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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 333566

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF : JUDITH HOLCOMB

—
BRIEF of APPELLANT
(Abridged by Order of the Court)

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A. ASSIGNMENTS OF ERROR

Assignment of Error

1. The trial court erred when it initiated ex-parte communications between the Court and Lori Petersen, appellant, and commenced a sua-sponte summary action against the appellants that was not authorized by any statute or court rule, and that resulted in the appealable judgment.
2. ~~The trial court erred when it removed the appellants as guardians in 124 cases, without legal authority, without due process, and pursuant to a General Order that "order only did two things – appointed special master and set bond."~~ (Disallowed by Court of Appeals.)
3. The trial court erred when it entered judgments against the appellants in each of the 124 cases, without notice, without due process, without hearing, and without a right to presentment.

Issues Pertaining to Assignments of Error

1.1 The trial court erred when and acted improperly when Commissioner Rachelle Anderson, considered to be a "judge" under the Applicability section of the Code of Judicial Conduct, personally initiated ex-parte contact with the appellants, wherein she attempted to investigate and order the appellants to comply with her demands in a para-judicial context without the protections and structure of a normal judicial proceeding.

1.2 The trial court erred and acted improperly when Judge Kathleen M. O'Connor personally initiated ex-parte communication with the appellants, with all local guardians ad litem, and with all local certified professional guardians, and personally issued a de facto order wherein she stated, without any authority or due process, that "The Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities fall under the Hallmark Umbrella," and where she informally appointed a special master to "over see the transition process and to determine successor guardians" and requiring the appellants to file a \$100,000 surety bond.

- 1.3 The Washington Courts erred and acted improperly when Judge Lawler, the Chair of the Certified Professional Guardian Board, a Board of the Washington Courts, wrongfully included two Certified Professional Guardianship Agencies, Hallmark Care Services, Inc. d.b.a. Castlemark Guardianship and Trusts CPG # 5128 and Hallmark Care Services Inc., d.b.a. Eagle Guardianship and Professional Services CPG #5132, both of which were in good standing, in the punitive sanction imposed on Lori Petersen.
- 1.4 The trial court erred and acted improperly when Judge Ellen Kalama Clark, based solely on an ex-parte basis for which there was no record, entered a General Order Appointing Special Master in 124 cases, none of which were assigned to her, and the process for which was not authorized under statute nor the Court rules.
- 3.1 The trial court erred when it failed to follow the civil rules, and violated the appellants' Fourteenth Amendment constitutional rights when it entered judgments against the appellants in each of the 124 cases, on an issue that the Court stated explicitly would be "reserved" for future determination, without notice, without hearing, and without following the requirements of the civil rules.

B. FACTS AND STATEMENT OF CASE

The Prelude

On March 13, 2015, the Supreme Court of Washington issued an Order *In Re: Lori A Petersen*, Supreme Court No. 91244-1, in which it affirmed the Certified Professional Guardian Board's ("CPG Board") sanctions against Ms. Petersen of a one year suspension; the Board's recommendation for the remedy of monitoring for 24 months following the end of the suspension; and, the Board's recommendation that Ms. Petersen pay costs to the Board in the amount of \$7500. CP 1880-1881. This Order was a final ruling regarding the issue of sanctions against Lori Petersen by the CPG Board stemming from an opinion issued by the Supreme Court on July 3, 2014 regarding the proportionality of suspension as a sanction against Lori Petersen stemming from her guardianship of D.S. and J.S. CP, 1814-1840.

The Supreme Court Order applied exclusively to Lori Petersen, Certified Professional Guardian number 9713. *See Id.*

Shortly after the Supreme Court's issuance of the Order, Rachelle Anderson, a Spokane County Superior Court Commissioner¹ sent an ex-parte letter to Ms. Petersen, dated March 17, 2015, reminding Ms. Petersen that she was suspended, and demanding that she respond in

¹ Commissioner Anderson was also a member of the Certified Professional Guardian Board at the time of this ex-parte communication.

writing within two days of her "specific plan as to each individual [that she] represent[ed]." CP, 1882. The letter from Commissioner Anderson included a list of guardianship cases not only for Ms. Petersen, but also for Hallmark Care Services, Inc. ("Hallmark").² CP 1883 - 1888. Ms. Petersen, through her attorney, replied to the ex-parte letter, informing Commissioner Anderson that Ms. Petersen was petitioning for a stay of the Supreme Court Order, that was to go into effect seven days after its date, because it did not allow adequate time for her to remove herself as guardian of record for the incapacitated persons ("IPs") that were assigned to her. CP 1881, 107. The reply to Commissioner Anderson stated that succession planning was already in place, and that J. Shoemaker, the current standby guardian for Hallmark, and for all of the IPs assigned to Ms. Petersen, would "petition the Court under RCW 11.88.120 to appoint Hallmark Care Services as the successor guardian" to Ms. Petersen during the term of the suspension. CP 107. The response to Commissioner Anderson also pointed out that "out of the list of cases that [she] forwarded, only those under "Empire" or "Lori Petersen [were] actually

2 Hallmark Care Services, Inc. d.b.a. Castlemark Guardianship and Trusts was a Certified Professional Guardianship Agency, **CPG Number 5128** that was in good standing, with no disciplinary actions to report at the time the Court instituted this action. Hallmark operated under two separate trade names as the result of mergers and acquisitions of other agencies in prior years. Hallmark Care Services, Inc. d.b.a. Eagle Guardianship and Professional Services, **CPG Number 5132**, was also good standing at the time of the action. These entities and agencies were separate and distinct licensees from Ms. Petersen d.b.a. Empire Care Services, **CPG Number 9713**, who was the subject of the one year suspension.

affected by this suspension, and that "the remaining cases where "Eagle" or "Castlemark" were separate licensees, in good standing, who were not subject to the suspension. *Id.*

On March 26, 2015, the Supreme Court of Washington granted a Stay of Suspension to allow Respondent Lori A. Petersen, to work with the Certified Professional Guardian Board to ensure proper representation of her clients to successor certified guardians." CP 1889.

On April 1, 2015, Ms. Petersen received an ex-parte communication from Judge James W. Lawler, on behalf of the Certified Professional Guardianship Board. CP 78-79. That letter requested similar information as the previous letter from Commissioner Anderson, but the letter from Judge Lawler also named the additional Certified Guardianship Agencies which it distinguished by the separate CPG numbers. *Id.* Ms. Petersen responded through counsel stating that Ms. Petersen had resigned as CPG of record for the Hallmark Care Services, Inc. (a certified agency) and was in the process of transferring the IPs for which she was the CPG of record to that agency (where she was no longer an active CPG). CP 82. The response also informed Judge Lawler of the ex-parte actions initiated by the local superior court; it informed him that the Court had frustrated Ms. Petersen's intents to successor any affected IP with as little disruption as possible; and, it requested that the board take action preventing the local

court from taking these unauthorized and unlawful actions. CP 82-84. The CPG Board did nothing to assist Ms. Petersen in transitioning her clients, nor to prevent the local court from taking its actions. Nothing. RP 01/27/16 ,19.

In furtherance of Ms. Petersen's duty to remove herself as a guardian during the term of the suspension, Hallmark Care Services, Inc. held a meeting of the Shareholders on April 1, 2015 to be filed with the Secretary of State, at which it elected K. Sandifer³ as director, and appointed her as an officer of the corporation to be filed with the Secretary of State. CP 105, 110-111. On the same day, Ms. Sandifer was appointed as a proxy for the shareholders of PJLA, Inc. (the holding company of Hallmark). CP 109.⁴ In addition to ensuring a firewall between Ms. Petersen and Hallmark, the certified guardianship agency added an additional professional guardian (CPG), Mr. J. Whiteley, to be in compliance with the requirements of GR 23. CP 112. As of April 1, 2015 Hallmark was in compliance with GR 23 as it had two CPGs, both in good standing. See CP 112, 113.

3 Ms. Sandifer, who was also the owner of a licensed care facility, met the qualifications of Chapter 11.88.020 RCW as required for agency certification as the sole director and officer of the corporation under GR 23(d)(2)(i).

4 Ms. Petersen had no vote in the Certified Guardianship Agency, nor was she a CPG affiliated with the Certified Guardianship Agency as of this point.

The Drumhead

On April 7, 2015, Anna Kemmerer, Coordinator of the Guardianship Monitoring Program in the Spokane Superior Court, emailed copies of the following documents to Hallmark's counsel: CP 75

1. Letter addressed to John Pierce from Judge Kathleen O'Connor stating, in part, that "[t]he Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella.⁵ A special master shall be appointed to oversee the transition process and individual guardians ad litem will determine successor guardians for these incapacitated persons. The Court will require \$100,000 surety bond to secure payment of fees." CP 88.
2. Letter from Judge Kathleen O'Connor to CPGs in Spokane County informing them that "In the upcoming weeks, Guardians ad Litem will be contacting you to take on several cases due to the recent suspension of CPG Lori Petersen, effective April 28, 2015." CP 85
3. Letter from Judge Kathleen O'Connor to Guardians ad Litem in Spokane County informing them that "the Court will assign

5 The Order did NOT include a remand of penalties to the Spokane Superior Court nor did it include any action against Hallmark Care Services, Inc, (hereinafter "Hallmark") nor any "certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella". Quoting Letter from Judge Kathleen M. O'Connor to John Pierce dated April 7, 2015. See CP 1880-1881.

Guardians ad Litem to each [of the 124 cases under Hallmark Care Services, Inc. or Lori Petersen] to investigate the appointment of a guardian, successor guardian and/or standby guardian." CP 86-87.

4. General Order Appointing Special Master stamped under Judge Ellen Kalama Clark. CP 89-95.

The Order Appointing Special Master was stamped as "FILED APR 07 2015", although upon direct inquiry to the Clerk's office on April 9, 2015, no record of any Order was on file for any of the named parties. CP 73.

On, or about April 10, 2015, the trial court entered multiple Order(s) Appointing Guardian(s) Ad Litem. ⁶ Each of these Orders grouped 2 to 6 guardianship cases into a single Order, and set a time half-hour hearing time slot for each of the groups of cases. *Id.*

On April 17, 2015, the Appellants, Lori Petersen, Hallmark Care Services, Inc. d.b.a. Castlemark, and Hallmark Care Services, Inc. d.b.a. Eagle Guardianship and Professional Services, filed a Motion for Reconsideration alleging the following errors: CP 29-31.

1. Lack of Jurisdiction for Superior Court to order or to expand on the disciplinary actions issued by the Certified Professional Guardian

⁶ CP 1027-1030, 124-125, 14-17, 1687-1691, 223-230, 235-246, 259-266, 271-278, 286-288, 297-300, 301-310, 315-330, 3168-3172, 335-338, 343-400, 370-377, 386-499, 393-396, 504-685

Board and affirmed by the Supreme Court;

2. Lack of Legal authority to order the bond/penalty and the appointment of the special master;
3. Lack of Due Process wherein Hallmark Care Services, Inc. was not provided notice, nor given a right to appear or defend against the Order. *Id.*

In the Motion for Reconsideration, the appellants also submitted the following issues for clarification to the Court:

1. To consolidate this issue, affecting one hundred and twenty-five cases, into a single action.
2. To clarify and identify who the presiding judge is in this matter as the letters directing action were signed by Judge Kathleen O'Connor, and the Order was signed using the stamp of Judge Ellen Kalama Clark.
3. To clarify and identify the open court date, time, and the name of the reporter on duty during that proceeding so that a transcript of the proceeding related to the order can be requested by Hallmark. *Id.*

On May 4, 2015, before the Motion for Reconsideration could be heard, the Court, through its Commissioners, commenced the groups of hearings, each in half-hour time slots, in which the appellants were

summarily removed as the guardians of record, absent any proof of wrongdoing, for all 124 IPs assigned to Lori Petersen d.b.a Empire and Hallmark Care Services under its two agency certifications. RP 02/04/16, 6-10. In these hearings, counsel for the Appellants objected at the beginning of each group of hearings to the lack of legal basis, lack of due process, and, the lack fairness of the Court's actions. *Id.* Counsel for Appellants restated these objections for the record at the beginning of each group of hearings for all 124 proceedings. See RP. in general.

After the motion for reconsideration was filed, Judge Kathleen O'Connor personally called the prosecutors office "seeking assistance and counsel". RP 1/27/16, 16-17. Counsel then consulted with the presiding judge, who formally requested representation of the prosecutor's office which has "the duty ... to represent the superior court on all matters. *Id.* On May 8, 2015, the Superior Court, itself, appeared through a Notice of Limited Appearance by the Deputy Prosecutor at Spokane County. CP 143-150. The prosecutor's office agreed with Judge O'Connor that it would would consult directly with her to "talk about strategy and [] recommendations as to the law in preparation for [the Motion for Reconsideration hearing]." RP 1/27/16, 17. Thereafter, the Court, through its counsel, filed its "Memorandum In Support" of the Courts actions which included a declaration by Anastasia Fortson-Kemmer in which the

preliminary ex-parte communications and actions by the Court were first entered into the record by the Court. CP 1775-2146.

After receiving the notice of limited appearance on behalf of the Superior Court itself, counsel for Appellants informed the Court in the subsequent hearings, the next of which was on May 13, 2015, about the attorney appearing on the Court's behalf. RP 02/04/16, 64-65, RP Supplemental, 187-185. At this hearing, counsel for Petersen/Hallmark informed the Court that because the Court's attorney was not present at the hearing, that it would be a possible violation of RPC 4.2 to communicate with a party, here the Superior Court, who was represented by counsel in a matter for which the Appellants' attorney did not have permission from the Court's attorney to do so.⁷ *Id.* The Court stated that the representation by counsel did not apply to these proceedings. *Id.*

As of April 1, 2015 Hallmark was in good standing and in compliance with GR 23. See CP 112, 113. In order for an Agency, like Hallmark, to be certified, all officers must meet the qualifications of Chapter 11.88.020 RCW - which K. Sandifer did. *See Supra*, GR 23(d)(2)(i). And, each agency must have at least two (2) individuals in the agency certified as professional guardians, whose residence or principal place of business is

⁷ Counsel for Appellants also spoke with the WSBA ethics hotline regarding this issue. The ethics hotline consultant was unable to provide any guidance as this issue had never been brought up before.

in Washington State and who are so designated in minutes or a resolution from the Board of Directors. GR 23(d)(2)(i). In this case J. Shoemaker was the standby guardian in all of Hallmark's cases, and J. Whitely was added as a CPG on April 1 to meet the compliance requirements after Ms. Petersen's resignation from Hallmark. See CP 112, 113.

On, or about, April 18, 2015, (the day after the appellants filed the Motion for Reconsideration with the Court) J. Shoemaker received a phone call from Shirley Bondon of the Administrative office of the Courts.⁸ CP 106. In this call Ms. Bondon threatened Ms. Shoemaker that if she continued as a CPG for Hallmark she could lose all of the guardianship cases assigned to her. *Id.* In response to Ms. Bondon's threat/warning, Ms. Shoemaker resigned from Hallmark. *Id.*⁹

On May 15, 2015, after two weeks of hearings and orders already entered by the Court in which Lori Petersen or Hallmark were removed as guardians of IPs, the Court, presided over by Judge Ellen Kalama Clark, heard the Motion for Reconsideration. RP 01/27/16 , 1-37.

In that hearing several issues were brought before the Court. *Id.*

- The Court's authority to appoint a special master for this matter;

8 Ms. Bondon has since resigned from her position as Manager of the Office of Guardianship and Elder Services at the Washington State Administrative Office of the Courts (AOC).

9 Mr. Whitely, the second guardian of Hallmark, received a similar phone call from Ms. Bondon shortly thereafter, the result of which caused him to tender his resignation. While declarations by the guardians, themselves, substantiating these facts are not in the record of proceedings, they are available.

Id. at 9

- The authority and powers of the local Guardianship Monitoring Program, and the source of the enabling rule or statute creating the "agency." *Id.* at 10.
- The identity of the petitioner in the action *Id.* at 16.
- The Court's violation of Petersen's and Hallmark's 14th Amendment rights; *Id.* at 31
- The lack of authority to require a bond; *Id.* at 8. and,
- The lack of due process in general. *Id.*

In the second hearing regarding the Court's ruling on the appellants' Motion for Reconsideration held on 5/18/2015¹⁰, the Court admitted that the Superior Court was, itself, the petitioner and client of counsel in this action. RP 01/27/16, 16. The Court also stated that the General Order Appointing Special Master "was presented to [her] ex parte without a court reporter present so there is no transcript. It was presented to [her] because it was not an order that would have been brought to the court commissioner, even though they handle most of our guardianship hearings, and because Judge O'Connor was out on medical leave." RP 5/18/2015, 5. The Court refused to identify who, in fact, presented the

¹⁰ The Report of Proceedings for this hearing was filed separately, is referenced as RP 5/18/2015, and a copy is attached hereto.

order. *Id.* With regard to the lawfulness of the order, the Court stated that "the order only did two things - appointed special master and set bond." RP 5/18/2015, 2. The Court further went on to claim that the order "does not remove Hallmark from any case nor does it order the appointment of any guardian in any case. *Id.* at 5. This claim is contrary to the actual language in the Order that clearly state the special master was appointed "to oversee the transition to and appointment of successor guardians for incapacitated persons serviced by the said Lori Petersen and the agencies of which she is a designated CPG or standby guardian." CP 73.

But, hearings instituted as a result of the Order Appointing Special Master did, in fact, result in two things: they forcibly removed the appellants as guardians from the cases rightfully assigned to them, and appointed a new guardian for the IP. RP 02/04/15, RP Supplemental.

The result of this hearing on the Motion for Reconsideration was to let the action proceed with the exception of the bond, which the Court, and its counsel admitted was unsubstantiated and unauthorized under the law. *See* RP 5/18/2015.

The Judgment

As stated above, each of the hearings resulted in the removal of Hallmark or Petersen as guardians in each case, and appointed a new guardian for the IP. RP 02/04/15, RP Supplemental. These proceedings continued over the constant objections by counsel for Hallmark and Petersen, as well as the objections of at least one guardian ad litem who found no authority of the Court to take such action. *See Id.* in general, and RP 02/04/15, 55-61. In these specific cases, the Court, at those hearings presided over by Commissioner Grovedahl, ordered the guardian ad litem to appoint a new guardian even where the guardian ad litem made it clear that this was a violation of due process. *Id.*

In all of the cases, the Court stated that "Reimbursement of guardian ad litem fees will continue to be reserved", or some form of that statement. *See Id.* at 72, 78; RP Supplemental at 102.¹¹ Each of the Orders signed by the Commissioner should have the notation that the fees are reserved at the time.¹²

The last "hearing" wherein the appellants were removed as guardians, and new ones were appointed at the Court's direction and discretion, was

11 At one point Ms. Anastasia Fortson-Kemmerer, stated on the record that "Leanne should be the one approving the GAL fees." RP Supplemental at 14. Counsel for appellants is not aware of the identity of this individual.

12 This fact is admittedly presumed since counsel for the Appellants never received a copy of any of the orders of the court.

held on June 4, 2015. RP Supplemental at 61.

Between the dates of June 5 and June 8, 2015, the Court entered money judgments for the fees, the issue of which was "reserved" at each of the hearings that were attended by the appellants. There is no evidence or record of notice, hearings, findings of fact, an opportunity to defend, nor notice of presentment.

Appellants Lori Petersen and Hallmark Care Services, Inc. d.b.a Castlemark d.b.a Eagle Guardianship, filed a Notice of Appeal for their removal as guardians without due process, and for the final judgments.

The Coda

The preceding events detail the acts of the Spokane County Superior Court in its summary proceedings against the appellants, wherein it ignored the statutory requirements, and the process set forth in the CPG rules, regarding the sanctioning and removal of guardians.¹³

After the local Court had forcibly removed the appellants as guardians, it then commenced subsequent "Show Cause" actions in 79 cases to compel the appellants to submit reports for the successor guardians, and entered judgments for contempt in each of these cases.

Appellants appealed these judgments on February 11, 2016. This

¹³ It is of note that the Spokane County Superior Court was the only court in the state to take such actions against the appellants.

secondary appellate action has been stayed by the Court of Appeals pending the results of the present matter that is before this Court.

On December 2, 2016, the appellants filed their Opening Brief, in which they asserted thirty-one assignments of error leading up to the final order that is the subject of this appeal. Amicus curiae, filed a Motion to Strike Appellants' Opening Brief.

A telephonic oral argument was held on January 18, 2017, for which the recording consists of seventeen minutes and three seconds of recorded argument. In this hearing, and in the appellant's response brief to the Amicus's motion, appellants made three arguments:

1. That under the rules of appellate procedure, an amicus does not have standing to file the motion to strike Appellants' Opening Brief because the amicus curiae is not a party, nor does it represent a party. The court answered that, in light of the rules, it "can do anything" that "facilitates its consideration of the case." Recorded Hearing at 9:05.
2. That there is no evidence, legal record, rule, or statute that the "Guardianship Monitoring Program" is an actual legal entity, specifically one that the County Prosecuting Attorney, has a duty or right to represent. The only evidence of its existence is the statement of a judge and a superior court employee. Hearing at

9:05.

3. And, that the issue of appealability is separate from the assignments of error. In the Commissioner's ruling, she equated appealability with assignments of error. See Pg. 22 of Ruling.

Despite the fact that the RAP states that a party's brief "should contain...[a] separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error;" that each specific trial court action (or inaction) the appellant or petitioner claims is erroneous must be included in a separate assignment of error. 10.3(a)(4). WASHINGTON APPELLATE PRACTICE DESKBOOK (Wash. State Bar Assoc. 4th ed. 2016) §14.8(8), pg. 14-24; and that it is clear under the rules, that asserted errors are not just limited to the ruling that gave rise to the right to appeal, as there may be a single judgment, but multiple errors leading up to that judgment. RAPs 2.2, 10.3(a)(4), the appellate court ordered that the asserted errors be disregarded as part of the action.

While the Supreme Court denied review of that ruling, it also stated that "[d]enial of discretionary review at this point does not preclude Hallmark from obtaining later review of the Court of Appelas decision or the issues pertaining to that decision." Ruling pg. 4. Hallmark re-asserts its objections for the record to this Court's ruling requiring the Appellants

to remove asserted errors from its brief.

Appellants' Plea for Relief and Justice

Appellants, Lori Petersen d.b.a Empire Care Services, Hallmark Care Services, Inc. d.b.a. Castlemark Guardianship and Trusts, Hallmark Care Services, Inc. d.b.a. Eagle Guardianship Services request the following relief:

- To reverse all rulings of the Spokane County Superior Court pursuant Order Appointing Special Master;
- To overturn all judgments entered against the Appellants in this action; and,
- To award the appellants the fees and costs incurred as a result of defending and appealing these actions.

C. SUMMARY OF ARGUMENT

This case is about the perceived abuse of powers of the trial court and the Certified Professional Guardianship Board, a component of the Washington Courts. The fact statement, while admittedly long, convoluted, and detailed, presents acts by the Court and its members that the appellants, and I as their counsel, have been unable to find support for, or authorization for under the statutes of the State of Washington, in particular RCW 11.88.120, The Article IV of the Washington State Constitution, the US Constitution, and the various court rules, in particular, GR 23, LSPR 98.20, Guardian Program Rules Regulation 500, CR 2, CR 3, CR 4, CR 54, and CR 58.

The Court, on its own and through its counsel, has argued that the State (presumably through RCW 11.88.120) empowers the Court "to act in any situation where we feel the interest of the incapacitated person are being compromised." RP 02/04/16, 51-52. It was further argued by the Court that "the Tedra Act also empowers [the Court]...on [its] own motion to appoint a guardian ad litem to represent the interests of the incapacitated person" (regardless of the fact that these actions had nothing to do with trusts or estates). *Id.*

Appellants, and I as their counsel, understand that in our system of government, the powers of any arm of government are limited by how

they are defined in the US Constitution, and the law and rules of the State in which that arm resides. This appeal is as much about the question source of the Court's authority to take such actions, as it is about arguing that those actions are contrary to, and in violation of, the statutes of this state, the rules that the Courts have enacted, and the Constitutional rights of the appellants.

I have tried, and ultimately failed, in finding a legal basis or justification to the trial court's assertions and actions:

- Is the Court not subject to its own rules with respect the actions authorized under CR 2, and how those actions should be commenced under CR 3?
- Does the Court have an inherent power to transcend the processes laid out in the court rules and statutes when it deems fit? If so, where is that authority, and is that discretion limited in any way?
- If a judicial officer takes action against a party to an action that is not before her (or even the Court in general in this case), who is the plaintiff/petitioner? Or is there an automatic right to step in as an agent for another party, in this case, the IPs as the Court has argued?
- Does the CJC in any way limit the acts that a judge or commissioner may take on her own? Or is it merely aspirational?

- If an Order does not instruct the Court, in further proceedings to remove a guardian, as the Court itself has alleged, can a commissioner rely on an ex-parte letter issued by a Judge who was not presiding over any of these cases as authority to take summary action against a party?
- If the Court is represented by counsel, does that counsel have to be present in order for the Court to communicate with counsel representing the opposing party?
- How does the Court enter judgment against a party without any process under CR 54 and CR 58?

I have wrestled with these and other questions. And the deeper I dig in to the analysis, the more convoluted the question becomes.

Appellants argue that the simple answer to these questions is that the Court in all circumstances, herein-under, acted improperly, an argument that is strengthened by the fact that every other county superior court in the state that was presented with a similar set of issues, acted in accordance with the statutes, and through a separate guardian ad litem.

There is but one form of action in the State of Washington, and it is known as a "Civil Action". CR 2. That action is commenced by one party serving a complaint on another, or, in the case of guardianships, submitting a complaint to the Court or the CPG Board. CR 3. In this

case, the action would have needed to be initiated either by the CPG board, or one or more of the IPs - not in an ex-parte, unrecorded, notice by a commissioner and/or judge.

Admittedly, the legislature has likely failed the courts of the State of Washington by granting some administrative responsibilities to the courts under guardianship statutes. But, it is incumbent on the courts to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and to avoid impropriety and the appearance of impropriety. See CJC Rule 1.2. Regardless of the nature of the action, a party has the right to be heard and argue before an independent and impartial arbiter. If the arbiter is the one bringing the action, it is impossible to maintain the appearance of impartiality and independence, and it undermines the integrity of the judicial system.

Appellants respectfully ask this Court to restore that integrity, to quash the findings, and determinations of the trial court, to reverse all judgments whether or not they were properly put on the record by the trial court), and to reimburse the appellants for the costs and expenses of defending this action.

D. ARGUMENT

1. *The trial court erred when it initiated ex-parte communications between the Court and Lori Petersen, appellant, and commenced a sua-sponte summary action against the appellants that was not authorized by any statute or court rule, and that resulted in the appealable judgment.*

"A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." CJC 1.1. "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." *Id.* Comment [5]. As part of this duty, "[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, *before that judge's court...*" CJC 2.9(A). The rules also clearly state that "[a] judge shall not investigate facts in a matter pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law." CJC 2.9(C). And, most importantly, "[a] judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." CJC 2.6(A).

In this matter, Commissioner Rachelle Anderson, considered to be a "judge" under the Applicability section of the Code of Judicial Conduct, violated these rules when she personally initiated ex-parte contact with the appellants, wherein she attempted to investigate and order the appellants to comply with her demands in a para-judicial context without the protections and structure of a normal judicial proceeding. Despite the fact that Commissioner Anderson's ex-parte demand was improper, Lori Petersen and Hallmark, through their counsel, responded to the ex-parte letter, noting that the Supreme Court Order, which was to go into effect seven days after its date, did not allow adequate time for Ms. Petersen to remove herself as guardian of record for the incapacitated persons ("IPs") that were assigned to her. CP 1881, 107. The reply to Commissioner Anderson continued by stating that J. Shoemaker, the standby guardian for all of the IPs assigned to Ms. Petersen, would "petition the Court under RCW 11.88.120 to appoint Hallmark Care Services as the successor guardian" to Ms. Petersen during the term of the suspension. CP 107. This information was clearly passed on to Judge Kathleen O'Connor who referenced the appellants' response in her ex-parte communications and de facto "order." CP 88.

Similar to Commissioner Anderson's actions, Judge Kathleen M. O'Connor appears to be in breach of the CJC when she personally initiated

ex-parte contact with the appellants, with all guardians ad litem, and with all local certified professional guardians, and personally issued an "order" wherein she stated, without any authority or regard for due process, that "The Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities fall under the Hallmark Umbrella," and where she informally appointed a special master to "over see the transition process and to determine successor guardians" and requiring the appellants to file a \$100,000 surety bond. CP 88.

These ex-parte communications continued when Judge Lawler, another active Judge, and the Chair of the Certified Professional Guardian Board, a Board of the Washington Courts, sent a letter to appellant, Lori Petersen, when in he wrongfully included two Certified Professional Guardianship Agencies, Hallmark Care Services, Inc. d.b.a. Castlemark Guardianship and Trusts CPG # 5128 and Hallmark Care Services Inc., d.b.a. Eagle Guardianship and Professional Services CPG #5132, both of which were in good standing, in the punitive sanction imposed on Lori Petersen. CP 78-79.

It should be noted, that it is understandably unusual to refer to a judge directly as opposed to the "Court," but in this case, and up to this point, the "Court" was not acting. There was no actual or legal proceeding in the

Court.

These ex-parte communication continued in the trial court, presided over by Judge Ellen Kalama Clark, when the Order Appointing Special Master "was presented to [her] ex parte without a court reporter present so there is no transcript. It was presented to [her] because it was not an order that would have been brought to the court commissioner, even though they handle most of our guardianship hearings, and because Judge O'Connor was out on medical leave." RP 05/18/2015, 5. The Court refused to identify who, in fact, presented the order. *Id.* Only upon the filing of the General Order Appointing Special Master, did the "Court" act - and it did so sua sponte.

These actions, and these errors, were (presumably) the basis for the appealable judgments.¹⁴

Legal Analysis

The Adversary System is the "[b]asic U.S. trial system in which each of the opposing parties has an opportunity to state his or her viewpoint before the Court. Plaintiff argues for defendant's guilt (criminal) or liability (civil). Defense argues for defendant's innocence (criminal) or

¹⁴ There were no additional processes, no other sets of hearings, no other actions from which the judgments could have been based. Because the judgments created and entered ex-parte, and emailed to counsel, it is impossible to know the actual source, basis, or arguments made against the appellants.

against liability (civil)." *Glossary of Legal Terms at*

<http://www.courts.wa.gov/newsinfo/resources/?>

[fa=newsinfo_jury.termguide](#). Stated more simply, it is a procedural

system, in which contesting parties present a case before an independent

decision-maker. BLACK'S LAW DICTIONARY 42 (abridged 7th ed. 2000).

This is contrary to an inquisitorial system which is "[a] system of proof-

taking used in civil law, whereby the judge conducts the trial, determines

what questions to ask, and defines the scope and extent of the inquiry."

Id. pg. 634.

A basic tenet of the adversarial system is that a hearing shall have at least three parties: a party making a claim; a party defending a claim; and, a neutral party hearing the argument, weighing the evidence, and making a legal determination. The Due Process Clause of the U.S. Constitution entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610 (1980). cited by *Tatham v. Rogers*, 170 Wn.App. 76 90 (Div. 3 2012). Parties in the State of Washington are also guaranteed the right to a fair, impartial and neutral hearing. *State v. Bilal*, 77 Wash.App. 720, 722, (Div. 2 1995), *State v. Gamble*, 168 Wn.2d 161, 187 (2010).

Furthermore, the State of Washington has an Appearance of Fairness Doctrine that not only requires a judge to be impartial, it also requires that

the judge appear to be impartial. *State v. Finch*, 137 Wash.2d 792, 808 (1999). Under the Appearance of Fairness Doctrine, it is not necessary to show a decision maker's bias actually affected the outcome, only that it could have. *Buell v. City of Bremerton*, 80 Wn.2d 518, 523 (1972).

The Appearance of Fairness Doctrine mirrors the principals of judicial ethics in the Canons of the Code of Judicial Conduct (the "CJC") that all judges must observe. Under the CJC, "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." CJC Rule 1.2. This canon is restated later in CJC Rule 2.2 wherein it states that "[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."

In these cases, certain members of the trial court disregarded the basic tenets of the adversarial system - and the trial court, in denying the appellants' Motion for Reconsideration, upheld those actions. With respect to guardianship proceedings, the Court, by failing to follow the basic principals of the adversary system as established in common law and American jurisprudence, denied the responding Certified Professional Guardian or Certified Professional Guardianship Agency their due process under the law.

2. *Argument and errors regarding improper removal of appellants as guardians in 124 cases, without legal authority has been removed, over the objection of the appellants, according to the Commissioner's ruling.*

3. *The trial court erred when it entered judgments against the appellants in each of the 124 cases, without any form of due process*

The Washington statutes and the rules governing certified professional guardians provide two parallel processes for the removal and sanctioning of a guardian. See RCW 11.88.120 and Guardianship Program Rules Regulation 500.

For any guardian, a guardianship may be modified, and the guardian removed pursuant to RCW 11.88.120, which states, in part that the Court may modify or terminate a guardianship, or replace a guardian for a "good reason." RCW 11.88.120.

A certified professional guardian may also be removed by the process defined in the disciplinary regulations (DR). Guardianship Program Rules Regulation 500 Disciplinary Regulations (DR). The process of removal pursuant to the DR requires that grievance be filed with the Administrative Office of the Courts.

There is nothing in RCW 11.88 et al that allows to the court to levy sanctions against a guardian for the fees and costs associated with the

removal of the guardian. *See c.f.* RCW 11.88 et al. The duty, power, and jurisdiction to discipline a Certified Professional Guardian is vested in the Certified Professional Guardian Board. GR 23. The Superior Court does not have original jurisdiction in cases and proceedings that have been vested by law exclusively in another court or administrative body. *c.f.* RCW 2.08.010.

The courts, under RCW 11.88 have a role in supervising guardians, limited guardians, and guardians ad litem. *See* RCW 11.88. In 2000, the Supreme Court enacted Supreme Court General Rule 23, creating the Certified Professional Guardian Board ("CPG Board"). Under this rule, the CPG Board is tasked with the administrative and executive duties of processing applications for professional guardians; with promulgating rules governing the standards of practice of guardians; with adopting and implementing training and certification, and continuing education programs; with investigating claims; and, with addressing and adjudicating grievances. GR 23.

The Board may take disciplinary action and impose disciplinary sanctions based on findings that establish a violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance

with duties, standards, and requirements for professional guardians." GR 23(2)(b)(viii). Guardianship Program Rules Regulation 500 et al are commonly referred to as Disciplinary Regulations, or DR. See DR 501. A copy of these rules is appended hereto. DR 502.3 states that a purpose of the Disciplinary Regulations is "[t]o set out the due process protections and other procedures that allow the professional guardian and the public to be protected." The grounds for disciplinary action against a Certified Professional Guardian are listed in DR 503.

In the case of professional guardianship certification, supervision, and discipline, the Washington courts departs their usual judicial role to undertake a quasi-executive role in operating as an administrative agency - the Certified Professional Guardian Board (the "CPG Board"). This comingling of judicial and executive activities unfortunately leads to a lack of clarity and conflict in, and between, the statutes and the Guardianship Program Rules; questions about the breadth of authority and powers of the Court versus the CPG board; and, separation of powers between the courts and the CPG Board to oversee professional guardians. The Administrative Office of the Courts (AOC) is tasked with providing the administrative support to the board. GR 23(c)(8). But, it should be noted that the powers and duties of the AOC as authorized by the Washington legislature do not include providing support for professional guardians in any way. *See*

RCW 2.56.030.

The Guardianship Program Rules provide the procedural framework for an intra-agency adjudicative proceeding. Here, the analysis is regarding whether or not a guardianship proceeding in the Superior Court requires the same due process as is afforded to other parties and proceedings.

In a guardianship matter, like any other legal matter, the due process requirements of a party's right to adversarial proceeding, and to an impartial decision maker, are an immutable and foundational requirement in the Washington Courts and the American legal system.

As stated above, the grounds for disciplinary action against a Certified Professional Guardian or a Certified Guardianship Agency are listed in DR 503. No action under the Disciplinary Rules was commenced against Hallmark, nor any of its active CPG employees. The Agency was in good standing when the local court, with the blessing of the CPG Board, forcibly removed it as guardian for all cases in which it was previously appointed under the laws of the State of Washington.

In the framework of the law as analyzed above, the Court, and certain of its members, violated the due process rights of the appellants in taking the following actions:

The Court, both through its counsel, and by itself in multiple

hearings, alleged wrongdoing and "patterns that are disturbing" in multiple cases by the appellants. See RP 01/27/2015, 21, RP 02/04/2015, 9. The Court, without any evidence, alleged that "without this [ad hoc court-created] process in place, these vulnerable adults and minors would be subject to exploitation, to neglect, and we felt we had no choice. And ---" RP 02/04/2015 8-9. It was pointed out by appellants' counsel that no evidence of these allegations actually exist. *Id.*¹⁵ In other hearings the Court alleged "numerous complaints for Castlemark, Hallmark, Eagle. There are six outstanding complaints right now as we sit in our county, 13 statewide from the CPG Board." RP 02/04/15, 57-58.

None of these cases and complaints alleged by the Court were ever adjudicated by the Court, nor the CPG Board. These allegations were a red herring - a convenient excuse by the actors to engage in these unfounded and unlawful actions.

In furtherance of this drumhead trial, the trial court created its own process, off the record, outside of the law, to remove the appellants as guardians, and to enter money judgments against the appellants. See *Id.* 4-12.

In addition to the local trial court's actions, the CPG Board, through

15 The first case in RP 02/04/2015 clearly represents the objections stated by the appellants, and the trial court's steadfast purpose of removing the appellants as guardians absent any due process whatsoever.

the AOC, took action against the appellants. On, or about April 18, 2015 J. Shoemaker received a call from Shirley Bondon at the Administrative office of the Courts. CP 106. In this call Ms. Bondon threatened Ms. Shoemaker that if she continued as a CPG for Hallmark she could lose all of the guardianship cases assigned to her. *Id.* In response to Ms. Bondon's call, Ms. Shoemaker resigned from Hallmark. *Id.*¹⁶

To convene an inquisitorial hearing as the Court attempted to do in this matter, without an appearing adversarial claimant, and without the perceived benefit of a fair, impartial, and neutral hearing, is contrary to the mission of the courts - to promote a legal system that is based upon the principle that an independent, impartial, and competent judiciary will strive to maintain and enhance confidence in the legal system.

Here, the actions of the Court were unsubstantiated, unexplained, and do not meet any recognizable appearance of fairness.

When pressed to clarify the source of authority for taking these actions, and the identity of the proponent of these actions, the Court stated the following: "Mr. Pierce asks for clarification on a number of other matters, at least some of which seem to be more of a discovery request regarding how this order came about rather than reconsideration of what

¹⁶ Mr. Whitely, the second guardian of Hallmark, received a similar phone call from Ms. Bondon shortly thereafter, the result of which caused him to tender his resignation.

was actually ordered a fact witness and I am uncomfortable with being put in that position." RP 05/18/2015, 3. But, in this case the Court, by its own admission at the time,¹⁷ was the party bringing the action. *Id.* The request for clarification was to better understand certain questions regarding the action:

- Who was the presiding judge?
- Who was the independent, impartial, and neutral party?
- Who was the claimant/plaintiff?
- What legal proceeding precipitated the Order to Appoint Special Master?
- Why were the parties affected by the Order not given notice or a right to appear and defend?
- Why did the Court forgo the statutory process for processing complaints against guardians pursuant to RCW 11.88.090, or recommend the Disciplinary Regulation process for Certified Professional Guardians pursuant to the DR? and,
- What was the legal basis for this action?

But, even if it did "seem to be more of a discovery request," under CR 26 a party to an action has the right to obtain discovery in any matter "whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." CR 26. This issue highlights the impropriety of the Court itself commencing action against a

17 An admission that the Court and its Counsel have since reneged, arguing before this Court that the trial court cannot be a party, and that the actual parties are the incapacitated persons (none of who ever acted) for which the Deputy Prosecutor is representing as Amicus Curiae. It is unclear if the same the duty that the Prosecutor's Office has to represent the superior court on all matters, translates to a duty to represent incapacitated person whose interests would, and should, otherwise be represented by their appointed guardians or guardians ad litem. This assertion does not appear to be supported under RCW 36.27.020.

party.

The Court, through its counsel, has argued that these actions were not adversarial, were not "any sort of discipline," were not "formal proceedings", and were the Court's "necessary exercise. RP 01/27/2015, 26. The Court further argued that its actions were simply "ministerial". *Id.* at 27. Additionally the Court has argued that no 14th amendment rights were violated, because no "property" was at stake. RP 02/04/15, 5; RP 01/27/15, 24. The appellants vehemently disagree with these statements.

The result of these proceedings was that Hallmark Care Services, Inc., an Agency in good standing at the time these actions were commenced, and Lori Petersen, had all of their goodwill and going concern forcibly removed by the Courts, and have money judgments entered against them absent any recognizable process.

The argument that the Court can conduct a non-adversarial, or non-formal administrative proceeding to forcibly enter money judgments, or take property, including goodwill from a person, whether flesh and blood or an entity, is untenable. The Court is NOT an administrative agency; it is not a ministry. It is the judicial arm of the government; the unbiased weigher of facts, and determiner of how the law is applied. See CJC in general, WA Const. Art. IV.

The last "hearing" wherein the appellants were removed as guardians, and new ones were appointed at the Court's direction and discretion, was held on June 4, 2015. RP Supplemental at 61.

Between the dates of about June 5 and June 8, 2015, the Court entered money judgments for the fees, the issue of which was "reserved" at each of the hearings that were attended by the appellants. This was done without hearing, without notice, and without presentment.

In all of the hearings where the appellants were replaced by new guardians by the Court, the Court stated that "Reimbursement of guardian ad litem fees will continue to be reserved", or some form of that statement. See *Id* at 72, 78; RP Supplemental at 102.¹⁸ Each of the Orders signed by the Commissioner should have the notation that the fees are reserved at the time.¹⁹

"A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in rule 58." CR 54(a)(1), "Judgments may be presented at the same time as the findings of fact and conclusions of law under rule 52."

18. At one point Ms. Anastasia Fortson-Kemmerer, stated on the record that "Leanne should be the one approving the GAL fees." RP Supplemental at 14. Counsel for appellants is not aware of the identity of this individual.

19. Counsel for the appellants and the respondents in the action never received copies of any of the orders entered by the court.

CR 54(f)(1). But, "[n]o order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless:

(A) Emergency. An emergency is shown to exist.

(B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.

(C) After verdict, etc. If presentation is made after entry of verdict or findings and while opposing counsel is in open court." CR 54 (f)(2).

In this case, the appellants were not afforded any right to be heard on the issue of the validity of the judgments. Furthermore, the Court failed to follow the rules regarding presentment, under which none of the exceptions to the presentment requirement applied.

As proffered in the preceding section, the trial court, through counsel, argued that these were not adversarial proceedings. RP 01/27/2015, 24. "We don't talk in terms of adversarial proceedings." *Id.* Quoting the Court's counsel. "[W]e're not talking about formal proceedings. We're not talking about any sort of discipline. We're talking about the Court's necessary exercise." *Id.* at 26 Quoting the Court's counsel.

In this non-adversarial, non-formal proceedings Judge O'Connor and the Court attempted to impose a \$100,000 bond requirement on the appellants to cover the costs of removing them as guardians. RP

01/27/2015, 14. And, when that baseless order was reversed in the Motion for Reconsideration, the Court entered 124 judgments against the appellants without any notice of hearing - the judgments that are the basis of this appeal.

The Civil Rules, the laws of the State of Washington, and the rights under the US Constitution are not to be taken capriciously; the Court, like its members, its officers, and every other individual under the jurisdiction of these rules, is obliged to follow the rules. They are not discretionary. And while they may be changed, there is a process that must be followed to do so.

Because the trial court wrongfully initiated ex-parte communications between the Court and Lori Petersen; wrongfully commenced a sua-sponte summary action against the appellants that was not authorized by any statute or court rule; and, failed to provide any semblance of due process for the appellants in these summary proceedings without notice, without hearing, and without following the requirements of the civil rules that resulted in appealable judgments, that the trial court stated explicitly would be "reserved" for future determination, the trial court clearly violated the appellants' Fourteenth Amendment constitutional rights.

Because the Court failed to follow the Civil Rules in these actions, all of the judgments should be overturned and vacated by this Court.

E. CONCLUSION

These matters, as proffered and analyzed above, appear, at first glance, to be unbelievable. They still are to me. But, these are the facts as substantiated by the record. The questions posed to the trial court, and this Court of Appeals by the appellants are not rhetorical. They are not hyperbole. How do these actions and proceedings conform with the State statutes, the court rules, due process, and the judicial system?

This Star Chamber action was commenced by members of the trial court in an ex-parte, off-the-record,²⁰ investigation and de factor order wherein the trial court was directed by one of its own judges to "transition incapacitated persons from Ms. Petersen, and any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella", and to demand a surety bond in the amount of \$100,000 from Ms. Petersen and Hallmark to cover the costs of doing so.

Contrary to the Court's statement, and its counsel's argument, the General Order Appointing Special Master clearly stated that the Special Master, Paul Bastine, was tasked to to oversee the transition to and appointment of successor guardians for incapacitated persons serviced by the said Lori Petersen and the agencies of which she is a designated CPG or standby guardian. The Special Master, whose actions

²⁰ These ex-parte communications would likely not have ever been entered into the record, if not for the Motion for Reconsideration and declaration in support thereof filed by the appellants in the trial court action.

are conspicuously absent from the record, summarily executed the orders initiated by Judge O'Connor and forcibly removed all clients from Lori Petersen and Hallmark.

The actions of the trial court are not in accord with any sanctioned legal process under the statutes of the State of Washington, nor the Washington court rules. Instead, the facts expose these actions for what they appear to be to the appellants - a drumhead trial. A witch hunt and summary justice for a bogeyman who dared to question the CPG Board's sanctions for taking a client to the hospital on a doctor's recommendation, but against the wishes of a family member. See CP, 1814-1840.

The transition process proffered by Lori Petersen and Hallmark not only complied with the terms of the suspension, but also with the statutes and guardianship rules. She resigned as an officer and CPG of record from Hallmark. Ms. Sandifer, who met the qualifications of RCW 11.88.020 took over the positions in the agency as its sole director and officer. J. Shoemaker, the standby guardians for both Lori Petersen and Hallmark, became the guardian of record for Hallmark, and J. Whitely joined Hallmark as its second CPG, meeting the agency compliance requirements of GR 23. Under this scenario, the IPs would have had a seamless transition. K. Sandifer, who had been a case worker for all of the IPs in Hallmark would continue to act as case worker in those cases as

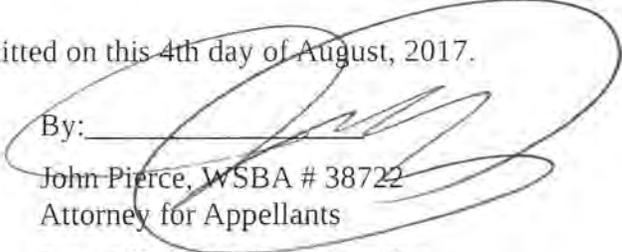
well as Ms. Petersen's cases that would be transferred to Hallmark.

But, this plan was not acceptable to the court nor to the CPG Board. Not because it lacked legitimacy or legality. Not because of any adjudicated claim. Not because there was a question of compliance.

Because the Court and certain members of the Court presumably did not like the plan or the fact that Ms. Petersen could resume her career after the expiration of one-year suspension.

Appellants, Lori Petersen d.b.a Empire Care Services, Hallmark Care Services, Inc. d.b.a. Castlemark Guardianship and Trusts, Hallmark Care Services, Inc. d.b.a. Eagle Guardianship Services request the following relief: To reverse all ruling of the Spokane County Superior Court pursuant Order Appointing Special Master; To overturn all judgments entered against the Appellants in this action; and, To award the appellants the fees and costs incurred as a result of defending and appealing these actions.

Respectfully Submitted on this 4th day of August, 2017.

By: 

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***RCW 11.88.120 Modification or termination of guardianship—
Procedure.***

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous

behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

(4) The administrative office of the courts must develop and prepare[,] in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant.

GR 23. Rule for Certifying Professional Guardians

(a) Purpose and Scope. This rule establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008 and prescribes the conditions of and limitations upon their activities. This rule does not duplicate the statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian.

(b) Jurisdiction. All professional guardians who practice in the state of Washington are subject to these rules and regulations. Jurisdiction shall continue whether or not the professional guardian retains certification under this rule, and regardless of the professional guardian's residence.

(c) Certified Professional Guardian Board.

(1) Establishment.

(i) Membership. The Supreme Court shall appoint a Certified Professional Guardian Board ("Board") of 12 or more members. The Board shall include representatives from the following areas of expertise: professional guardians; attorneys; advocates for incapacitated persons; courts; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships. No more than one-third of the Board membership shall be practicing professional guardians.

(ii) Terms. The term for a member of the Board shall be three years. No member may serve more than three consecutive full three-year terms, not to exceed nine consecutive years, including any unfilled term. Terms shall be established such that one-third shall end each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later.

(iii) Leadership. The Supreme Court shall designate the Chair of the Board. The Board shall designate the Vice-Chair, who shall serve in the absence of or at the request of the Chair.

(iv) Vacancies. Any vacancy occurring in the terms of office of Board members shall be filled for the unexpired

term.

(2) Duties and Powers.

(i) Applications. The Board shall process applications for professional guardian certification under this rule. The Board may delay or deny certification if an applicant fails to provide required basic or supplemental information.

(ii) Standards of Practice. The Board shall adopt and implement policies or regulations setting forth minimum standards of practice which professional guardians shall meet.

(iii) Training Program. The Board shall adopt and implement regulations establishing a professional guardian training program.

(iv) Examination. The Board may adopt and implement regulations governing the preparation and administration of certification examinations.

(v) Recommendation of Certification. The Board may recommend certification to the Supreme Court. The Supreme Court shall review the Board's recommendation and enter an appropriate order.

(vi) Denial of Certification. The Board may deny certification. If the Board denies certification, it shall notify an applicant in writing of the basis for denial of certification and inform the applicant of the appeal process.

(vii) Continuing Education. The Board may adopt and implement regulations for continuing education.

(viii) Grievances and Disciplinary Sanctions. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. The Board may take disciplinary action and impose disciplinary sanctions based on findings that establish a of violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

(ix) Investigation. The Board may investigate to determine whether an applicant for certification meets the certification

requirements established in this rule. The Board may also investigate to determine whether a professional guardian has violated any statute, duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians.

(x) Authority to Conduct Hearings. The Board may adopt regulations pertaining to the orderly conduct of hearings.

a) Subpoenas. The Chair of the Board, Hearing Officer, or a party's attorney shall have the power to issue subpoenas.

b) Orders. The Chair or Hearing Officer may make such pre-hearing or other orders as are necessary for the orderly conduct of any hearing.

c) Enforcement. The Board may refer a Subpoena or order to the Supreme Court for enforcement.

(xi) Disclosure of Records. The Board may adopt regulations pertaining to the disclosure of records in the Board's possession.

(xii) Meetings. The Board shall hold meetings as determined to be necessary by the chair. Meetings of the Board will be open to the public except for executive session, review panel, or disciplinary meetings prior to filing of a disciplinary complaint.

(xiii) Fees. The Board shall establish and collect fees in such amounts as are necessary to support the duties and responsibilities of the Board.

(3) Board Expenses. Board members shall not be compensated for their services. Consistent with the Office of Financial Management rules, Board members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid pursuant to a budget submitted to and approved by the Supreme Court. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray Board expenses.

(4) Agency. Hearing officers are agents of the Board and are accorded rights of such agency.

(5) Immunity from Liability. The Board, its members, or agents, including duly appointed hearing officers, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

(6) Conflict of Interest. A Board member should disqualify

himself or herself from making any decisions in a proceeding in which his or her impartiality might reasonably be questioned, including but not limited to, when the Board member has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.

(7) Leave of Absence. The Board may adopt regulations specifying that a Board member who is the subject of a disciplinary investigation by the Board must take a leave of absence from the Board. A Board member may not continue to serve as a member of the Board if the Board or Supreme Court has imposed a final disciplinary sanction on the Board member.

(8) Administration. The Administrative Office of the Courts (AOC) shall provide administrative support to the Board and may contract with agencies or organizations to carry out the Board's administrative functions.

(d) Certification Requirements. Applicants, Certified Professional Guardians, and Certified Agencies shall comply with the provisions of Chapter 11.88 and 11.92 RCW. In addition, individuals and agencies must meet the following requirements.

(1) Individual Certification. The following requirements apply to applicants and do not apply to currently certified professional guardians, except as stated in subsection (d)(1)(vii). An individual applicant shall:

- (i) Be at least 18 years of age;
- (ii) Be of sound mind;
- (iii) Have no felony or misdemeanor convictions involving moral turpitude;
- (iv) Possess an associate's degree from an accredited institution and at least four full years' experience working in a discipline pertinent to the provision of guardianship services, or a baccalaureate degree from an accredited institution and at least two full years' experience working in a discipline pertinent to the provision of guardianship services, or a Masters, J.D., Ph.D., or equivalent advanced degree from an accredited institution and at least one year experience working in a discipline pertinent to the provision of guardianship services;
- (v) The experience required by this rule is experience in which the applicant has developed skills that are transferable to the provision of guardianship services and must include decision-making or the use of independent

judgment for the benefit of others, not limited to incapacitated persons, in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship services;

(vi) Have completed the mandatory certification training.

(vii) Applicants enrolled in the mandatory certification training on September 12, 2008, and who satisfactorily complete that training, shall meet the certification requirements existing on that date, or the date the applicant submitted a complete application for certification, whichever date is earlier, and not the requirements set forth in this rule.

(2) Agency Certification. Agencies must meet the following additional requirements:

(i) All officers and directors of the corporation must meet the qualifications of Chapter 11.88.020 RCW for guardians;

(ii) Each agency shall have at least two (2) individuals in the agency certified as professional guardians, whose residence or principal place of business is in Washington State and who are so designated in minutes or a resolution from the Board of Directors; and

(iii) Each agency shall file and maintain in every guardianship court file a current designation of each certified professional guardian with final decision-making authority for the incapacitated person or their estate.

(3) Training Program and Examination. Applicants must satisfy the Board's training program and examination requirements.

(4) Insurance Coverage. In addition to the bonding requirements of Chapter 11.88 RCW, applicants must be insured or bonded at all times in such amount as may be determined by the Board and shall notify the Board immediately of cancellation of required coverage.

(5) Financial Responsibility. Applicants must provide proof of ability to respond to damages resulting from acts or omissions in the performance of services as a guardian. Proof of financial responsibility shall be in such form and in such amount as the board may prescribe by regulation.

(6) Application Under Oath. Applicants must execute and file with the Board an approved application under oath.

(7) Application Fees. Applicants must pay fees as the Board may require by regulation.

(8) Disclosure. An applicant for certified professional guardian or certified agency shall disclose upon application:

- (i) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;
 - (ii) A court finding that the applicant has violated its duties as a fiduciary, or committed a felony or any crime involving moral turpitude;
 - (iii) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;
 - (iv) Pending or final licensing or disciplinary board actions or findings of violations;
 - (v) The existence of a judgment against the applicant within the preceding eight years in any civil action;
 - (vi) Whether the applicant has filed for bankruptcy within the last seven years. Disclosure of a bankruptcy filing within the past seven years may require the applicant or guardian to provide a personal credit report from a recognized credit reporting bureau satisfactory to the Board;
 - (vii) The existence of a judgment against the applicant or any corporation, partnership or limited liability corporation for which the applicant was a managing partner, controlling member or majority shareholder within the preceding eight years in any civil action.
- (9) Denial of Certification. The Board may deny certification of an individual or agency based on any of the following criteria:
- (i) Failure to satisfy certification requirements provided in section (d) of this rule;
 - (ii) The existence of a judgment against the applicant arising from the applicant's performance of services as a fiduciary;
 - (iii) A court finding that the applicant has violated its fiduciary duties or committed a felony or any crime involving moral turpitude;
 - (iv) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;
 - (v) Pending or final licensing or disciplinary board actions or findings of violations;
 - (vi) A Board determination based on specific findings that the applicant lacks the requisite moral character or is otherwise unqualified to practice as a professional guardian;
 - (vii) A Board determination based on specific findings that the

applicant's financial responsibility background is unsatisfactory.
(10) Designation/Title. An individual certified under this rule may use the initials "CPG" following the individual's name to indicate status as "Certified Professional Guardian." An agency certified under this rule may indicate that it is a "Certified Professional Guardian Agency" by using the initials "CPGA" after its name. An individual or agency may not use the term "certified professional guardian" or "certified professional guardian agency" as part of a business name.

(e) Guardian Disclosure Requirements.

(1) A Certified Professional Guardian or Certified Agency shall disclose to the Board in writing within 30 days of occurrence:

- (i) The existence of a judgment against the professional guardian arising from the professional guardian's performance of services as a fiduciary;
- (ii) A court finding that the professional guardian violated its fiduciary duties, or committed a felony or any crime involving moral turpitude;
- (iii) Any adjudication of the types specified in RCW 43.43.830, and RCW 43.43.842;
- (iv) Pending licensing or disciplinary actions related to fiduciary responsibilities or final licensing or disciplinary actions resulting in findings of violations;
- (v) Residential or business moves or changes in employment; and
- (vi) Names of Certified Professional Guardians they employ or who leave their employ.

(2) Not later than June 30 of each year, each professional guardian and guardian agency shall complete and submit an annual disclosure statement providing information required by the Board.

(f) Regulations. The Board shall adopt regulations to implement this rule.

(g) Personal Identification Number. The Board shall establish an identification numbering system for professional guardians. The Personal Identification Number shall be included with the professional guardian's signature on documents filed with the court.

(h) Ethics Advisory Opinions.

(1) The Board may issue written ethics advisory opinions to inform and advise Certified Professional Guardians and Certified Agencies of their ethical obligations.

(2) Any Certified Professional Guardian or Certified Agency may request in writing an ethical advisory opinion from the Board. Compliance with an opinion issued by the Board shall be considered as evidence of good faith in any subsequent disciplinary proceeding involving a Certified Professional Guardian or Certified Agency.

(3) The Board shall publish opinions issued pursuant to this rule in electronic or paper format. The identity of the person requesting an opinion is confidential and not public information.

(i) Existing Law Unchanged. This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to, Title 11 RCW.

LSPR 98.20 Estates - Guardianships - Trusts

(a) Hearings

1. If a guardianship/trust case is assigned to a trial judge, all hearings will be set before the assigned judge pursuant to LCR 40.
2. If a guardianship/trust case is not assigned to a trial judge, hearings must be scheduled through the Guardianship Monitoring Program.
3. There will be a weekly guardianship/trust calendar.
4. The first thirty minutes of the guardianship/trust calendar will be reserved for ex-parte matters.
5. The Note for Hearing or Order to Show Cause and documents pertaining to the hearing must be served and filed no later than twelve days prior to the hearing. Any responding documents must be served and filed at least seven days before the hearing. Reply documents must be served and filed at least two days before the hearing. In the event an agreed or uncontested order of continuance is to be entered, parties are required to present the order to the judicial assistant of the assigned judge or the Guardianship Monitoring Program if not assigned.
6. Copies of all documents pertaining to the hearing shall be furnished to the judicial assistant of the assigned judge or to the Guardianship Monitoring Program if not assigned.
7. Hearing time limits. Each party shall be given ten minutes unless additional time is granted by the judge or court commissioner. Requests for additional time shall be made in writing and provided with copies of all documents pertaining to the hearing.
8. Confirming hearings. A party to the proceeding must confirm the matter is ready no later than 12:00 noon, 2 days before the hearing by contacting the assigned judicial assistant of the assigned judge or to the Guardianship Monitoring Program if not assigned.

(b) Pleadings. Parties are required to use those guardianship forms approved by the Spokane County Superior Court for guardianship proceedings.

(c) Presentation of Reports and Care Plans.

- (1) The original of any report, accounting or care plan shall be

filed in the Clerk's Office.

(2) A date-stamped copy of the report, accounting or care plan shall be provided to the Guardianship Monitoring Program together with an original and one copy of a proposed order approving the report, accounting and/or care plan and a stamped, self-addressed envelope. Out-of-county guardians doing business by mail shall send the originals, copies and proposed order to the Guardianship Monitoring Program.

(3) Supporting documentation for accountings shall be provided to the Guardianship Monitoring Program. This shall include original monthly bank statements, canceled checks or substitute images thereof provided by the financial institution, and receipts as appropriate. If the guardian of the estate is a bank or trust/agency company, it may file a computer printed statement of account in lieu of receipts or canceled checks. However, it must still complete the Report and Accounting form.

(d) Final Accounting. When a guardianship of the estate terminates and a guardian files a final account, an order shall be presented to the court setting a hearing on notice pursuant to RCW 11.92.053. The Guardianship Monitoring Program shall audit the final accounting. The order shall be on a form approved by the court. However, if the sole basis for the guardianship is the minority of the incapacitated person, the guardian may settle the account by filing a declaration of completion and serving notice thereof, on forms approved by the court, in accord with RCW 11.88.140. If the guardian of the estate resigns or is removed, but the guardianship continues, the court may in its discretion settle the account as an ex-parte intermediate account or require a hearing on notice.

(e) Withdrawal by Attorney. Should the attorney representing the estate choose to withdraw, the attorney must advise the court of the name and address of the party to be notified, should that be necessary, of a delinquent report, accounting or Periodic Personal Care Plan. The notice to the court shall be filed prior to the effective date of the withdrawal of the attorney.

(f) Show Cause Noncompliance Calendar.

(1) Calendar. The clerk's office shall record all due dates for guardian's reports, and filings as set by the court. This shall

include, but not be limited to an inventory, care plan, designation of standby-guardian, report and accounting or receipt for blocked account. The Guardianship Monitoring Program shall set a monthly Show Cause Noncompliance Calendar for those cases in which guardians have not met the required due dates.

(2) Order to Appear. If reports and filings are not presented timely, an order to appear on the guardianship show cause noncompliance calendar shall be sent to the attorney of record and/or the guardian citing the parties into court. Appearance on the calendar is mandatory. The attorney and/or the guardian shall have at least five days notice, in accordance with CR 6, to appear.

(3) Attendance at Show Cause Noncompliance Calendar Excused. If the guardian files the required document(s) referenced in the show cause noncompliance notice at least five days in advance of the calendar date, they shall be excused from attendance at the calendar.

(4) Sanctions on the Show Cause Noncompliance Calendar. The judicial officer assigned to hear the guardianship show cause noncompliance calendar may impose monetary sanctions, increase the bond, suspend the duties of the guardian, appoint a guardian ad litem, and/or remove the guardian.

(g) Review Hearing/Conference. If after initial review of a guardian's report or other filing, it is found unacceptable by the Court, the guardian shall be notified of the additional information or corrective action required. Additionally, the Court may cite the guardian in to appear at an informal review conference or in-court review hearing. The Court may then take appropriate action to resolve any concerns regarding the guardian's performance of their fiduciary duties.

(h) Deleted.

CERTIFICATE OF SERVICE

I certify a copy of the foregoing Appellants' Brief was served by the method below, and addressed to the following:

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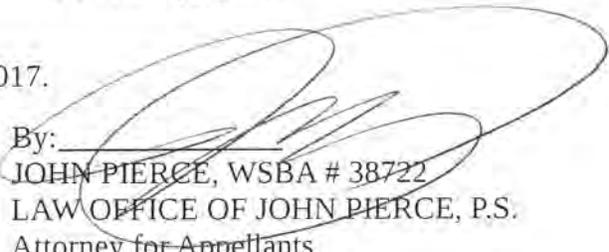
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DATED, this 4th day of August, 2017.

By: 
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