mere administrative reason: Mr. Bolliger inadvertently had noted the **9/13/13** hearing for the wrong docket date [App., pp. 33-36]. Therefore, Mr. Bolliger respectfully requests that the Court reject Mr. Meehan's use of his factually incorrect final sentence in FF No. 9.

G. Mr. Meehan's CL Nos. 4, 6, 7, And 8 Contain Factually And Legally Incorrect Phrases – As Such, The Court Should Reject Mr. Meehan's Use Of His Factually And Legally Incorrect Phrases In CL Nos. 4, 6, 7, And 8

Mr. Meehan's CL Nos. 4, 6, 7, and 8 contain the following phrase: "was not warranted by law or fact because [Mr. Bolliger] was no longer an attorney for a party in the matter" or a variant thereof. Mr. Meehan's CL Nos. 4, 6, and 7 each relate to Mr. Bolliger assisting Mr. Cudmore with getting his CR 54(b) motion to a hearing, so that Mr. Cudmore could attend and provide his own testimony to Judge Mendoza – to the effect that, pursuant to RCW

11.88.045(1)(a), Mr. Cudmore wanted to be defended against Mr. Meehan's guardianship case by his own chosen and hired attorney, and not by Mr. Meehan's and Mr. May's hand-picked team member, Ms. Woodard. Mr. Meehan's CL No. 8 relates to that same period of time.

However, as shown above, Mr. Bolliger appropriately assisted Mr. Cudmore with that [§ 1, pp. 27-30]. Indeed, getting Mr. Bolliger (instead of Ms. Woodard) appointed to defend Mr. Cudmore against the case was the **very purpose** of Mr. Cudmore's CR 54(b) motion. Mr. Cudmore wanted to personally testify to the judge at his motion hearing. Mr. Cudmore's CR 54(b) motion was addressing the **seminal issue** in the case: Mr. Cudmore's entitlement under RCW 11.88.045(1)(a) to choose and hire his own attorney. Moreover, Mr. Meehan's phrases under discussion ignore Judge Mendoza's following words to the parties, at the very end of the **7/19/13** initial guardianship hearing (with emphases added) [¶ 19]:

At some point later perhaps **Mr. Bolliger you might be involved . . . as the attorney with motions and briefing**

Thus, Mr. Meehan's phrases under discussion are factually and legally incorrect. As such, Mr. Bolliger respectfully requests that the Court reject Mr. Meehan's use of his factually and legally incorrect phrases in CL Nos. 4, 6, 7, and 8.

In the CR 11 order, crossing out the foregoing factually and legally misleading/incorrect language reveals that the remaining **immaterially** worded FFs and CLs do not, alone or together, justify imposing CR 11 sanctions against Mr. Bolliger. [App. pp. 37-41]

4. It Make No Sense To Impose CR 11 Fees Against Mr. Bolliger – To “Reimburse” Mr. Cudmore’s Estate For Its Having To Pay Mr. Meehan, Mr. May, And Ms. Woodard For Executing Their Predatory Litigation Tactics To Oppose Precisely Those Legal Services Which Mentally Competent Mr. Cudmore Kept Soliciting Mr. Bolliger To Perform For Mr. Cudmore

Mr. Meehan, Mr. May, and Ms. Woodard acted in concert in this guardianship case – solely to unlawfully try to nullify Mr. Cudmore disinheriting Mr. Lamberson.¹⁹ Indeed, the three team members unlawfully inserted the following language into the **12/27/13** final guardianship order:

The Last Will and Testament of James D. Cudmore executed on July 26, 2013 . . . [is] hereby declared to be invalid. The Last Will and Testament of James D. Cudmore executed on January 30, 2008 is valid and is Mr. Cudmore’s last will and testament. [¶ 33]

Their insertion of that language into the final guardianship order was unlawful because it has the effect of the guardianship court making a ruling on a **probate** subject about which the **guardianship** court has **no subject matter jurisdiction** to make a ruling. See, again, Pond v. Faust, supra [fn. 13].

That said, Mr. Bolliger is not herein appealing the imposition of an unnecessary guardianship against Mr. Cudmore. Nor is Mr. Bolliger herein appealing the fact that the **12/27/13** final guardianship order contains the aforequoted unlawful language. (That latter issue presently is being litigated between Mr. Bolliger and Mr. Meehan in the superior court, now that Mr. Cudmore has passed and it is time to probate his lawful Will.) Thus, although Mr. Cudmore wanted Mr. Bolliger to prevent those outcomes from occurring, Mr. Bolliger is not herein appealing either of those outcomes.

For the entire 1 month and 25 days following the **7/19/13** initial

¹⁹ In doing so, Mr. Meehan grossly exceeded his extremely limited role as a guardianship petitioner’s attorney under Guardianship of Mathews, supra. For her part, Ms. Woodard violated her duty to Mr. Cudmore, under RCW 11.88.045(1)(b) to “act as an advocate for,” and carry out the “expressed preferences” of, Mr. Cudmore.

guardianship hearing (and beyond), **mentally competent** Mr. Cudmore **continually solicited** Mr. Bolliger [§ 2] to help Mr. Cudmore redress his grievance that Judge Mendoza violated Mr. Cudmore's RCW 11.88.045(1)(a) right to be defended against Mr. Meehan's guardianship case by the attorney of Mr. Cudmore's own choice and hire – and not by Mr. Meehan's and Mr. May's team member, Ms. Woodard – the issue which was the **seminal issue** of the case. Yet, even though Mr. Bolliger appropriately performed as an attorney according to his client Mr. Cudmore's wishes [§ 1], Mr. Bolliger ended up with \$ 9,782.75 in CR 11 fees imposed against him. Of all the travesties which Mr. Meehan pulled off in this case, that is the one which Mr. Bolliger herein is appealing.

Respectfully, here is how the trial court erred. First, **Mr. Meehan and Mr. May misled and confused Judge Mendoza** into denying Mr. Cudmore his RCW 11.88.045(1)(a) right to be defended against Mr. Meehan's guardianship case by the attorney of Mr. Cudmore's own choice and hire [p. 22, starting with "*Fourth, . . .*," through p. 25 – and their fns. 15-17]. Of course, that wrongdoing is on Mr. Meehan and Mr. May. However, thereafter, **Judge Mendoza erroneously refused** to entertain Mr. Cudmore's and Mr. Bolliger's efforts to redress Mr. Cudmore's grievance about that seminal issue of the case [¶¶ 20 and 24 (and its fn. 6)]. By so refusing, Judge Mendoza essentially wrote RCW 11.88.045(1)(a) out of existence for this case. That error was on Judge Mendoza. Judge Mendoza's error then culminated with his entering an unmerited 5-year VAPO against Mr. Bolliger to "protect" Mr. Cudmore from Mr. Bolliger [¶¶ 28-29].

Then, Mr. Meehan persuaded Judge Spanner that – because Mr. Meehan and his team members spent time “persuading” Judge Mendoza to expel Mr. Bolliger from helping Mr. Cudmore – Judge Spanner should impose \$ 9,782.75 in CR 11 fees against Mr. Bolliger. Mr. Meehan’s theory (accepted by Judge Spanner) was that, because Mr. Cudmore’s Estate had to pay the three team members for their time so “persuading” Judge Mendoza, Mr. Bolliger should be required to “reimburse” Mr. Cudmore’s Estate therefor. Yet, Mr. Meehan and his team members didn’t merely “persuade” Judge Mendoza to expel Mr. Bolliger (as if that action was on the merits) – rather, they executed their predatory litigation tactics to **confuse and mislead Judge Mendoza** into erroneously cleaving Mr. Bolliger from his lawful client, Mr. Cudmore. Thus, Mr. Bolliger respectfully submits that it makes no sense to impose CR 11 fees against Mr. Bolliger – to “reimburse” Mr. Cudmore’s Estate for **its** having to pay Mr. Meehan, Mr. May, and Ms. Woodard for executing their predatory litigation tactics to oppose precisely those legal services which mentally competent Mr. Cudmore kept soliciting Mr. Bolliger to perform for Mr. Cudmore. That result essentially has Mr. Bolliger paying the Estate of Mr. Cudmore for legal work Mr. Cudmore hired Mr. Bolliger to perform for Mr. Cudmore. That’s backwards. Mr. Cudmore’s Estate should be paying Mr. Bolliger therefor – not the other way around.²⁰ Thus, Judge Spanner’s imposition **any amount** of CR 11 fees against Mr. Bolliger – to “reimburse” Mr. Cudmore’s Estate – was erroneous.

²⁰ Indeed, in a perfect world, this Court would hold that Mr. Meehan’s, Mr. May’s, and Ms. Woodard’s predatory litigation tactics were so egregious as to require them to disgorge their fees back to Mr. Cudmore’s Estate, with interest. See *Behnke v. Ahrens*, 172 Wn.App. 281, 298, 294 P.3d 729 (2012) (“Disgorgement of fees is a reasonable way to discipline specific breaches of professional responsibility, and to deter future misconduct of a similar type. ‘Such an order is within the inherent power of the trial court to fashion judgments.’”).

Also, Mr. Bolliger submits that Mr. Meehan's frivolous pursuit of CR 11 fees against Mr. Bolliger, including his disingenuously worded FFs and CLs [§ 3], **itself** amounts to a violation of CR 11 – which has caused Mr. Bolliger to have to expend tremendous amounts of unpaid time defending himself and his lawful client Mr. Cudmore against this case.

5. Mr. Bolliger Requests The Recovery Of His Attorneys' Fees – From Mr. Meehan, Ms. Woodard, And Their Firms – Pursuant To CR 11 And RAP 18.1

With his 2/12/14 letters [¶ 34] – Mr. Bolliger put Mr. Meehan and Ms. Woodard on notice that Mr. Bolliger would be seeking CR 11 sanctions against them. The letters are proper notice to them pursuant to Biggs v. Vail, supra. The facts set forth in [p. 22, starting with “*Fourth, . . .*,” through p. 25 – and their fns. 15-18] surely demonstrate that Mr. Meehan and Ms. Woodard continually, deliberately, materially, and successfully executed an array of predatory litigation tactics against Mr. Bolliger and his client for the sole purpose (1) to unlawfully [fn. 13] try to nullify Mr. Bolliger's client disinheriting Mr. Lamberson (2) by forcing Mr. Bolliger's client to be defended against Mr. Meehan's guardianship case by Mr. Meehan's own hand-picked team member, Ms. Woodard. Toward that end, Mr. Meehan and Ms. Woodard frivolously worked to prejudice the local judges against Mr. Bolliger's proper attempts to assist his client with asserting his client's RCW 11.88.045(1)(a) right to be defended against the case by his own chosen and hired attorney. As demonstrated, Mr. Meehan's and Ms. Woodard's predatory litigation tactics (1) were not well grounded in fact, (2) were not warranted by existing law, and (3) were not reasonably researched by them.

The Court therefore may impose on Mr. Meehan, Ms. Woodard, and their

firm a sanction for “the amount of the reasonable expenses incurred . . . , 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 the Court impose CR 11 sanctions against Mr. Meehan, Ms. Woodard, and their firms for their predatory tactics against Mr. Bolliger and his client – solely in order to unlawfully [fn. 13] try to nullify Mr. Bolliger’s client, with his **testamentary capacity**, disinheriting Mr. Lamberson – which predatory tactics frivolously and needlessly caused Mr. Bolliger to have to expend tremendous amounts of unpaid time defending himself and his client against this case.

IV. CONCLUSION

Based upon foregoing, Mr. Bolliger respectfully prays for:

1. A holding reversing the trial court’s imposition of \$ 9,782.75 in CR 11 fees against Mr. Bolliger for the purpose of “reimbursing” Mr. Cudmore’s Estate [§ 4] – and ordering the Estate to repay the \$ 3,575.32 which Mr. Meehan and his firm garnished Mr. Bolliger therefor [¶ 36], with interest.
2. A holding imposing CR 11 sanctions against Mr. Meehan, Ms. Woodard, and their firms for their predatory litigation tactics against Mr. Bolliger and his client – executed by them to wrongfully sever Mr. Bolliger from his lawful client – which predatory legal tactics **frivolously and needlessly** caused Mr. Bolliger to have to expend tremendous amounts of unpaid time defending himself and his client against this case.

DATED this 27 day of May, 2016.

BOLLIGER LAW OFFICES

By: _____

John C. Bolliger, WSBA 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 21 day of May, 2016.

Kennewick, WA
City, state where signed


John C. Bolliger

Appendix

Guardianship
Petitioner
(represented by
Mr. Meehan)

VS.

AIP
(Mr. Cudmore)

AIP's GAL
(Mr. May)

~~RCW 11.88.045(1)(a)?~~

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

Hand Picked by
Mr. Meehan

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

Hand Picked by
Mr. Meehan and Mr. May

—

Last Will and Testament

and

Declaration Of Testamentary Trust

of
JAMES D. CUDMORE

INTRODUCTION

I, James D. Cudmore, residing in Kennewick, Benton County, state of Washington, being of sound and disposing mind, memory, and understanding – and not acting under duress, menace, fraud, or undue influence of any person whomsoever – do hereby make, publish, and declare this to be my *Last Will And Testament and Declaration of Testamentary Trust*, in the manner and form following:

ARTICLE ONE: REVOCATION

I hereby revoke any and all Wills, Codicils, and Trusts previously executed by me, and I declare this and no other to be my only valid *Last Will And Testament and Declaration of Testamentary Trust*.

ARTICLE TWO: APPOINTMENT OF PERSONAL REPRESENTATIVE

I hereby nominate and appoint my attorney at law and attorney in fact, John C. Bolliger of Bolliger Law Offices, as the Personal Representative of this, my *Last Will and Testament*, to act without bond or intervention of the Court.

////

2

ARTICLE THREE: NONINTERVENTION WILL

I direct that my Estate be settled without the intervention of the Court, except to the extent required by law, and as required to assure compliance with the terms and conditions of this, my *Last Will And Testament*, and that my Personal Representative settle my Estate in such a manner as shall seem best and most convenient to my Personal Representative. I hereby empower my Personal Representative to mortgage, lease, sell, exchange and convey the real and personal property of my Estate for that purpose and without notice, approval or confirmation and in all other respects to administer and settle my Estate.

ARTICLE FOUR: DEFINITIONS

All references herein to children and descendants shall include adopted persons. Unless some other meaning and intent is apparent from the context, the plural shall include the singular and vice-versa, masculine, feminine and neuter words shall be used interchangeably.

ARTICLE FIVE: FAMILY STATUS

I declare that I am married. My wife's name is L. Annette Cudmore. Any reference in this, my *Last Will And Testament*, to "my wife" is to her. I have no natural children of my own. I have four step-children, each of whom is a natural child of my wife. The first names of my four step-children are as follows: David, Joani, Tim, and Traci.

At the time of executing this *Last Will And Testament*, I have no other living children – biological or adopted – and I have no deceased children who have left surviving issue. I here state my specific intention to disinherit all four of my aforementioned step-children.

I love my wife with all my heart. I want her to live a long time – even to outlive me. That said, she is permanently disabled with a stroke, is unable to converse or answer any questions responsively, requires full-time care, is receiving the same at the Canyon Lakes Restorative & Rehabilitation Center (in Kennewick, WA).

ARTICLE SIX: LIST OF PROPERTY

Pursuant to RCW 11.12.260, I plan to prepare a list designating that certain items of tangible personal property shall be given to specific persons. I understand that the list must be in my handwriting or signed by me in order for it to be effective. I also understand that I may make subsequent handwritten or signed changes to the list and that, if there is an inconsistent disposition of tangible personal property as between separate versions of the list, the most recent version of the list controls. This list shall be placed with this, my *Last Will And Testament*, and the list is incorporated herein by this reference to the list. Whenever I create or modify the list, I intend to send an updated copy of it to

my attorney:

John C. Bolliger
BOLLIGER LAW OFFICES 734-8500 – phone
5205 W. Clearwater Ave. 734-2591 – fax
Kennewick, WA 99336

ARTICLE SEVEN: DISPOSITION OF ESTATE

In the sole event that my wife predeceases me, my entire Estate (including the rest, residue and remainder thereof, but not including any tangible personal property otherwise disposed of pursuant to Article Six above) is hereby devised and bequeathed 50%/50% to the following two entities:

Hospice at the Chaplaincy
1480 Fowler St.
Richland, WA 99352
(509) 783-7416

**Domestic Violence Services
of Benton & Franklin Counties**
3311 W. Clearwater Ave., Ste. C-140
Kennewick, WA 99336
(509) 735-1295.

ARTICLE EIGHT: CONTINGENT DISPOSITION OF ESTATE
IN THE EVENT MY WIFE DOES NOT PREDECEASE ME

In the sole event that my wife does not predecease me, my entire Estate (including the rest, residue, and remainder thereof, but not including any tangible personal property otherwise disposed of pursuant to Article Six above) is hereby devised and bequeathed to the Medical and Emergency Needs Trust that is described and created in Article Nine hereof.

ARTICLE NINE: MEDICAL AND EMERGENCY NEEDS TRUST
FOR L. ANNETTE CUDMORE

A. ESTABLISHMENT

As Trustor, I hereby establish a Medical and Emergency Needs Trust (“Trust”) for my wife, the Beneficiary under this Trust. It is my express direction that all funds and property devised and bequeathed via Article Eight of this, my *Last Will And Testament*, be placed in this Trust.

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4

B. TERMS OF TRUST

1. PURPOSE

a. TRUST FUNDS FOR MEDICAL NEEDS

I establish this Trust in this, my *Last Will And Testament*, with the express purpose of providing funds for the medical needs of my wife. I hereby direct that the Trustee make payments for the medical needs of my wife.

b. TRUST FUNDS FOR EMERGENCY NEEDS

Trust funds may also be used for other expenses of my wife, so long as such funds are required to meet her emergency health, safety, and necessities-of-life needs. The decision as to what constitutes such an emergency need shall remain within the sole discretion of the Trustee.

c. PAYMENT OF TRUST FUNDS

The proceeds of my Estate which are devised and bequeathed via Article Eight of this, my *Last Will And Testament*, are to be delivered to the Trustee and placed in this Trust. The Trustee shall use so much of the net income and principal of the Trust as the Trustee deems advisable for the medical and emergency needs of my wife. Once my wife becomes deceased, final distribution of all funds remaining in this Trust shall be made 50%/50% to the following two entities:

Hospice at the Chaplaincy
1480 Fowler St.
Richland, WA 99352
(509) 783-7416

**Domestic Violence Services
of Benton & Franklin Counties**
3311 W. Clearwater Ave., Ste. C-140
Kennewick, WA 99336
(509) 735-1295.

2. TERMINATION OF TRUST

This Trust shall terminate under the following conditions:

a. NO FUNDS REMAINING

If there are no funds remaining in this Trust, it shall terminate.

b. IF PURPOSE ACCOMPLISHED

This Trust shall terminate whenever the purpose has been accomplished.

5

3. APPOINTMENT OF TRUSTEE

I hereby nominate and appoint my attorney, John C. Bolliger, as Trustee to use his sole judgment with regard to the Trust for the benefit of my wife, as specified herein. In the event that John C. Bolliger is for any reason unable or unwilling to serve as Trustee, the Court is to appoint a Trustee. The Court shall have discretion as to whom it shall appoint as the Trustee; that said, I hereby declare I do not want the Trustee to be any of my stepchildren. Any Trustee nominated or appointed under the terms of this Medical and Emergency Needs Trust shall serve without bond, except as required by law.

4. DISCRETION

Prior to the final distribution of trust assets as mandated above in § B.1.c. of Article Nine of this, my *Last Will And Testament*, the Trustee shall have the sole and absolute discretion to determine whether and when funds from this Trust should be distributed to accomplish the specifications of this Trust. Thus, during the period prior to final distribution, in the proper exercise of her/his fiduciary duties, the Trustee may make or withhold payment at any time and in any amount the Trustee deems appropriate.

5. PAYMENTS

At the discretion of the Trustee, the Trustee may make payments from this Trust directly to any person or organization on behalf of my wife.

6. CHOICE OF LAWS

The laws of the state of Washington shall govern the terms of this Trust.

7. SPENDTHRIFT

Neither the income nor the principal of the Trust Estate shall be subject to any debt that my wife owes to any creditor. The assets of this Trust Estate shall not be subject to anticipation or to pledge, assignment, sale, or transfer in any manner, nor shall my wife have the power to voluntarily charge or encumber such assets, whether because of liability arising from debt, contract, tort, engagement, or any other transaction or occurrence of any type. The assets of this Trust shall not be subject to seizure, garnishment, attachment, levy, or any other legal process of any Court for the benefit of any creditor of my wife, nor shall the assets be an asset in any future bankruptcy filed by my wife.

8. ADMINISTRATION AND ACCOUNTING

The Trustee shall keep and maintain complete and accurate records and accounts – open to my wife – concerning this Trust and its assets, income, and

expenditures. Except in the case of a suit against the Trustee that is initiated by my wife, or a person/entity who/which is legally authorized to file such a suit on behalf of her, this Trust is to be administered free of the control and direction of, and without accounting to, any Court – and any Trustee nominated under the terms of this Trust shall be exempt from any requirement of any law of the state of Washington which may require the Trustee to otherwise account to any Court (except for laws addressing the fiduciary duties of the Trustee).

9. MODIFICATION

Except where otherwise expressly provided for in this Trust, once this Trust comes into existence, it shall be irrevocable and shall not be subject to amendment or modification by my wife – or by her acting in concert with the Trustee.

C. AUTHORITY OF THE TRUSTEE

1. SCOPE

In order to accomplish the specifications of this Trust, the Trustee shall have the authority to manage and deal with the Trust Estate assets in all respects, in the same manner, and to the same extent as I would be able to do if I was living and in full control of the Trust Estate assets.

2. INVESTMENTS

The Trustee shall have the authority to hold, manage, sell, exchange or otherwise dispose of the whole or any part of the Trust Estate upon such terms and conditions and for such price as the Trustee deems best. The Trustee may invest and reinvest the whole or any part of the money in the Trust Estate, so long as the funds are not immediately necessary for the medical or emergency needs of my wife. Such investments shall be in any forms of investment which are prudent as set forth pursuant to RCW chapter 11.100.

3. PAYMENT AND ALLOCATION

The Trustee shall have authority to:

a. PAYMENT OF TAXES AND EXPENSES

Pay such expenses, costs and taxes, if any, which are legally imposed upon the Trust Estate and

b. ALLOCATION OF INCOME AND PRINCIPAL

Allocate and make transfers between the Trust income and principal, as the Trustee deems best.

7

4. COMPENSATION

The Trustee shall be entitled to receive out of the Trust assets reasonable compensation for the Trustee's services in administering this Trust.

5. AGENTS

The Trustee shall have authority to employ such agents, attorneys, accountants, appraisers, financial managers, social workers, educational counselors, or other individuals that the Trustee deems reasonably necessary -- and to rely upon their legal, tax or other expert advice and to pay their reasonable fees for such services out of the Trust assets.

6. DILIGENCE

Except for a failure on the part of the Trustee to act in good faith or to exercise good judgment in performing the Trustee's duties consistent with this Trust document and other applicable law, the Trustee shall not be liable to any person or entity, including my wife.

7. NO TRANSFER OF OFFICE

The Trustee shall not transfer the Trustee's office as Trustee to anyone else nor shall the Trustee delegate the responsibility for the administration of any portion of the Trust Estate to anyone else.

8. NECESSARY POWERS

The powers of the Trustee shall not be limited to those specifically stated in this Trust document, but shall include all powers necessary to enable the Trustee to perform the Trustee's duties consistent with all the terms of this Trust document and other applicable law.

////

8

IN WITNESS WHEREOF, I hereby set my hand this 26 day of July, 2013.

James D. Cudmore

(Signature of Testator/Trustor, James D. Cudmore)

We attest as follows. This instrument, consisting of ten (10) typewritten pages, numbered one through ten, including this page on which we are signing as attesting witnesses, was on the date immediately appearing above, signed and published by James D. Cudmore, who appeared to us to be of sound and disposing mind and memory. This instrument was declared by James D. Cudmore, in the presence of us, to be his *Last Will And Testament and Declaration of Testamentary Trust*. At James D. Cudmore's request and in his presence and in the presence of each other, we hereby set our hands as attesting witnesses this 26 day of July, 2013.

Dona L. Belt
(Signature of Witness #1)

Lori Alvarez
(Signature of Witness #2)

Dona L. Belt
(Printed name of Witness #1)

Lori Alvarez
(Printed name of Witness #2)

Benton City, WA
(City, state of residence of Witness #1)

Pasco, WA
(City, state of residence of Witness #2)

9

**AFFIDAVIT OF ATTESTING WITNESSES
FOR PROOF OF FOREGOING WILL**

STATE OF WASHINGTON)
)
County of BENTON) ss

The undersigned attesting witnesses, each being of lawful age and competent to testify, and each for himself or herself being first duly sworn upon oath, depose and state:

1. This Affidavit is made pursuant to RCW 11.20.020 and at the request of James D. Cudmore.
2. The foregoing instrument, titled *Last Will And Testament and Declaration of Testamentary Trust of James D. Cudmore*, consisting of ten (10) pages, numbered one through ten, was signed and executed by said James D. Cudmore in Kennewick, Benton County, Washington, on the 26 day of July, 2013, the date it bears, in the presence of myself and the other witness.
3. At the request of and in the presence of James D. Cudmore and in the presence of each other, the other witness and I subscribed our names to said instrument as witnesses thereto.
4. At the time of executing said instrument, James D. Cudmore and the witnesses were of the age of majority and James D. Cudmore appeared to be of sound and disposing mind, and not acting under duress, menace, fraud, undue influence or misrepresentation.

Dona L. Belt
(Signature of Witness #1)

Lori Alvarez
(Signature of Witness #2)

Dona L. Belt
(Printed name of Witness #1)

Lori Alvarez
(Printed name of Witness #2)

Benton City, WA
(City, state of residence of Witness #1)

Pasco, WA
(City, state of residence of Witness #2)

10

SUBSCRIBED AND SWORN TO before me this 26 day of July, 2013.



[Handwritten Signature]
(Signature of Notary Public)

Yanett Ayala
(Printed name of Notary Public)

NOTARY PUBLIC in and for the state of
Washington, residing at PO BOX.

My commission expires: May 22, 2017.

11

Subj: **RE: I need a Special Setting**
Date: 8/5/2013 10:47:24 A.M. Pacific Daylight Time
From: Tiffany.Husom@co.benton.wa.us
To: Jcbolliger@aol.com

Yes, Friday, Sept 6th at 1:30pm is still open. I will reserve this spot for you. Please send me a copy of your NFMD to confirm this setting.

Thanks
Tiffany

From: Jcbolliger@aol.com [mailto:Jcbolliger@aol.com]
Sent: Monday, August 05, 2013 8:57 AM
To: Tiffany Husom
Subject: Re: I need a Special Setting

Hi, Tiffany:

Sorry for the delayed response. I was in trial Wednesday through Friday with Judge Mitchell. Anyway, in answer to your question, I would prefer Sept. 6th at 1:30 pm. Please confirm that date still is available. Thank you. 😊

Sincerely,

John C. Bolliger
BOLLIGER LAW OFFICES
5205 W. Clearwater Ave.
Kennewick, WA 99336

(509) 734-8500 -- phone
(509) 734-2591 -- fax

(509) 521-6643 -- cell (this is the best phone number at which to reach me)

In a message dated 7/30/2013 4:25:01 P.M. Pacific Daylight Time, Tiffany.Husom@co.benton.wa.us writes:

Here are the next available openings:

Sept 6th at 1:30pm

Sept 13th at 3:30pm

Let me know which will work 😊

From: Jcbolliger@aol.com [mailto:Jcbolliger@aol.com]
Sent: Friday, July 26, 2013 3:31 PM
To: Tiffany Husom
Subject: Re: I need a Special Setting

12

To hear a motion related to rulings he made in the case at the July 19th hearing. I don't want to calendar such a related motion to be heard on the regular Friday-at-9:30-am docket, in case it would end up

being heard by a different judge, because Judge Mendoza already is familiar with the issue and case.

In a message dated 7/26/2013 3:23:28 P.M. Pacific Daylight Time, Tiffany.Husom@co.benton.wa.us writes:

Why are you needing a special set with Judge Mendoza?

From: Jcbolliger@aol.com [<mailto:Jcbolliger@aol.com>]
Sent: Friday, July 26, 2013 9:01 AM
To: Tiffany Husom
Subject: I need a Special Setting

Hi, Tiffany:

In BCSC case no. 13-4-00260-9, I need a 1-hour special setting with Judge Mendoza -- hopefully, about 1-1/2 weeks from now or so. Thank you for your help.

Sincerely,

John C. Bolliger
BOLLIGER LAW OFFICES
5205 W. Clearwater Ave.
Kennewick, WA 99336

(509) 734-8500 -- phone
(509) 734-2591 -- fax

(509) 521-6643 -- cell (this is the best phone number at which to reach me)

13

BOLLIGER LAW OFFICES

John C. Bolliger
- practicing in WA
- Email: jcbolliger@aol.com

Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336

(509) 734-8500 – phone
(509) 734-2591 – fax

August 30, 2013

Honorable Bruce Spanner
Administrative Presiding Judge
Benton & Franklin Superior Courts
7122 W. Okanogan Pl., Bldg. A
Kennewick, WA 99336

Via Legal Messenger & Facsimile
736-3057

Re: Appointment of Attorneys for Guardianship AIPs

Dear Judge Spanner:

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.

In my pending case, which is on for a special setting next Friday (before another judge) to address this very issue, I have argued the matter as follows; I provide you the following briefing excerpt only for the purpose of highlighting the conflict I address:

Again, [AIP] Mr. Cudmore and [petitioner] Mr. Lamberson have polar-opposite positions in this case. On **July 12, 2013**, with his initial filing of his guardianship petition, Mr. Lamberson nominated Mr. May to be Mr. Cudmore's GAL – and Mr. Lamberson secured an *ex parte* order so appointing Mr. May as GAL. (See Clerk's file, Sub. nos. 002 and 003.) Then, on **July 18, 2013**, Mr. May in turn petitioned the Court to have Ms. Woodard appointed as Mr. Cudmore's attorney for the case. (See Clerk's file, Sub. no. 013.) As the following discussion reveals, it was inappropriate for Mr. May to be petitioning to have **anybody** appointed as Mr. Cudmore's attorney – because, in a guardianship case, the GAL for the AIP has different (conflicting) duties as contrasted with the attorney for the AIP.

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

Finally, my brethren, be strong in the Lord and in the power of His might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we do not wrestle against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places. Therefore take up the whole armor of God, that you may be able to withstand in the evil day, and having done all, to stand.

Stand, therefore, having girded your waist in truth, having put on the breastplate of righteousness, and having shod your feet with the preparation of the gospel of peace; above all, taking the shield of faith with which you will be able to quench all the fiery darts of the wicked one. And take the helmet of salvation, and the sword of the Spirit, which is the word of God; praying always with all prayer and supplication in the Spirit, being watchful to this end with all perseverance and supplication for all the saints – and for me, that utterance may be given to me, that I may open my mouth boldly to make known the mystery of the gospel, for which I am an ambassador in chains; that in it I may speak boldly, as I ought to speak. Ephesians 6:10-20

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.

Thus, Mr. Cudmore's attorney is supposed to advocate for **Mr. Cudmore's subjective, expressed preferences** with respect to the guardianship being sought against him – whereas Mr. Cudmore's GAL is supposed to advocate for **what the GAL objectively believes is in Mr. Cudmore's best interests, regardless of Mr. Cudmore's subjective, expressed preferences.** Clearly, the duties of the GAL and the attorney are “distinct” (in conflict) – and the statute so states. As such, GAL Mr. May has no business whatsoever petitioning the Court to appoint **anybody** as AIP Mr. Cudmore's attorney – especially not where, as here, Mr. May's appointment itself was secured via an ex parte application of AIP Mr. Cudmore's polar-opposing party in the case, petitioner Mr. Lamberson. Mr. May has a direct, statutory conflict of interest in getting involved, in any manner whatsoever, in the process of the appointment of Mr. Cudmore's attorney for this case.

Thus, in my pending case, the guardianship petitioner (Mr. Lamberson) got the GAL (Mr. May) onboard with an ex parte order – then the GAL (Mr. May) turned around and petitioned the Court to appoint the AIP's attorney (Ms. Woodard) – and, at the hearing the next day, the judge granted the GAL's (Mr. May's) petition to appoint Ms. Woodard as the AIP's attorney. Such a process appears tainted – giving the appearance the GAL and the AIP's attorney are working together, when the statute expresses they have conflicting obligations for the case. In my view, the Court should not allow the process to unfold in such a manner. If the Courts allow the GALs to insinuate themselves into the attorney-appointment process for the AIP, I fear the Courts themselves are tacitly aiding at least the appearance of impropriety.¹

¹ In my pending case, the appearance of impropriety is exacerbated by the fact that the AIP repeatedly has declared in written filings that he wants me, and not Ms. Woodard, to be his attorney in the guardianship case. See RCW 11.88.045(1)(a), which sets forth in pertinent part as follows (with emphasis added):

Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. . . .

Finally, my brethren, be strong in the Lord and in the power of His might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we do not wrestle against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places. Therefore take up the whole armor of God, that you may be able to withstand in the evil day, and having done all, to stand.

Stand, therefore, having girded your waist in truth, having put on the breastplate of righteousness, and having shod your feet with the preparation of the gospel of peace; above all, taking the shield of faith with which you will be able to quench all the fiery darts of the wicked one. And take the helmet of salvation, and the sword of the Spirit, which is the word of God; praying always with all prayer and supplication in the Spirit, being watchful to this end with all perseverance and supplication for all the saints – and for me, that utterance may be given to me, that I may open my mouth boldly to make known the mystery of the gospel, for which I am an ambassador in chains; that in it I may speak boldly, as I ought to speak. Ephesians 6:10-20

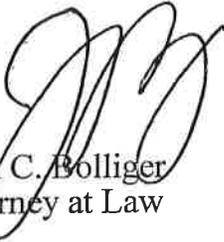
Honorable Bruce Spanner
Administrative Presiding Judge
Benton & Franklin Superior Courts
August 30, 2013
Page 3

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.

Sincerely,

BOLLIGER LAW OFFICES



John C. Bolliger
Attorney at Law

16

Finally, my brethren, be strong in the Lord and in the power of His might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we do not wrestle against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places. Therefore take up the whole armor of God, that you may be able to withstand in the evil day, and having done all, to stand.

Stand, therefore, having girded your waist in truth, having put on the breastplate of righteousness, and having shod your feet with the preparation of the gospel of peace; above all, taking the shield of faith with which you will be able to quench all the fiery darts of the wicked one. And take the helmet of salvation, and the sword of the Spirit, which is the word of God; praying always with all prayer and supplication in the Spirit, being watchful to this end with all perseverance and supplication for all the saints – and for me, that utterance may be given to me, that I may open my mouth boldly to make known the mystery of the gospel, for which I am an ambassador in chains; that in it I may speak boldly, as I ought to speak. Ephesians 6:10-20

BOLLIGER LAW OFFICES

Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336
(509) 734-8500 – telephone
(509) 734-2591 – facsimile

Facsimile Transmission Cover Sheet

TO: Honorable Bruce Spanner
Administrative Presiding Judge

FAX: 736-3057

PAGES: 4, including this cover sheet

FROM: John C. Bolliger

DATE: August 30, 2013

RE: Suggestion for Rule Change

MESSAGE:

— a letter from me to you, dated today, is attached

17

For we did not follow cunningly devised fables when we made known to you the power and coming of our Lord Jesus Christ, but were eyewitnesses to His majesty. For He received from God the Father honor and glory when such a voice came to Him from the Excellent Glory: "This is My beloved Son, in whom I am well pleased." And we heard this voice which came from heaven when we were with Him on the holy mountain.

And so we have the prophetic word confirmed, which you do well to heed as a light that shines in a dark place, until the day dawns and the morning star rises in your hearts; knowing this first, that no prophecy of Scripture is of any private interpretation, for prophecy never came by the will of man, but holy men of God spoke as they were moved by the Holy Spirit.
2 Peter 1:16-21

TRANSACTION REPORT

AUG/30/2013/FRI 02:31 PM

FAX (TX)

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	AUG/30	02:30PM	7363057	0:01:22	4	OK	SG3 9046

BOLLIGER LAW OFFICES**Attorneys at Law**

5205 W. Clearwater Avenue
 Kennewick, WA 99336
 (509) 734-8500 – telephone
 (509) 734-2591 – facsimile

Facsimile Transmission Cover Sheet

TO: Honorable Bruce Spanner
 Administrative Presiding Judge

FAX: 736-3057

PAGES: 4, including this cover sheet

FROM: John C. Bolliger

DATE: August 30, 2013

RE: Suggestion for Rule Change

MESSAGE:

— a letter from me to you, dated today, is attached

18

BOLLIGER LAW OFFICES

John C. Bolliger
- practicing in WA
- Email: jcbolliger@aol.com

Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336

(509) 734-8500 – phone
(509) 734-2591 – fax

September 3, 2013

Honorable Bruce Spanner
Administrative Presiding Judge
Benton & Franklin Superior Courts
7122 W. Okanogan Pl., Bldg. A
Kennewick, WA 99336

Via Legal Messenger & Facsimile
736-3057

Re: Appointment of Attorneys for Guardianship AIPs

Dear Judge Spanner:

This follows my August 30, 2013 letter to you on the same subject.

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.

Again, my concern is that this practice appears tainted – giving the appearance the GAL and the AIP's attorney are working together (perhaps, over time, even getting each other appointed on cases), when the statute expresses they have conflicting obligations for the case. I am further concerned that, if the Superior Court allows this practice to continue, the shadow of the taint will fall on the Superior Court itself. In my view, in every active case in which the AIP's GAL has successfully petitioned the Court for appointment of the AIP's attorney, **the GAL should be removed and replaced in the case.** I hope a broadcast letter from your office can issue which will prevent this practice henceforth. Perhaps a follow-on local rule could set up a list of attorneys, from which list the Court, alone, would select the next-on-the-list attorney for the next AIP – in much the same way the Court appoints the next-on-the-list attorney having a felony defense contract for the next indigent felony defendant.

19

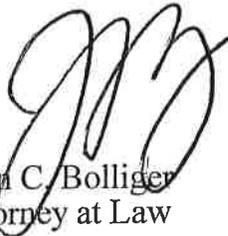
Finally, my brethren, be strong in the Lord and in the power of His might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we do not wrestle against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places. Therefore take up the whole armor of God, that you may be able to withstand in the evil day, and having done all, to stand.

Stand, therefore, having girded your waist with truth, having put on the breastplate of righteousness, and having shod your feet with the preparation of the gospel of peace; above all, taking the shield of faith with which you will be able to quench all the fiery darts of the wicked one. And take the helmet of salvation, and the sword of the Spirit, which is the word of God; praying always with all prayer and supplication in the Spirit, being watchful to this end with all perseverance and supplication for all the saints – and for me, that utterance may be given to me, that I may open my mouth boldly to make known the mystery of the gospel, for which I am an ambassador in chains; that in it I may speak boldly, as I ought to speak. Ephesians 6:10-20

Honorable Bruce Spanner
Administrative Presiding Judge
Benton & Franklin Superior Courts
September 3, 2013
Page 2

Sincerely,

BOLLIGER LAW OFFICES



John C. Bolliger
Attorney at Law

20

Finally, my brethren, be strong in the Lord and in the power of His might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we do not wrestle against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places. Therefore take up the whole armor of God, that you may be able to withstand in the evil day, and having done all, to stand.

Stand, therefore, having girded your waist in truth, having put on the breastplate of righteousness, and having shod your feet with the preparation of the gospel of peace; above all, taking the shield of faith with which you will be able to quench all the fiery darts of the wicked one. And take the helmet of salvation, and the sword of the Spirit, which is the word of God; praying always with all prayer and supplication in the Spirit, being watchful to this end with all perseverance and supplication for all the saints – and for me, that utterance may be given to me, that I may open my mouth boldly to make known the mystery of the gospel, for which I am an ambassador in chains; that in it I may speak boldly, as I ought to speak. Ephesians 6:10-20

BENTON COUNTY SUPERIOR COURT
FRIDAY, AUGUST 30, 2013
PROBATE DOCKET

1. 13-5-00137-1
ADOPTION OF: SLAVIN, DAVID LAYNE
SLAVIN, YVETTE MARIE

OLDFIELD, KARYN K.

ADP/DECREE OF ADOPTION *CLOSED HRG*
TELEPHONIC TESTIMONY
2. 13-4-00019-3
ESTATE OF:
STUART, FLORENCE E
RUFF, BEAU JAMES

EST/PET'S FINAL RPT & DECREE DIST
3. 13-4-00300-1
ESTATE OF:
YAHNE, PRESTON LOYAL
HUNT, SCOTT W PRO SE

EST/PET'S ORDER FOR CREMATION
4. 13-4-00250-1
GUARDIANSHIP OF:
GAMBOA, JOSE G
MAY, C WAYNE
BISHOP, JEREMY J

GDN/PET'S APPOINTMENT OF GUARDIAN
5. 13-4-00260-9
GUARDIANSHIP OF: VS
CUDMORE, JAMES D
MAY, C WAYNE WOODARD, RACHEL M
MEEHAN, SHEA CORNELISON

GDN/PET'S MT TO COMPEL

6. 13-4-00289-7
GUARDIANSHIP OF:
SHORT, GAYLE ROXANNE
ST. HILAIRE, RONALD (GAL)
KLYM, ARTHUR D.

GDN/0:GAL'S MT APPT ATTY FOR AIP

21



Courts Home | Search Case Records

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Home | Summary Data & Reports | Resources & Links | Get Help

Superior Court Case Summary

About Dockets

Court: Benton Superior Ct
Case Number: 13-4-00289-7

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Sub	Docket Date	Docket Code	Docket Description	Misc Info
	07-31-2013	FILING FEE RECEIVED	Filing Fee Received	240.00
001	07-31-2013	CASE INFORMATION COVER SHEET	Case Information Cover Sheet	
002	07-31-2013	PET FOR APPT OF GUARDIAN	Pet For Appt Of Guardian	
003	07-31-2013	ORDER APPOINTING GUARDIAN AD LITEM GAL0001	Order Appointing Guardian Ad Litem St. Hilaire, Ronald (gal)	
	07-31-2013	NOTICE OF HEARING ACTION	Notice Of Hearing Gdn/pet's Appt Of Guardian	09-20-2013G
	07-31-2013	EX-PARTE ACTION WITH ORDER JDG0001	Ex-parte Action With Order Judge Vic L Vanderschoor	
004	07-31-2013	NOTICE	Notice Of Guardianship Petition	
005	08-06-2013	DECLARATION OF MAILING	Declaration Of Mailing	
006	08-07-2013	ACCEPTANCE OF SERVICE	Acceptance Of Service	
007	08-07-2013	STATEMENT OF QUALIFICATIONS GAL0001	Statement Of Qualifications-gal St. Hilaire, Ronald (gal)	
008	08-12-2013	AFFIDAVIT/DCLR/CERT OF SERVICE INC0001	Affidavit Of Service-08-06-13 Short, Gayle Roxanne	
009	08-23-2013	PETITION GAL0001	Verified Pet To Appt Atty For Aip St. Hilaire, Ronald (gal)	
010	08-23-2013	NOTE FOR MOTION	Note For Motion	08-30-

22

Directions

Benton Superior Ct
 7122 W Okanogan Pl, Bldg A
 Kennewick, WA
 99336-2359

Map & Directions
 509-736-3071
 [Phone]
 509-736-3057[Fax]

		DOCKET ACTION	Docket Gdn/0:gal's Mt Appt Atty For Aip	2013G
011	08-30-2013	ORDER APPOINTING ATTORNEY	Order Appointing Attorney For Aip	
	08-30-2013	FINDINGS	Findings	
012	08-30-2013	MOTION HEARING JDG0005	Motion Hearing Judge Swisher/digital/alw	

[Visit Website](#)

Disclaimer

What is this website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.

How can I obtain the complete court record?

You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

Click [here](#) for a court directory with information on how to contact every court in the state.

Can I find the outcome of a case on this website?

No. You must consult the local or appeals court record.

How do I verify the information contained in the index?

You must consult the court record to verify all information.

Can I use the index to find out someone's criminal record?

23

BOLLIGER LAW OFFICES

Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336
(509) 734-8500 – telephone
(509) 734-2591 – facsimile

Facsimile Transmission Cover Sheet

TO: Honorable Bruce Spanner
Administrative Presiding Judge

FAX: 736-3057

PAGES: 6, including this cover sheet

FROM: John C. Bolliger

DATE: September 3, 2013

RE: Suggestion for Rule Change

MESSAGE:

— a letter from me to you, dated today, is attached

24

For we did not follow cunningly devised fables when we made known to you the power and coming of our Lord Jesus Christ, but were eyewitnesses to His majesty. For He received from God the Father honor and glory when such a voice came to Him from the Excellent Glory: "This is My beloved Son, in whom I am well pleased." And we heard this voice which came from heaven when we were with Him on the holy mountain.

And so we have the prophetic word confirmed, which you do well to heed as a light that shines in a dark place, until the day dawns and the morning star rises in your hearts; knowing this first, that no prophecy of Scripture is of any private interpretation, for prophecy never came by the will of man, but holy men of God spoke as they were moved by the Holy Spirit.
2 Peter 1:16-21

TRANSACTION REPORT

SEP/03/2013/TUE 10:39 AM

FAX (TX)

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	SEP/03	10:38AM	7363057	0:01:03	6	OK	SG3 9057

BOLLIGER LAW OFFICES

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TO: Honorable Bruce Spanner
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PAGES: 6, including this cover sheet

FROM: John C. Bolliger

DATE: September 3, 2013

RE: Suggestion for Rule Change

MESSAGE:

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25

RECEIVED SEP 05 2013

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR BENTON AND FRANKLIN COUNTIES

7122 W. Okanogan Place, Building A, Kennewick, WA 99336

SUPERIOR COURT JUDGE
BRUCE A. SPANNER

BENTON COUNTY JUSTICE CENTER
FRANKLIN COUNTY COURTHOUSE
TELEPHONE (509) 736-3071
FAX (509) 736-3057

September 4, 2013

Mr. John Bolliger
Bolliger Law Offices
5205 W. Clearwater Ave.
Kennewick, WA 99336

Re: ***Appointment of Attorneys for Guardianship AIPs***

Dear Mr. Bolliger:

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.

The remedy of a party aggrieved by a decision of a judicial officer is to appeal, not engage in ex parte communications. I am providing copies of your correspondence to the attorneys involved in the Cudmore case.

Very Truly Yours,

Benton Franklin Superior Court



Bruce A. Spanner
Superior Court Judge

Cc: Shea Meehan (w/enclosure)
Rachael Woodard (w/enclosure)

I:\Misc. Correspondence\LTR-Bolliger 09-03-2013.doc

26

BOLLIGER LAW OFFICES

John C. Bolliger

- practicing in WA
- Email: jcbolliger@aol.com

Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336

(509) 340-3740 – phone
(509) 734-2591 – fax

bolligerlaw.com

February 12, 2014

Shea C. Meehan
Walker Heye Meehan & Eisinger, PLLC
1333 Columbia Part Trail, Suite 220
Richland, WA 99352

Via Facsimile
735-7140

Re: Guardianship of Cudmore

Dear Shea:

I write to inform you that, in the above-referenced case, I will be seeking CR 11 fees against you for your wrongful prosecution of the guardianship against Mr. Cudmore.

Sincerely,

BOLLIGER LAW OFFICES



John C. Bolliger
Attorney at Law

27

Finally, my brethren, be strong in the Lord and in the power of His might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we do not wrestle against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places. Therefore take up the whole armor of God, that you may be able to withstand in the evil day, and having done all, to stand.

Stand, therefore, having girded your waist in truth, having put on the breastplate of righteousness, and having shod your feet with the preparation of the gospel of peace; above all, taking the shield of faith with which you will be able to quench all the fiery darts of the wicked one. And take the helmet of salvation, and the sword of the Spirit, which is the word of God; praying always with all prayer and supplication in the Spirit, being watchful to this end with all perseverance and supplication for all the saints – and for me, that utterance may be given to me, that I may open my mouth boldly to make known the mystery of the gospel, for which I am an ambassador in chains; that in it I may speak boldly, as I ought to speak. Ephesians 6:10-20

BOLLIGER LAW OFFICES

Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336
(509) 340-3740 – telephone
(509) 734-2591 – facsimile

Facsimile Transmission Cover Sheet

TO: Shea C. Meehan

FAX: 735-7140

PAGES: 2, including this cover sheet

FROM: John C. Bolliger

DATE: February 12, 2014

RE: Guardianship of Cudmore

MESSAGE:

— a letter from me to you, dated today, is attached

28

For we did not follow cunningly devised fables when we made known to you the power and coming of our Lord Jesus Christ, but were eyewitnesses to His majesty. For He received from God the Father honor and glory when such a voice came to Him from the Excellent Glory: "This is My beloved Son, in whom I am well pleased." And we heard this voice which came from heaven when we were with Him on the holy mountain.

And so we have the prophetic word confirmed, which you do well to heed as a light that shines in a dark place, until the day dawns and the morning star rises in your hearts; knowing this first, that no prophecy of Scripture is of any private interpretation, for prophecy never came by the will of man, but holy men of God spoke as they were moved by the Holy Spirit.
2 Peter 1:16-21

TRANSACTION REPORT

FEB/12/2014/WED 09:25 AM

FAX (TX)

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	FEB/12	09:24AM	7357140	0:00:26	2	OK	SG3 9805

BOLLIGER LAW OFFICES

Attorneys at Law

5205 W. Clearwater Avenue
 Kennewick, WA 99336
 (509) 340-3740 – telephone
 (509) 734-2591 – facsimile

Facsimile Transmission Cover Sheet

TO: Shea C. Meehan

FAX: 735-7140

PAGES: 2, including this cover sheet

FROM: John C. Bolliger

DATE: February 12, 2014

RE: Guardianship of Cudmore

MESSAGE:

— a letter from me to you, dated today, is attached

29

BOLLIGER LAW OFFICES

John C. Bolliger

- practicing in WA
- Email: jcbolliger@aol.com

Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336

(509) 340-3740 - phone
(509) 734-2591 - fax

bolligerlaw.com

February 12, 2014

Rachel M. Woodard
POWELL & GUNTER
1025 Jadwin Avenue
Richland, WA 99352

Via Facsimile
946-5177

Re: Guardianship of Cudmore

Dear Shea:

I write to inform you that, in the above-referenced case, I will be seeking CR 11 fees against you for your wrongful handling of the guardianship against Mr. Cudmore.

Sincerely,

BOLLIGER LAW OFFICES



John C. Bolliger
Attorney at Law

30

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BOLLIGER LAW OFFICES
Attorneys at Law

5205 W. Clearwater Avenue
Kennewick, WA 99336
(509) 340-3740 – telephone
(509) 734-2591 – facsimile

Facsimile Transmission Cover Sheet

TO: Rachel M. Woodard

FAX: 946-5177

PAGES: 2, including this cover sheet

FROM: John C. Bolliger

DATE: February 12, 2014

RE: Guardianship of Cudmore

MESSAGE:

— a letter from me to you, dated today, is attached

31

For we did not follow cunningly devised fables when we made known to you the power and coming of our Lord Jesus Christ, but were eyewitnesses to His majesty. For He received from God the Father honor and glory when such a voice came to Him from the Excellent Glory: "This is My beloved Son, in whom I am well pleased." And we heard this voice which came from heaven when we were with Him on the holy mountain.

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2 Peter 1:16-21

TRANSACTION REPORT

FEB/12/2014/WED 09:43 AM

TX)

	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	FEB/12	09:42AM	9465177	0:00:36	2	OK	ECM 9806

BOLLIGER LAW OFFICES

Attorneys at Law

5205 W. Clearwater Avenue
 Kennewick, WA 99336
 (509) 340-3740 – telephone
 (509) 734-2591 – facsimile

Facsimile Transmission Cover Sheet

TO: Rachel M. Woodard

FAX: 946-5177

PAGES: 2, including this cover sheet

FROM: John C. Bolliger

DATE: February 12, 2014

RE: Guardianship of Cudmore

MESSAGE:

a letter from me to you, dated today, is attached

32

JOSIE DELVIN

Benton County Clerk & Ex-Officio Clerk of the Superior Court

Benton County Courthouse
620 Market Street
Prosser, WA 99350
(509) 786-5624

Benton County Justice Center
7122 W. Okanogan Place, Bldg A
Kennewick, WA 99336
(509) 735-8388

DATE: September 6, 2013

TO: JOHN BOLLIGER

CASE: 13-4-00260-9

- Additional fee required for:**
 - Filing Fee \$56.00**
 - Copies**
 - Regular (\$.50 per page)
 - Certified Copies (\$5.00 for the first page and \$1.00 for each additional page)
 - Exparte Fee \$30.00**
- Incorrect or Missing Case Number**
- Incorrect or Missing Caption**
- DSHS Certificate Needed (1/2 Sheet)**
- Confidential Information Sheet Needed**
- Law Enforcement Sheet Needed**
- Case Already on File**
- Signatures Required on Pleadings**
- Automatic Temporary Restraining Order**
- Judge's Signature Required on Order**
- Original Documents Required**
- Cannot File Faxed Documents**

GR 17 only applies to documents with facsimile signatures.

- Documents Not in Proper Format**
 - 8 ½ x 11 paper
 - 3" top, 1" side & bottom margins
 - No two-sided documents
 - Must be typed or neatly written in black ink
- A Valid Docket Date/Time**
 - Status Conferences are Tuesday @ 8:00 a.m.
 - Over-Ten is on Tuesday @ 8:30 a.m.
 - Under-Ten is on Tuesday @ 1:30 p.m.
 - Decrees are on Tuesday @ 1:30 p.m.
 - Pro Se are on Tuesday @ 1:30 p.m.
 - Prosser Docket is Thursday @ 8:30 a.m.
 - Adoption/Probate/Guardianship are Friday @8:30 (*Over-Ten matters are heard on the first Friday of the month)
- "Sealed" Coversheet Required for Confidential Information**
- Proper Coversheet Required**
- Forms Available at www.courts.wa.gov/forms**
- Self-addressed Stamped Envelope to Return Requested Document**

33

By: Amanda Willden, Deputy Clerk

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JOSIE DELVIN
BENTON COUNTY CLERK
SEP 06 2013
VOID
FILED

**SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF BENTON**

In re the Guardianship of:

JAMES DONALD CUDMORE,

Alleged Incapacitated Person.

Case No. 13-4-00260-9

**RE-NOTE FOR MOTION
DOCKET**

[Clerk's Action Required]
[Estimated 1 hour needed,
with companion case]

PLEASE TAKE NOTICE that the above-named alleged incapacitated person will bring issues of law on for hearing on **Friday, September 13, 2013 – at 8:30 am** – at the Benton County Justice Center located in Kennewick, Washington. These are the same motions which previously were calendared for a special set hearing with Judge Mendoza on September 6th – which special setting Judge Mendoza struck the day before the hearing (on September 5th).

34
Original

1 DATED this 6 day of September, 2013.

2
3 **BOLLIGER LAW OFFICES**

4
5
6
7 By: _____

8 John C. Bolliger, WSBA No. 26378

9 Attorneys for Mr. Cudmore

35

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 [] regular mail
Walker Heye Meehan & Eisinger [] certified mail, RRR no.
1333 Columbia Park Trail, Ste. 220 [X] facsimile no.
Richland, WA 99352 [] Pronto Process & Messenger Service, Inc.
[] hand-delivery by
[] Federal Express

C. Wayne May [] regular mail
3 Rivers Fiduciary Services [] certified mail, RRR no.
1761 Geo. Wash. Way, # 351 [] facsimile no.
Richland, WA 99354 [X] Pronto Process & Messenger Service, Inc.
[] hand-delivery by
[] Email: trfsvs@yahoo.com

Rachel M. Woodard [] regular mail
Powell & Gunter [] certified mail, RRR no.
1025 Jadwin Ave. [X] facsimile no.
Richland, WA 99352 [] 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 6 day of September, 2013.

Kennewick, WA

Signature [Handwritten Signature]

City, state where signed

36

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JOSIE DELVIN
BENTON COUNTY CLERK

JUL 22 2014
FILED *MWS*

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

In re the Guardianship of:

JAMES DONALD CUDMORE,

An Incapacitated Person.

Cause No. 13-4-00260-9

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER REGARDING
CR 11 SANCTIONS

THIS MATTER, having come on for hearing on the Court's order that John C. Bolliger & Bolliger Law Offices appear and show cause why he and his law firm should not be required to pay fees, the Court having considered the submissions by the petitioner Timothy Lamberson, Mr. Bolliger, the arguments of counsel, and the record and pleadings on file, find the following facts and makes the following conclusions of law.

FINDINGS OF FACT

1. James Cudmore, ~~at that point an allegedly incapacitated person,~~ initially hired attorney John C. Bolliger to represent him in the guardianship proceedings after previously hiring Mr. Bolliger to prepare estate planning documents.

2. On July 19, 2013, this Court granted the petition of the Guardian ad Litem to appoint attorney Rachel M. Woodard as Mr. Cudmore's attorney in the guardianship and denied Mr. Bolliger's petition to be appointed attorney for Mr. Cudmore ~~because Mr. Bolliger was going to be a witness in the case.~~

37

didn't fully address

1 3. On July 24, 2013, the Court ~~denied~~ Mr. Bolliger's motion for
2 reconsideration to be appointed Mr. Cudmore's attorney for the guardianship.

3 4. On August 7, 2013, Mr. Bolliger filed a note for motion docket scheduling
4 a hearing for September 6, 2013. ~~Mr. Bolliger knew at the time of this action that his~~
5 ~~petition to be appointed Mr. Cudmore's attorney and his motion for reconsideration had~~
6 ~~been denied.~~

7 ~~5. On August 15, 2013, Ms. Woodard sent a letter signed by Mr. Cudmore to~~
8 ~~Mr. Bolliger requesting that he send a copy of Mr. Cudmore's file to Ms. Woodard. Mr.~~
9 ~~Bolliger refused to provide Ms. Woodard with a copy of Mr. Cudmore's file. On October~~
10 ~~15, 2013, Mr. Bolliger provided Ms. Woodard with a copy of Mr. Cudmore's will after~~
11 ~~being provided with a second written request from Mr. Cudmore.~~

12 6. On August 29, 2013, Mr. Bolliger filed a motion and memorandum seeking
13 to have Mr. Cudmore testify, to strike the appointment of Ms. Woodard as Mr.
14 Cudmore's attorney, or to certify the matter for appeal. ~~Mr. Bolliger knew at the time of~~
15 ~~this action that his petition to be appointed Mr. Cudmore's attorney and his motion for~~
16 ~~reconsideration had been denied. Mr. Bolliger knew that the request to certify for appeal~~
17 ~~had already been denied by the Court.~~

18 7. On September 5, 2013, Mr. Lamberson filed a memorandum opposing the
19 August 29, 2013 motion filed by Mr. Bolliger. Mr. Bolliger was on notice that his
20 August 29, 2013 filing was potentially sanctionable by Mr. Lamberson's opposition
21 memorandum requesting CR 11 sanctions against Mr. Bolliger.

22 8. On September 5, 2013, the Court struck the hearing noted by Mr. Bolliger
23 for September 6, 2013. On September 6, 2013, Mr. Bolliger re-noted a hearing on the
24 same motions for September 13, 2013. ~~Mr. Bolliger knew at the time of this action that~~
25 ~~his petition to be appointed Mr. Cudmore's attorney and his motion for reconsideration~~
26 ~~had been denied. Mr. Bolliger knew that the request to certify for appeal had already been~~
27 ~~denied by the Court.~~

28 9. On September 9, 2013, Mr. Lamberson's attorney filed a declaration
29 seeking to strike the hearing set by Mr. Bolliger. Mr. Bolliger was on notice that his

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1 September 6, 2013 filing was potentially sanctionable by the declaration of Mr.
2 Lamberson's attorney seeking to strike the hearing and also requested fees be imposed
3 against Mr. Bolliger for the filing. ~~The Court struck the hearing in question.~~

4 10. On September 9, 2013, Mr. Bolliger issued subpoena duces tecums to
5 HAPO Community Credit Union and Edward Jones seeking Mr. Cudmore's account
6 records. ~~Mr. Bolliger knew at the time of this action that his petition to be appointed Mr.
Cudmore's attorney and his motion for reconsideration had been denied.~~

7 11. Mr. Bolliger was on notice that his issuance of subpoenas was potentially
8 sanctionable by the declaration of Mr. Lamberson's attorney submitted in support of the
9 motion seeking to quash the subpoenas which requested the Court award terms against
10 Mr. Bolliger for the frivolous issuance of invalid subpoenas.

11 12. On September 20, 2013, ~~The Court quashed the subpoenas issued by Mr.
12 Bolliger as invalid.~~

13 13. Mr. Lamberson's fees ~~reasonably related to the sanctionable conduct of Mr.
14 Bolliger are in the amount of \$3,725.75.~~

15 14. Ms. Woodard's fees ~~reasonably related to the sanctionable conduct of Mr.
16 Bolliger are in the amount of \$3,445.50.~~

17 15. Mr. May's fees ~~reasonably related to the sanctionable conduct of Mr.
18 Bolliger are in the amount of \$2,550.00.~~

19 16. The Court makes no findings or comments as to whether Mr. Bolliger
20 complied with his ethical duties in regard to this litigation.

21 CONCLUSIONS OF LAW

22 1. CR 11 requires that all pleadings, motions and legal memorandums
23 submitted by an attorney or party be: (1) Well-grounded in fact; (2) Warranted by
24 existing law or a good faith argument for the alteration of existing law; and (3) Not be
25 interposed for an improper purpose.

2. A party or attorney who submits a pleading, motion, or legal memorandum
in violation of this rule is subject to an appropriate sanction, including an order to pay the

1 other parties attorney fees. CR 11 allows for sanctions to be imposed directly against an
2 attorney who violates these rules.

3 3. Sanctions against the offending party or attorney must be limited to
4 amounts reasonably expended in responding to the sanctionable filings.

5 4. Mr. Bolliger's note for motion docket filed August 7, 2013 ~~was not~~
6 ~~warranted by law or fact because he was no longer an attorney for a party in the matter.~~

7 ~~5. Mr. Bolliger's refusal to provide a copy of Mr. Cudmore's will to Ms.~~
8 ~~Woodard after receiving a signed letter from Mr. Cudmore on August 15, 2013, was not~~
9 ~~warranted by law or fact.~~

10 6. Mr. Bolliger's August 29, 2013, motion and memorandum seeking to have
11 Mr. Cudmore testify, to strike the appointment of Ms. Woodard as Mr. Cudmore's
12 attorney, and to certify the matter for appeal ~~was not warranted by in law or fact because~~
13 ~~(1) He was no longer an attorney for a party in the matter; and (2) The motion and~~
14 ~~memorandum requested the same relief recently considered and denied by the Court.~~

15 7. Mr. Bolliger's re-note for motion docket filed September 6, 2013, ~~was not~~
16 ~~warranted by fact or law because he was no longer an attorney for a party in the matter.~~

17 8. Mr. Bolliger's issuance of subpoenas duces tecums to Mr. Cudmore's
18 financial institutions ~~was not warranted by law or fact because he was no longer an~~
19 ~~attorney for a party in the matter.~~

20 9. Imposing fees against Mr. Bolliger pursuant to RCW § 11.96A.150 is not
21 warranted because Mr. Bolliger is not a party to the guardianship proceedings.

22 10. Imposing fees against Mr. Bolliger for procedural bad faith under the
23 Court's equitable powers is not warranted because a more specific rule applies to Mr.
24 Bolliger's actions.

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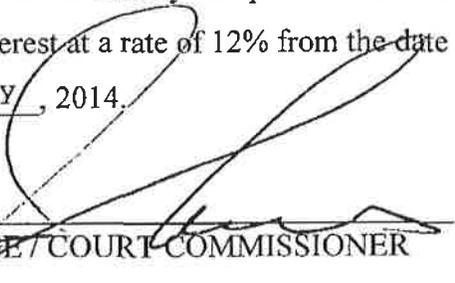
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NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that John C. Bolliger and Bolliger Law Center Inc., P.C. d/b/a Bolliger Law Offices shall pay as CR 11 sanctions \$9,782.75 to Timothy Lamberson, in his capacity as the Guardian of James Donald Cudmore, as reimbursement for attorney fees and GAL fees incurred herein.

IT IS FURTHER ORDERED THAT the money due pursuant to this order shall be reduced to judgment and shall accrue interest at a rate of 12% from the date of this order.

DONE this 22 day of July, 2014.


JUDGE / COURT COMMISSIONER

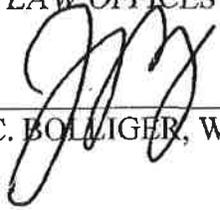
Presented by:

WALKER HEYE MEEHAN & EISINGER, PLLC
Attorneys for Petitioner

By: 
SHEA C. MEEHAN, WSBA #34087

Approved as to form, notice of presentment waived:

BOLLIGER LAW OFFICES

By:  7/18/14
JOHN C. BOLLIGER, WSBA #26378

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