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Court of Appeals No. 355004

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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Estate of MARTHA D. BOOHEISTER,

Deceased.

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ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON FOR PEND ORIELLE COUNTY

*The Honorable Allen C. Nielson, Judge*

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APPELLANT'S OPENING BRIEF

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SPRINKLE LAW FIRM  
S. CHARLES SPRINKLE, WSBA No. 16090  
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Libby, MT 59923  
(406) 293-1071  
Attorney for Appellant

 ORIGINAL

SUPREME COURT NO. 94117-3

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## I. INTRODUCTION

The Petitioner Lorence Graber properly filed a Will Contest Petition in this Cause on August 19, 2016. CP No. 9. The **Petition to Contest the Will was served on the Personal Representative Alisha Krause along with a Note of Hearing** which the Petitioner Lorence Graber contends is the **functional equivalent of a Summons** (but was entitled a Note for Hearing). CP No. 10. The Personal Representative of the Estate, Alisha Krause, entered her Notice of Appearance on September 22, 2016. CP No. 12.

Counsel for the Personal Representative Alisha Krause corresponded with Petitioner Lorence Graber's Counsel on September 13, 2016 and September 20, 2016. Copies of those letters are attached as Exhibit 3 to this Brief. The letters discuss the fact that the Personal Representative intends to "conduct extensive discovery and further depose your Client's agent-in-fact, Debbie Mackinnon... remainder deleted." A letter dated September 20, 2016 discusses the Notice of Appearance and the issue of continuance of the Hearing. Neither letter addresses jurisdiction.

Thereafter, a Motion and Declaration for Trial Continuance was filed by Personal Representative Krause on September 26, 2016. See Exhibit 4 in Appellant's Appendix. A continuance was granted by way of Order of the Superior Court on October 13, 2016. That Order provides, in part, that "the Parties shall note the matter for a trial setting consistent with

L.C.R. 40”. A copy of the Petition to Contest the Will and a copy of the Note for Hearing are included in the Appellant’s Appendix as Exhibits 1 and 2, respectively.

A Motion and Memorandum to Dismiss were filed by Personal Representative Krause on December 7, 2016. CP No. 19.

The Petitioner Lorence Graber filed a Response in Opposition to Krause’s Motion to Dismiss on December 16, 2016.

Although the Petitioner Lorence Graber had complied with the provisions of R.C.W. 11.24.010 by **filing and serving** a copy of the Petition to Contest the Will on the Personal Representative Alisha Krause within the statutory four-month limitation period, and notwithstanding the fact that the **functional equivalent** of a **Summons** (albeit denominated a Notice of Hearing) was also **simultaneously served** in substantial compliance with R.C.W. 11.96A.100, and despite the fact that the Notice of Hearing apparently functioned as a Summons because the Personal Representative Krause responded to the Will Contest Petition, the Superior Court dismissed the Will Contest Petition on January 13, 2017. CP No. 25.

This Appeal followed with filing date of February 9, 2017. CP No. 26.

## I. ASSIGNMENTS OF ERROR

The Trial Court improperly dismissed Lorence Graber's Will Contest Petition because:

- No. 1** The Trial Court failed to address the fact that Lorence Graber had not only filed and served the Petition pursuant to R.C.W. 11.24.010 on Personal Representative Alisha Krause but had also contemporaneously filed and served the functional equivalent of the Summons required under 11.96A.100 which was denominated a Notice of Hearing;
- No. 2** The Trial Court misconstrued or ignored the issues regarding the fact that the Notice of Hearing was the functional equivalent of the Summons and that Lorence Graber had substantially complied with the statutory provisions regarding Will Contests;
- No. 3** Alternatively, the Trial Court failed to consider the fact that a Summons was not required under R.C.W. 11.96A.100(2); and
- No. 4** The Trial Court ignored the concerns had by Lorence Graber that the Personal Representative failed to act with candor towards the tribunal (Trial Court) when obtaining a continuance with consent of the Petitioner Lorence Graber.

Issues Pertaining to Assignments of Error:

**No. 1** Is the primary (and only) issue raised by the Personal Representative Krause's Motion to Dismiss summarized on Page 6 of the Motion the Personal Representative filed on December 5, 2016 which states, in part, as follows:

“Petitioner filed the Will Contest... on August 19, 2016... and failed to issue a summons... As such, Petitioner has exceeded the 90 day time period for filing and serving the Citation or Summons... the four-month statute of limitations has expired for perfecting a Will Contest and the Court has been deprived of personal jurisdiction... this matter should be dismissed.”

Clearly, the only contention had by the Personal Representative Krause is that the Petition to Contest the Will, although served in timely fashion, did not include a document entitled Summons, although it did include a document entitled “Notice of Hearing” which was the functional equivalent of a Summons.

**No. 2** Did the Petitioner Lorence Graber's Petition to Contest the Will and Notice of Hearing (both of which were served on Personal Representative Alisha Krause) constitute substantial compliance with the statutory provisions for a Will Contest such that the Trial Court did, in fact, obtain jurisdiction over the Will Contest, *CP 9, 10*.

**No. 3** Did R.C.W. 11.96A.100(2) excuse the requirement of the service of Summons on Personal Representative Krause.

R.C.W. 11.96A.100(2) provides as follows:

(2) A summons must be served in accordance with this chapter and, where not inconsistent with these rules, the procedural rules of Court, however, if the proceeding is commenced as an action incidental to an existing judicial proceeding relating to the same trust or estate or non probate asset, notice must be provided by Summons only to respect to those parties who were not already parties to the existing judicial proceedings.

Petitioner Lorence Graber would submit that this case falls under that statutory Summons exception dispensing with the need for a Summons altogether. Lorence Graber continues to assert that he did, in fact, file and serve the Will Contest Petition along with a Summons which was titled a Notice of Hearing. As an alternative, Lorence Graber would submit that this Statute works to remove that Summons requirement. This issue was raised during argument on December 29, 2016. See Transcript Page 6, Line 21.

**No. 4** Did the Trial Court fail to properly consider Petitioner's Lorence Graber's claim that his consent to a continuance was not obtained for the purpose of discovery but, rather, was used to delay filing a response which would require

that jurisdictional issues be addressed and the reason given to the Trial Court for discovery was not consistent with candor toward the tribunal.

## II. STATEMENT OF THE CASE

The Petition Contesting the Will (Petition for Invalidity) and a Notice of Hearing were filed by Petitioner Lorence Graber on August 19, 2016. *CP No. 9, 10*. This was within the four-month Statute of Limitations established in R.C.W. 11.24.010 from the date of the filing of the Petition for Probate on April 20, 2016. *CP No. 1*.

The Personal Representative Alisha Krause appeared in response to the Petition and Notice of Hearing on September 22, 2016. *CP No. 12*. The Personal Representative Alisha Krause filed a Motion to Continue on September 28, 2016. *CP No. 13*. The continuance was granted on October 13, 2016. *CP No. 16*.

The Personal Representative Alisha Krause filed a Motion to Dismiss on December 7, 2016. *CP No. 19*. Petitioner Lorence Graber filed a Response to the Motion to Dismiss on December 19, 2016. *CP No. 21*. Hearing on the Motion was heard on December 29, 2016. The Trial Court issued the subject Order under review in this case on January 13, 2017 dismissing Lorence Graber's Petition Contesting the Will. *CP No. 25*.

This Appeal followed by way of Notice on February 9, 2017. *CP No. 26*.

### **III. SUMMARY OF ARGUMENT**

The Petition to Contest the subject Will in this case and the Notice of Hearing, both of which were filed and served on the Personal Representative Alisha Krause constitute substantial compliance with the applicable Statutes and the Trial Court did, in fact, obtain jurisdiction over the Will Contest proceeding.

#### IV. ARGUMENT

##### Standard of Review

The party initiating a civil action bears the burden of showing proper service of process. See *Streeter-Dybdahl v. Huynh*, 157 Wn. App. 408, 412, 236 P.3d 986 (2010). Further, the party asserting that a trial court has personal jurisdiction bears the burden of establishing it after a challenge to that jurisdiction. *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wn. App. 799, 807, 292 P.3d 147 (2013), *aff'd*, 181 Wn.2d 272 (2014). Where the trial court rules on a motion to dismiss under CR 12(b)(2) or (b)(4) based on undisputed facts, we review the resulting order de novo. *Outsource Servs. Mgmt.*, 172 Wn. App. at 807; see *Streeter-Dybdahl*, 157 Wn. App. at 412.

##### Service of Process Under Chapter 11.24 RCW

"First and basic to any litigation is jurisdiction. First and basic to [personal] jurisdiction is service of process." *Scott v. Goldman*, 82 Wn. App. 1, 6, 917 P.2d 131 (1996) (quoting *In re Marriage of Logg*, 74 Wn. App. 781, 786, 875 P.2d 647 (1994)).

Proper service of process has both constitutional and statutory elements. *Scanlan v. Townsend*, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). Turning to the latter, the legislature prescribed two elements for proper service of process in will contests in chapter 11.24 RCW. First, any party contesting a will must personally serve the estate's personal representative with the petition commencing the will contest within 90

days of filing the petition. RCW 11.24.010.<sup>6</sup> Second, the contesting party must provide the notice described in RCW 11.96A.100, meaning a summons using certain language or **substantially equivalent language** (emphasis added).<sup>7</sup> RCW 11.24.020; RCW 11.96A.100.

*Anderson v. Hicklin* (In re Tuttle) (Wash. App., 2015), No. 45917-5-II.

**No. 1, 2 FILING AND SERVING THE WILL CONTEST PETITION  
ALONG WITH THE NOTE OF HEARING CONSTITUTES  
SUBSTANTIAL COMPLIANCE WITH THE RELEVANT  
STATUTES**

R.C.W. 11.24.010 reads as follows:

**Contest of probate or rejection—  
Limitation of action—Issues.**

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so

made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

The Appellant Lorence Graber complied with R.C.W. 11.24.010.

The Will Contest Petition was filed on August 19, 2016. CP No. 9, Appendix Exhibit No. 1.

The Petition was filed within the four-month limitation period as mandated by Statute.

R.C.W. 11.24.020 provides that, “Upon the filing of the petition referred to in, R.C.W. 11.24.010, notice shall be given as provided in R.C.W. 11.96A.100 to the executors... remainder deleted.”

R.C.W. 11.96A.100(1-4) provides, in part, as follows:

**Procedural rules.**

Unless rules of court require or this title provides otherwise, or unless a court orders otherwise:

(1) A judicial proceeding under RCW 11.96A.090 is to be commenced by filing a petition with the court;

(2) A summons must be served in accordance with this chapter and, where not inconsistent with these rules, the procedural rules of court, however, if the proceeding is commenced as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset, notice must be provided by summons only with respect to those parties who were not already parties to the existing judicial proceedings;

(3) The summons need only contain the following language or substantially similar language:

SUPERIOR COURT OF  
WASHINGTON  
FOR (...) COUNTY

IN RE..... )  
                  )            No....  
                  )            Summons  
                  )  
                  )

TO THE RESPONDENT OR OTHER INTERESTED PARTY: A petition has been filed in the superior court of Washington for ( . . ) County. Petitioner's claim is stated in the petition, a copy of which is served upon you with this summons.

In order to defend against or to object to the petition, you must answer the petition by stating your defense or objections in writing, and by serving your answer upon the person signing this summons not later than five days before the date of the hearing on the petition. Your failure to answer within this time limit might result in a default judgment being entered against you without further notice. A default judgment grants the petitioner all that the petitioner seeks under the petition because you have not filed an answer. If you wish to seek the advice of a lawyer, you should do so promptly so that your written answer, if any, may be served on time.

This summons is issued under RCW 11.96A.100(3).

(Signed) .....

Print or Type Name

Dated: .....

Telephone Number: .....

(4) Subject to other applicable statutes and court rules, the clerk of each of the superior courts shall fix the time for any hearing on a matter on application by a party, and no order of the court shall be required to fix the time or to approve the form or content of the notice of a hearing;

... remainder deleted

Lorence Graber complied with the above Statute by serving along with the Will Contest Petition a Note of Hearing that is the functional equivalent of the Summons mentioned in 11.96A.100.

The Personal Representative Alisha Krause continues to cite a case that is inapplicable to this case before the bar. That case is *The Estate of Kordon*, 157 Wn.2d 206, 137 P.2d 16 (2006). The Memorandum filed by the Personal Representative relies on the *Kordon* case, supra, to allege that lack of a summons mandates dismissal.

However, the *Kordon* case does not apply to the facts of this case. In *Kordon*, the Petitioner named Helen Cleveland filed a Will Contest Petition. However, she did not mail a copy of the Petition to the Personal Representative. She also did not serve a Note for Hearing upon the Personal Representative. In this case, the Petitioner has filed and served a Will Contest Petition and a Note for Hearing on the Personal Representative within the statutory time limitations. In the *Kordon* decision, however, the Washington Supreme Court made reference to a case that is virtually identical to the one before the Court herein and supports the sufficiency of the service of the Petition and the Note for Hearing. That case is *Estate of Palucci*, In re, 810 P.2d 970, 61 Wn.App. 412 (WASH.App., 1991). The *Palucci* case is cited with approval in the *Kordon* case, supra, ¶18 wherein the Supreme Court of the State of Washington stated: “substantial compliance with the R.C.W. 11.24.020 Citation requirement within the R.C.W. 11.24.010 Statute of Limitations

may be sufficient.” See *In Re Estate of Palucci*, 61 Wn.App 412, 417, 810 P.2d 970 (1991).

In the *Palucci* case the Petitioner (Sharron Kennedy) had filed a Petition contesting the Will. At a Show Cause Hearing on November 2, 1989, initially, a Commissioner of the Superior Court found that there was “no proof of service or personal service upon... portion deleted... and dismissed the Petition for “want of service of citation and notice of hearing.” The Petitioner (Kennedy) requested a revision of the Commissioner’s Order and provided an Affidavit to confirm that a Notice of the Order Setting the November Hearing was mailed to (other Parties) on October 4, 1989.

The *Palucci* Court, after considering a number of issues involving proof of service by mail, concluded that filing and serving the Petition for Will Contest and the Note for Hearing was sufficient to confer jurisdiction on the Washington Superior Court as stated:

The September 28, 1989 Order was the functional equivalent of a citation. It named the executor and the heirs, and ordered them to appear on a specified date to [810 P.2d 974] answer the original reinstated citation. The service by mail of that order was sufficient to establish personal jurisdiction over the heirs. The untimely filing of the proof of service did not affect the validity of the service. We therefore reverse the commissioner’s order dismissing the Petition and remand the matter for trial on the merits. *Palucci* supra, Page 417-418.

The *Palucci* case also made the following observation:

Finally, we observe that the law favors the resolution of legitimate disputes brought before the Court rather than leaving parties without a remedy. *Vandike*, 54 Wash.App. 231, 772 P.2d 1049; ... remainder deleted... *Palucci supra*, Page 416.

As has been discussed, then, it is apparent that the *Kordon* case is distinguishable due to lack of service of both Petition and Note for Hearing. The *Palucci* case establishes that the service by mail of both the Note for Hearing and the Petition to Contest the Will **confers jurisdiction upon the Washington Supreme Court** and that the **Motion to dismiss should be denied.**

**No. 3** ALTERNATIVELY R.C.W. 11.96A.100(2) EXCUSED

LORENCE GRABER FROM SERVING SUMMONS ON  
ALISHA KRAUSE.

Unpublished opinion, *Anderson v. Hicklin* (In Re Tuttle),

(Wash.App., 2015), Page 11, 12, states as follows:

Accordingly, regardless whether RCW 11.96A.100(2) excused Anderson from serving summonses on Hicklin, the provision did not repeal RCW 11.24.010's requirement of personal service of the petitions on Hicklin as personal representative. *Kordon*, 157 Wn.2d at 212; *see also In re Estate of Harder*, 185 Wn. App. 378, 385, 341 P.3d 342 (2015) (citing *Kordon*, 157 Wn.2d at 212). Anderson did not personally serve Hicklin with copies of the petitions. Therefore, she failed to serve process in accordance with the provisions.

In this case however, Lorence Graber **did** make timely service of the Petition on Alisha Krause as well as a Note of Hearing which, again,

Lorence Graber submits is the functional equivalent of a Summons.

Lorence should be excused from serving the Summons.

**No. 4 LACK OF CANDOR TOWARD THE TRIBUNAL SHOULD  
NOT BE REWARDED**

The Respondent Krause filed a Motion to Continue and listed the purpose in the Declaration of Counsel in Paragraph 3 of said Motion and Declaration as follows:

Following my appearance in this matter I contacted Mr. S. Charles Sprinkle, Counsel for the Contestors to discuss moving the Hearing date and conducting discovery.  
4. Mr. Sprinkle replied indicating he would not strike the Hearing date but would not oppose a Motion for Continuance. Mr. Sprinkle's September 21, 2016 correspondence is attached hereto as Exhibit A. *CP No. 13*

A copy of the Motion to Continue and attached Exhibits is included in the Petitioner/Appellant Lorence Graber's Appendix as Exhibit 4.

The Appellant Lorence Graber submitted this issue to the Trial Court below but it was not addressed in the lower court decision. The issue was framed such that the Respondent Alisha Krause should not be rewarded for misleading the Court.

This happened in conjunction with the Motion and Declaration to Continue filed by Alisha Krause.

Alisha Krause filed a Motion and Declaration for Trial Continuance on September 26, 2016. Included with that Motion was a Declaration of Counsel and a copy of a letter from Counsel for Petitioner Appellant's Opening Brief  
Page 16 of 21

indicating that there was no objection to a continuance. Had the Motion to continue been contested, or if the Hearing had not been continued, the jurisdictional issue of the claimed lack of summons would have been brought to the attention of the Court. However, the P.R. Alisha Krause did not wish opposing Counsel or the Court to be aware of the fact that the Motion and Declaration for Trial Continuance was simply a strategy to stall any further activity on the case until the 11.24.010 ninety-day window for filing the “citation” had closed and the case could be dismissed.

The Respondent failed to inform the Court that the purpose for the Trial continuance was, in effect, to delay long enough such that the Respondent could deprive the Court of jurisdiction by using that jurisdiction to obtain a continuance such that the opposing party was distracted and would not precipitate inquiry about service of process and the like.

Had the Respondent been truthful with the Court (candor toward the tribunal) and informed the Court that the whole purpose for the continuance was just to delay until such time that they could file a Motion to Dismiss for lack of jurisdiction, the problem would have been remedied. However, the Respondent failed to inform the Court of the true reason behind the Motion for Continuance, did not engage in any further discovery, and published communications to opposing counsel suggesting that there was or would be no question about jurisdiction and that venue

and jurisdiction issues had been resolved. See Appendix Exhibit 3, letters from Attorney Jovick and Attorney Mitchell.

In addition, Respondent disregarded the admonition in the letter from the Sprinkle Law Firm which states that consent is given for a continuance subject to the condition that “my clients did not give me authority to strike the hearing altogether.” Appendix Exhibit 3, CP No. 13.

The implicit agreement in that letter and the Motion to Continue was that the time gained by the continuance would not be used to the disadvantage of the Petitioner such that the case was dismissed. One could analogize this to an agreement by opposing counsel not to default the requesting party. Herein, the Respondent requested a hearing, was given the professional courtesy of consent to that continuance, and then used the time charged to the continuance to simply wait out the default of Petitioner by way of a claimed Statute of Limitations violation.

The reason given by Alisha Krause for the continuance was for the purpose of discovery as evidenced by documents sent to the Appellant’s Attorney (Sprinkle Law Firm). A copy of the Motion to Continue and the attachments are included in Appendix Exhibit 4.

That Motion to Continue makes reference to discovery. However, the Personal Representative Alisha Krause did not engage in any further discovery with Appellant Lorence Graber. There were no forms of communication setting up any discovery schedules, depositions, or interrogatories. It was evident on a more likely than not basis that Alisha

Krause was simply waiting for the ninety days to expire under R.C.W. 11.24.010. After the expiration of that period of time, the Motion to Dismiss was promptly filed. The pre-continuance date on the communications to opposing Counsel discussed “extensive discovery” but indicated no concern about jurisdictional issues. The Personal Representative Alisha Krause should not be heard to complain about the lack of a Summons (which she received in the form of a Note of Hearing) due to the fact that it appeared that such notice had been waived. See Appendix Exhibit 3.

This is inconsistent with the spirit and intent of the Rules of Civil Procedure and the consent to continuance extended to the Respondent.

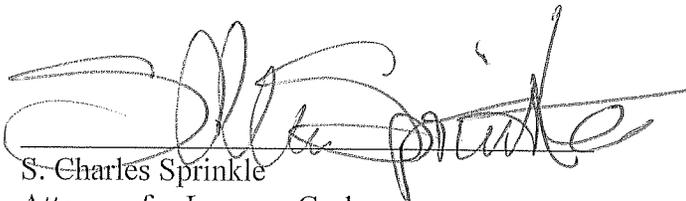
## V. CONCLUSION

In conclusion, the Appellant Lorence Graber would submit to the reviewing Court that the Trial Court gained jurisdiction by Appellant:

- 1) Filing and serving a Will Contest Petition and a Summons (denominated Notice of Hearing) on the Appellee Personal Representative Alisha Krause on December 19, 2016. CP No. 21. This is when the Trial Court obtained jurisdiction;
- 2) Alternatively R.C.W. 11.96A.100(2) waives service of Summons in this particular case due to the fact that a Petition and Notice of Hearing (Summons) were filed and served on Personal Representative Alisha Krause; and
- 3) The Respondent Appellee Alisha Krause failed to address the Court with candor when seeking a continuance and cannot be rewarded for that failure by dismissal of the Will Contest Petition.

Appellant and Petitioner Lorence Graber would respectfully request the Court to deny the subject Petition to Dismiss and make a finding that the lower Trial Court obtained jurisdiction.

DATED this 26<sup>th</sup> day of April, 2017.



S. Charles Sprinkle  
Attorney for Lorence Graber  
WSBA No. 16090

DECLARATION OF MAILING

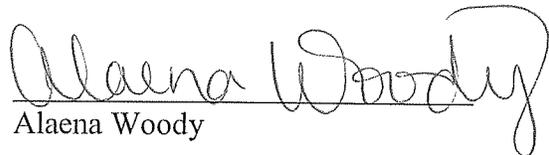
I, Alaena Woody, being first duly sworn on oath deposes and says:

That I am a citizen of the United States of America and the State of Montana, over the age of eighteen years and not a party to this action; that on the 20<sup>th</sup> day of April, 2017, I served the following people with the Appellant's Opening Brief by placing said copies in the United States Mail with postage prepaid, at Libby, Montana and addressed to:

Andrew Mitchell  
Lake City Law  
1710 N. Washington Street, #200  
Spokane, WA 99205

BETTY LAPP  
515 Riverside Park Rd.  
Bismarck, ND 58504-5373

JOAN STAFFORD  
10253 S 4422  
Locust Grove, OK 74352-6091

  
Alaena Woody

SUPREME COURT NO. 94117-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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**Estate of MARTHA D. BOOHEISTER,**

**Deceased.**

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ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON FOR PEND OUELLE COUNTY

*The Honorable Allen C. Nielson, Judge*

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# APPELLANT'S APPENDIX

---

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Attorney for Appellant

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*Motion to Continue (with Exhibits)*

# EXHIBIT "1"

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AUG 19 2016  
SUPERIOR COURT  
PEND OUELLE COUNTY, WA

Attorney for Petitioner

SUPERIOR COURT OF WASHINGTON  
FOR PEND OUELLE COUNTY

Estate of

MARTHA D. BOOHEISTER,

Deceased.

NO. 16-4-00025-1

WILL CONTEST  
(RCW 11.24.010)

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

1. **Decedent.** Decedent died testate on March 15, 2016, was then a resident of Pend Orielle County, Washington, and left property in this state subject to probate.
2. **Will.** Decedent's last Will was signed by Decedent on December 18, 2009 and admitted to probate by this Court's *Order* dated April 25, 2016.
3. **Personal Representative.** In that *Order*, this Court also appointed Alisha Krause as Decedent's Personal Representative.
4. **Person Interested in Will.** I am a "personal interested in [Decedent's] Will" as that phrase is used in RCW 11.24.010 for the following reasons:

Under Washington succession law, R.C.W. 11.04.015, Petitioner Lorence Graber is the sole surviving issue of the Decedent's parents. If the Will is declared invalid Lorence Graber receives the entire Estate.

Debra M. McKinnon (MacKinnon) is Agent and Attorney-in-Fact for Lorence L. Graber under a durable unlimited power of attorney dated January 13, 2014. Exhibit 1.

Another sibling Fred Graber is deceased but had no children.

Lorence's children are Scott L. Graber and Debbie MacKinnon.

There are no other siblings who survived Martha Booheister. Scott and Debbie are the only surviving issue of Lorence Graber.

**5. Objections & Exceptions to Will.** I contest the validity of Decedent's Will because:

- A. Martha Booheister lived in Clark County at Glenwood Nursing Home in Vancouver, WA around July 2009 and was developing senile dementia prior to the date on the Will of the 18<sup>th</sup> day of December, 2009. She was or became incompetent prior to that date.
- B. Martha Booheister's previous Will, drafted in 2000 by Attorney Kimberly S. Brown, was never signed by Martha. That Will leaves all the residual estate to Martha's nieces and nephews which would include Debbie McKinnon and Scott Graber. This is significantly inconsistent with the Will the Court is currently probating which leaves almost the whole estate to P.R. Alisha Krause. Exhibit 2 (unsigned Will), Exhibit 3 (Cover letter from Attorney Brown).
- C. After Martha Booheister moved to the Newport area she did not maintain contact with family. The current estate administrator, Alisha Krause, avoided the family after she moved Martha to Eastern Washington. Martha's medical records are expected to indicate that on the day the Will under probate was signed that Martha was incapacitated and unable to competently execute a Will.
- D. Martha Booheister did not intend to omit her nieces and nephews from her Will and was subject to undue influence, misrepresentation, and/or fraud when she signed the will under probate.
- E. Martha Booheister had signed a General Durable Power of Attorney November 5, 2008 appointing her brother Lorence Graber as Attorney-in-Fact prior to moving to Glenwood Place. Exhibit 4.

WHEREFORE, I request that this Court:

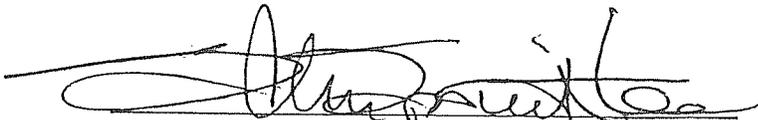
1. Declare Decedent's Will invalid.
2. Order that the Booheister Estate be subject to intestate probate.
3. Appoint an alternate Personal Representative such as Debbie MacKinnon or Scott Graber.

SIGNED

On August 5, 2016.

At Battle Ground, Washington

*Lorence Graber signed by  
Debbie MacKinnon POA*  
Lorence Graber, Petitioner  
By Debbie MacKinnon as Power of Attorney



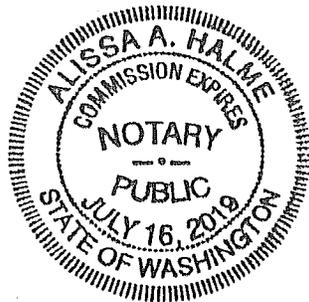
S. Charles Sprinkle, WSBA No. 16090  
Attorney for Petitioner

VERIFICATION

STATE OF WASHINGTON )  
County of Clark ) ss

Debbie MacKinnon, being first duly sworn, deposes and says:

That she has read the forgoing, knows the contents thereof, and that the facts and matters contained therein are true, accurate and complete to the best of her knowledge, information and belief.



*Debbie MacKinnon*  
Debbie MacKinnon

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of August, 2016.



Alissa A. Halme  
Notary Public for the State of Washington

**EXHIBIT "1"**

# Durable Unlimited Power of Attorney

## Effective Immediately

Notice to Adult Signing this Document: This is an important document. Before signing this document, you should know these important facts. By signing this document, you are not giving up any powers or rights to control your finances and property yourself. In addition to your own powers and rights, you are giving another person, your attorney-in-fact, broad powers to handle your finances and property, which may include powers to encumber, sell or otherwise dispose of any real or personal property without advance notice to you or approval by you. THE POWERS GRANTED UNDER THIS DOCUMENT ARE EFFECTIVE IMMEDIATELY AND WILL REMAIN IN EFFECT IF YOU BECOME DISABLED OR INCAPACITATED. This document does not authorize anyone to make medical or other health care decisions for you. If you own complex or special assets such as a business, or if there is anything about this form that you do not understand, you should ask a lawyer to explain this form to you before you sign it. If you wish to change your durable unlimited power of attorney, you must complete a new document and revoke this one. You have the right to revoke the designation of the attorney-in-fact and the right to revoke this entire document at any time and in any manner. You may revoke this document at any time by destroying it, by directing another person to destroy it in your presence or by signing a written and dated statement expressing your intent to revoke this document. If you revoke this document, you should notify your attorney-in-fact and any other person to whom you have given a copy of the form. You also should notify all parties having custody of your assets. These parties have no responsibility to you unless you actually notify them of the revocation. If your attorney-in-fact is your spouse and your marriage is annulled, or you are divorced after signing this document, this document may become invalid. Since some third parties or some transactions may not permit use of this document, it is advisable to check in advance, if possible, for any special requirements that may be imposed. You should sign this form only if the attorney-in-fact you name is reliable, trustworthy and competent to manage your affairs. Generally, you may designate any competent adult as the attorney-in-fact under this document.

I, Lorence L. Graber, of 5015 NE 99 St.,  
City of Vancouver, State of Washington, as Principal,  
do appoint Debra M. Mackinnon, of 22109 NE Risto Rd,  
City of Battle Ground, State of Washington, as my  
attorney-in-fact to act in my name, place and stead in any way which I myself could do, if I were personally present,  
with respect to all the following matters to the extent that I am permitted by law to act through an agent:

I grant my attorney-in-fact the maximum power under law to perform any act on my behalf that I could do personally, including but not limited to, all acts relating to any and all of my financial transactions and/or business affairs including all banking and financial institution transactions, all real estate or personal property transactions, all insurance or annuity transactions, all claims and litigation, and any and all business transactions.

This power of attorney shall become effective immediately and shall remain in full effect upon my disability or incapacitation. This power of attorney grants no power or authority regarding healthcare decisions to my designated attorney-in-fact.

If the attorney-in-fact named above is unable or unwilling to serve, then I appoint

\_\_\_\_\_, of \_\_\_\_\_,  
City of \_\_\_\_\_, State of \_\_\_\_\_, to be my  
successor attorney-in-fact for all purposes hereunder.

I have discussed my health care wishes with the person whom I have herein appointed as my health care representative, I am fully satisfied that the person who I have herein appointed as my health care representative will know my wishes with respect to my health care and I have full faith and confidence in their good judgement.

I further direct that my health care representative shall have full authority to do the following, should I lack the capacity to make such a decision myself, provided however, that this listing shall in no way limit the full authority that I give my health care representative to make health care decisions on my behalf:

- a. to give informed consent to any health care procedure;
- b. to sign any documents necessary to carry out or withhold any health care procedures on my behalf, including any waivers or releases of liabilities required by any health care provider;
- c. to give or withhold consent for any health care or treatment;
- d. to revoke or change any consent previously given or implied by law for any health care treatment;
- e. to arrange for or authorize my placement or removal from any health care facility or institution;
- f. to require that any procedures be discontinued, including the withholding of any medical treatment and/or aid, including the administration of nutrition, hydration, and any other medical procedure deemed necessary to provide me with comfort, care, or to alleviate pain, subject to the conditions earlier provided in this document.
- g. to authorize the administration of pain-relieving drugs, even if they may shorten my life.

I desire that my wishes with respect to all health care matters be carried out through the authority that I have herein provided to my health care representative, despite any contrary wishes, beliefs, or opinions of any members of my family, relatives, or friends.

I have read the Notice that precedes this document. I understand the full importance of this appointment, and I am emotionally and mentally competent to make this appointment of health care representative.

I intend for my attorney-in-fact under this Power of Attorney to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164.

I have read the Notice that precedes this document. I understand the full importance of this appointment. I am over 19 years of age and I am emotionally and mentally competent to make this appointment of health care representative.

Date Jan 13, 2014

*[Handwritten Signature]*

\_\_\_\_\_  
Signature of person granting health care power of attorney and appointing health care representative

**Witness Attestation**

I, Cailey Hartman, the first witness, and I, Jack M Mackinnon, the second witness, sign my name to the foregoing power of attorney being first duly sworn and do declare to the undersigned authority that the principal signs and executes this instrument as his/her power of attorney and that he/she signs it willingly, or willingly directs another to sign for him/her, and that I, in the presence and hearing of the principal, sign this power of attorney as witness to the principal's signing and that to the best of my knowledge the principal is nineteen years of age or older, of sound mind and under no constraint or undue influence. I am not related to the principal, nor am I entitled to any portion of the principal's estate. I also do not provide health care services to the principal and

I am not financially responsible for the principal's health care.

Cathy Hartman  
Signature of First Witness

John M. MacKinnon  
Signature of Second Witness

3007 S 10<sup>th</sup> Way Ridgefield WA 98642  
Address of First Witness

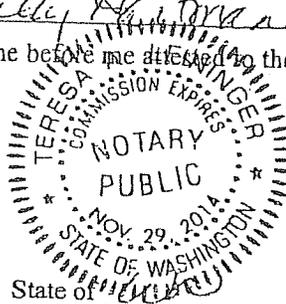
22109 NE Ristord Bg WA 98604  
Address of Second Witness

Notary Acknowledgment

State of WA County of Clark

On Jan 13, 2014, Debra M. MacKinnon came before me personally and, under oath, stated that he/she is the person described in the above document and he/she signed the above document in my presence. The witnesses Cathy Hartman and John M. MacKinnon also came before me attached to the above statement and signed the document in my presence.

Teresa A. Heininger  
Notary Public Signature



Notary Public In and for the County of Clark State of WA  
My commission expires: 11-29-14 Seal

Acceptance of Appointment as Attorney-in-Fact

I accept my appointment as Attorney-in-Fact.

Debra M. MacKinnon  
Signature of Attorney-in-Fact

Debra M. MacKinnon  
Printed Name of Attorney-in-Fact

California residents or persons intending that this document be valid in the State of California should use the following California Notary Acknowledgment form and the following California Witness Acknowledgments:

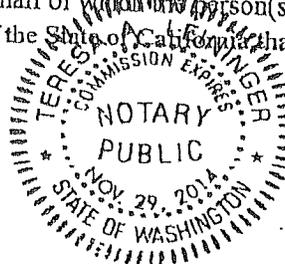
California Notary Acknowledgment

State of California WA  
County of Clark } S.S.

On Jan 13, 2014, before me, Teresa A. Heininger (name and title of notary), personally appeared Debra M. MacKinnon, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Teresa A. Heininger  
Notary Signature

(Seal)



**EXHIBIT "2"**

**DRAFT**

WILL

OF

MARTHA D. BOOHEISTER

I, Martha D. Booheister, of Boring, Oregon, declare that this is my Will and revoke all prior Wills and Codicils.

ARTICLE 1

FAMILY

- 1.1 SPOUSE. I am not married.
- 1.2 DESCENDANTS. I have no descendants.
- 1.3 OTHER FAMILY. I have two brothers: my brother, Lorence L. Graber lives in Vancouver, Washington; and my brother, Fred Graber, lives in Marysville, Washington.

My presently living nieces and nephews are:

X

- Timothy Lapp of Bismarck, North Dakota;
- Connie Klein of Bismarck, North Dakota;
- Debbie MacKinnon of Vancouver, Washington;
- Loren Scott Graber of Vancouver, Washington;
- Lisa Graber of Vancouver, Washington;
- Cindi Getz of Lincoln, North Dakota; and
- Roger Lapp of Bismarck, North Dakota.

References to "my nieces and nephews" are to them and them alone.

ARTICLE 2

LEGAL REPRESENTATIVES

2.1 PERSONAL REPRESENTATIVE. I name my brother, Lorence L. Graber, of Vancouver, Washington as my personal representative. If my brother fails to qualify or ceases to act as my personal representative, I name my nephew, Loren Scott Graber of Vancouver, Washington, as my personal representative.

ARTICLE 3

SPECIFIC GIFTS AND SPECIAL DIRECTIONS

3.1 HUMANE SOCIETY. I give the sum of Ten Thousand Dollars (\$10,000.00) to the Humane Society of Portland, Oregon, or if it is no longer in existence, to a similar suitable charitable organization to be selected by my personal representative.

X  
Handwritten initials and scribbles.

3.2 CASH GIFT. If my sister-in-law, Betty Lapp of Bismark, North Dakota, survives me, I give to my sister-in-law the sum of Ten Thousand Dollars (\$10,000.00). If my sister-in-law does not survive me, this gift shall lapse.

3.3 NO INTEREST ON CASH GIFTS. No interest shall be paid on any gift of money under this article.

3.4 TANGIBLE PERSONAL PROPERTY. I give any interest I have in household goods and furnishings, personal vehicles, recreational equipment, clothing, jewelry, personal effects, and other tangible personal property for personal or household use, together with any insurance on this ~~X~~ property, in substantially equal shares to my surviving nieces and nephew to be divided among them as they agree or, if they do not agree, as my personal representative determines.

#### ARTICLE 4

##### RESIDUE

~~X~~ 4.1 IF ANY NIECES AND NEPHEWS SURVIVES. I give the residue of my estate in equal shares to my nieces and nephews, one share for each niece and nephew who survives me and one share by right of representation for the then surviving descendants of each niece or nephew who does not survive me.

4.2 CONTINGENT BENEFICIARIES. If none of my nieces and nephews survive me, I give the residue of my estate to those persons surviving me who would be entitled to receive my intestate property as determined by Oregon law at the time of my death. For purposes of this section, persons entitled to receive intestate property shall not include those persons described in Oregon Laws 1993, Chapter 598, Section 4.

#### ARTICLE 5

##### PERSONAL REPRESENTATIVE

5.1 NO BOND REQUIRED. No bond shall be required of any individual named in this Will as my personal representative.

5.2 POWERS. I give my personal representative all powers conferred on a personal representative by Oregon law as now existing or later amended, whether or not those powers are exercised in Oregon.

~~X~~ 5.3 TRANSFER TO CUSTODIAN. If any interest passes under this Will to a person under the age of 21, I authorize my personal representative to transfer that interest to a custodian for that person under the Oregon Uniform Transfers to Minors Act.

#### ARTICLE 6

##### GENERAL ADMINISTRATIVE PROVISIONS

6.1 SURVIVORSHIP. A beneficiary under my Will shall be considered to survive me only if the beneficiary is living on the sixtieth day after the date of my death.

6.2 DESCENDANTS. "Descendants" means all naturally born or legally adopted descendants of the person indicated.

6.3 DEATH TAXES. I direct my personal representative to pay out of the residue of my estate, without apportionment, all estate, inheritance, and other death taxes (including interest and penalties) payable by reason of my death on property passing under this Will. If my residue is insufficient to pay all such death taxes, the excess shall be apportioned according to Oregon law. All death taxes on property not passing under this Will shall be apportioned according to Oregon law.

6.4 DEBTS AND EXPENSES. I direct my personal representative to pay out of the residue of my estate my debts as they come due, and my funeral and estate administration expenses.

6.5 ELECTIONS, DECISIONS, AND DISTRIBUTIONS. I authorize my personal representative and my trustee, if any, to make any election or decision available to my estate or trust under federal or state tax laws, to make pro rata or non-pro rata distributions without regard to any differences in tax basis of assets distributed, and to make distributions in cash, in specific property, in undivided interests in property, or partly in cash and partly in property. The good faith decisions of my personal representative or trustee in the exercise of these powers shall be conclusive and binding on all parties, and my personal representative or trustee need not make any adjustments among beneficiaries because of any election, decision, or distribution.

6.6 CHANGE IN CORPORATE FIDUCIARY. If any corporate fiduciary is merged or voluntarily liquidated into or consolidated with another entity having the required fiduciary powers, the successor shall have all powers granted to the original corporate fiduciary.

6.7 GOVERNING LAW. The validity and construction of my Will shall be determined under Oregon law in effect on the date my Will is signed.

6.8 CAPTIONS. The captions are inserted for convenience only. They are not a part of this instrument and do not limit the scope of the section to which each refers.

I have signed this Will on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Martha D. Booheister

On the date of the foregoing Will of Martha D. Booheister, I saw her sign it. Upon her declaration that it was her Will, I signed my name below as a witness.

\_\_\_\_\_ Residing at \_\_\_\_\_, Oregon

\_\_\_\_\_ Residing at \_\_\_\_\_, Oregon

AFFIDAVIT OF ATTESTING WITNESSES

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_ )

\_\_\_\_\_ and \_\_\_\_\_, being sworn, each say:

On the date of the attached Will of Martha D. Booheister, I saw Martha D. Booheister sign it. I then, on that same date, attested the Will by signing my name to it as a witness.

To the best of my knowledge and belief, at that time Martha D. Booheister was of legal age, of sound mind, and not acting under any restraint, undue influence, duress, or fraudulent misrepresentation.

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

**EXHIBIT "3"**



Kimberly S. Brown Attorney at Law  
Post Office Box 1180 Sandy, Oregon 97055 Telephone (503) 668-7494 Facsimile (503) 668-1036

---

March 8, 2000

Martha D. Booheister  
9285 SE 307<sup>th</sup> Avenue  
Boring, Oregon 97009

Re: Will

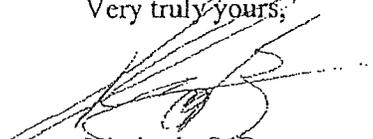
Dear Mrs. Booheister:

Enclosed is a draft of the Will that I have prepared. Please review the Will and let me know of any changes you want made. Once the Will is to your satisfaction, I will schedule an appointment for you to come in and sign it.

Please note that your estate appears to be in excess of \$800,000.00. As such, this estate will be subject to estate taxes on your death. I have advised you that there may be some tax planning you can do to avoid or minimize some estate taxes. You have indicated, however, that you want a "simple" Will and that your beneficiaries should receive whatever remains of your estate after any taxes or other obligations are paid. I have prepared a Will per those instructions.

Call me with any changes that you wish made and to schedule an appointment.

Very truly yours,



Kimberly S. Brown

KSB:tbs  
Enclosures

**EXHIBIT "4"**

**GENERAL DURABLE POWER OF ATTORNEY**  
**(RCW 11.94)**  
 Effective Immediately

I, MARTHA D. BOHEISTER, the undersigned Principal, domiciled and residing in the State of Washington, hereby designate and appoint LORENCE L. GRABER as my Attorney-in-Fact. If for any reason my first designated Attorney-in-Fact is unable to serve, then I designate and appoint DEBRA ~~ADAMS~~ MCKINNON instead. If guardianship of my person or estate becomes necessary or desirable, I nominate the above-named Attorney-in-Fact (or alternate, if necessary) to serve as my guardian.

I direct that this document shall be liberally construed to give effect to its plain meaning. This document and all issues relating to it shall be governed by the laws of the State of Washington.

So long as neither the Attorney-in-Fact nor any person with whom the Attorney-in-Fact was dealing at the time received actual knowledge of revocation or termination of this power of attorney, by death or otherwise, then the Attorney-in-Fact and such persons dealing with the Attorney-in-Fact shall be entitled to rely upon this power of attorney. Any action taken shall therefore be binding upon the Principal, heirs, legatees, devisees, guardians, agents, and personal representatives of the Principal.

1. Effective Date/Duration. This Power of Attorney shall become effective immediately upon execution and, unless revoked or terminated as provided in paragraphs 4 and 5 below, shall continue in effect and shall not be affected by the disability or incompetence of the Principal, including the inability to manage property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication determined in all such cases by my physician in writing; or for confinement, detention by a foreign power, or disappearance as stated in writing by a person with knowledge of any of those said conditions.

2.13 My Attorney-in-Fact shall keep accurate records of my financial affairs, including documentation of all transactions in which the Attorney-in-Fact is involved. My Attorney-in-Fact shall account for all actions taken by my Attorney-in-Fact for or on behalf of me upon request by me, any guardian or limited guardian of my estate or of my person, any subsequently appointed Attorney-in-Fact, any successor Attorney-in-Fact acting in such capacity, any primary or alternate Attorney-in-Fact named herein, and/or to any subsequently appointed personal representative of my estate.

3. Limitation on Powers. RCW 11.94.050 governs the matter of limitations.

4. Revocation. Except during a period of disability or incompetency, this Power of Attorney may be revoked, suspended, or terminated in writing by the Principal by written notice to the designated Attorney-in-Fact or by recording a written instrument of revocation in the office of the Recorder or Auditor of CLARK County, Washington, with a copy thereof given to the Attorney-in-Fact.

5. Termination. This power terminates as follows:

5.1 By Appointment of Guardian. The appointment of a Guardian of the Estate or of the Person of the Principal vests in Guardian the power to revoke, suspend, or terminate this Power of Attorney after court approval of such revocation, suspension, or termination. The appointment of a Guardian of the Person only does not empower that Guardian to revoke, suspend, or terminate this Power of Attorney without prior specific court approval.

5.2 By Death of Principal. The death of the Principal shall terminate this Power of Attorney upon the Attorney-in-Fact receiving actual knowledge or actual notice of such death.

6. Hold Harmless-Indemnity. I make this grant of power with confidence that my Attorney-in-Fact is a person of good judgment who knows me well. The estate of the Principal shall defend, protect, hold harmless, and indemnify the Attorney-in-Fact from all liability for acts or omissions occurring in good faith reliance on this instrument, but not as to any species of fraud upon the Principal for any claim for any damages arising from his or her reliance on this instrument.

7. Interpretation and Savings Clause. The organization of this instrument, its designation of its parts, paragraph numbering, and other like aspects are matters of clerical convenience only and not intended to have any other significance. This instrument shall be read and construed as an integrated whole. Any part that is determined to be null, void, or of no effect shall, however, fail alone, and all remaining provisions shall remain in effect.

SIGNED THIS 5 DAY OF NOVEMBER, 20 08

Signature Martina D. Bocheister

Name Printed: MARTHA D. BOCHEISTER

Domiciled and residing at:  
7808 NE 51<sup>st</sup> St, Apt B211 VANC WA 98662

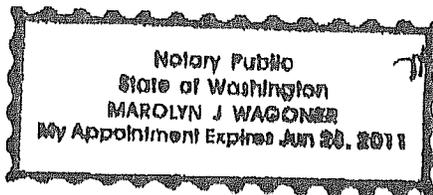
ACKNOWLEDGMENT OF PRINCIPAL

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Clark )

This is to certify that on this 5 day of NOVEMBER, 20 08, before me personally appeared MARTHA BOCHEISTER, known to me to be the individual described in and who executed the foregoing General Durable Power of Attorney, and acknowledged to me that said person signed and sealed the same as the person's free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Marilyn J. Wagoner  
NOTARY PUBLIC in and for the State of  
Washington, residing at 3613 NE 40<sup>th</sup> Ave VANC. WA 98661  
My Commission expires 6-28-2011



**EXHIBIT "2"**

S. Charles Sprinkle, Esq.  
WSBA No. 16090  
SPRINKLE LAW FIRM  
417 Mineral Avenue  
P.O. Box 795  
Libby, MT 59923  
Telephone: (406) 293-6267  
[sprinklelawfirm@frontiernet.net](mailto:sprinklelawfirm@frontiernet.net)

CLERK OF COURT  
AUG 19 2016  
SUPERIOR COURT  
PEND ORELLE COUNTY, WA

Attorney for Petitioner

**SUPERIOR COURT OF WASHINGTON  
FOR PEND ORELLE COUNTY**

Estate of

MARTHA D. BOOHEISTER,

Deceased.

NO. 16-4-00025-1

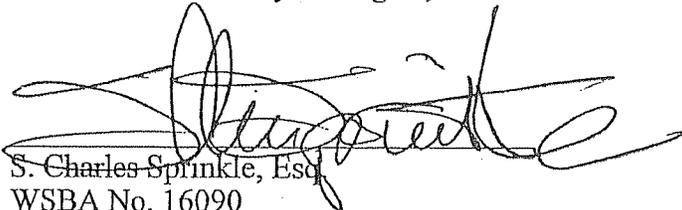
NOTE FOR HEARING

**To: THE CLERK OF COURT AND TO ALISHA KRAUSE & those  
other persons shown on the attachment**

Please take notice that the undersigned will bring on for Hearing the Will Contest which was filed on August 19, 2016 (a copy of which is attached).

The Hearing will be held on Thursday, October 20, 2016, at 1:30 P.M.  
At: Hall of Justice/Superior Court  
Address: 229 S. Garden Ave., Newport, WA 99156

DATED this 18<sup>th</sup> day of August, 2016.



S. Charles Sprinkle, Esq.  
WSBA No. 16090  
Attorney for Lorence Graber  
SPRINKLE LAW FIRM  
417 Mineral Avenue  
P.O. Box 795  
Libby, MT 59923

Note for Hearing  
Page 1 of 2

S. Charles Sprinkle, WSBA No. 16090  
Attorney for Petitioner  
417 Mineral Ave., Suite 3/PO Box 795  
Libby, MT 59923

DECLARATION OF MAILING

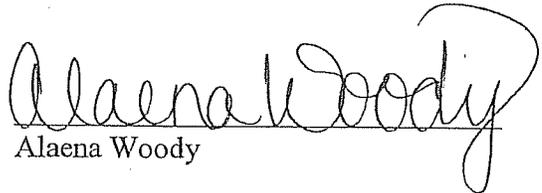
I, Alaena Woody, being first duly sworn on oath deposes and says:

That I am a citizen of the United States of America and the State of Washington, over the age of eighteen years and not a party to this action; that on the 19<sup>th</sup> day of August, 2016, I served the following people with the Will Contest and Note for Hearing by placing said copies in the United States Mail with postage prepaid, at Libby, Montana and addressed to:

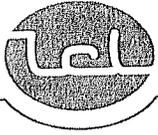
ALISHA KRAUSE  
301 N. Union St. Ste A  
Newport, WA 99156

BETTY LAPP  
515 Riverside Park Rd.  
Bismarck, ND 58504-5373

JOAN STAFFORD  
10253 S 4422  
Locust Grove, OK 74352-6091

  
Alaena Woody

**EXHIBIT “3”**



# LAKE CITY LAW

50 MAIN STREET #201 | PRIEST RIVER, ID 83856  
TEL: 208.448.1300 | FAX: 208.448.2100

Fonda L. Jovick | Partner | fjovick@LCLattorneys.com

September 13, 2016

VIA US MAIL and FAX: 406-293-5539

S. Charles Sprinkle  
Attorney and Counselor at Law  
PO Box 795  
417 Mineral Ave Ste 3  
Libby, MT 59923

*Re: Estate of Martha D. Booheister*

Dear Mr. Sprinkle:

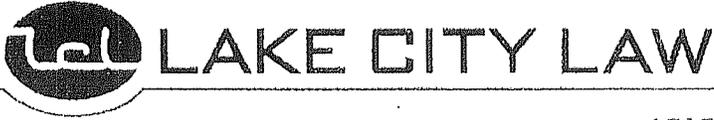
I am in receipt of the Petition to Invalidate Will served upon my client, as Personal Representative of the Estate of Martha D. Booheister. Please forward all communication and pleadings to my attention, as I am the attorney of record for the Estate.

You have scheduled a hearing on this matter for October 20, 2016 at 1:30. On behalf of the Estate, we intend to conduct extensive discovery and further depose your client's agent-in-fact, Debbie MacKinnon. Therefore, please advise if you are willing to continue the hearing scheduled for October 20<sup>th</sup>. Alternatively, I will file a Motion to Continue. Additionally, please provide available dates for Ms. MacKinnon's deposition at my office.

Sincerely,

Fonda Jovick | Partner

Cc:



1710 N. WASHINGTON ST. #200 | SPOKANE, WA 99205  
TEL: 509.315.9890 | FAX: 509.315.9891

Andrew J. Mitchell  
*Attorney at Law*  
[amitchell@LCLattorneys.com](mailto:amitchell@LCLattorneys.com)

September 20, 2016

**Sent Via: facsimile**  
**406.293.5539**

S. Charles Sprinkle  
Attorney at Law  
417 Mineral Avenue, Suite 3  
Libby, Montana 59923

Re: *Estate of Booheister / Will Contest (RCW 11.24.010)*

Dear Mr. Sprinkle:

My office will be appearing on behalf of Ms. Alisha Krause, the Personal Representative of the above-captioned estate. I have enclosed our Notice of Appearance on her behalf, which will be mailed for filing to the Court today.

My understanding is you have agreed to strike your contemplated hearing on the will contest, currently scheduled for October 20, 2016. Please confirm this to avoid the necessity of a motion for continuance. Also, I believe you recently issued a subpoena to a care facility in Newport, Washington. To the extent you have received records, please provide copies to my office

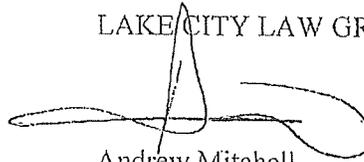
S. Charles Sprinkle  
Attorney at Law

Page 2  
September 20, 2016

Finally, I would suggest we set a time for a phone conference to discuss what discovery needs to be conducted and develop a schedule for the same. Please let my office know of your availability for such a conference. You can contact my office administrator, Darla Arnold [509.315.9890], and she can place a mutually convenient time on my calendar. I look forward to working with you to resolve this matter.

Sincerely,

LAKE CITY LAW GROUP PLLC

A handwritten signature in black ink, appearing to read "Andrew Mitchell", with a large, stylized flourish extending to the right.

Andrew Mitchell

# EXHIBIT "4"

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PEND OREILLE

In the Matter of the Estate of:

NO. 16-4-00025-1

MARTHA D. BOOHEISTER,

MOTION AND DECLARATION FOR  
TRIAL CONTINUANCE

Deceased.

MOTION:

The Personal Representative of the above Estate, Alisha Krause, through her counsel, moves the Court for an Order of Trial Continuance. This Motion is based upon Civil Rule 40 and the Declaration of counsel below. This matter is currently set for trial on October 20, 2016. The Personal Representative is requesting a 160 day continuance.

DATED this 26<sup>th</sup> day of September, 2016.

LAKE CITY LAW GROUP, PLLC

By   
Fonda L. Jovick, WSBA 42120  
Andrew Mitchell, WSBA 30399  
Attorneys for Personal Representative

MOTION AND DECLARATION FOR TRIAL  
CONTINUANCE - 1

LAKE CITY LAW GROUP PLLC  
50 Main Street, Ste 201  
Priest River, Idaho 83856  
PHONE: (208) 448-1300  
FAX: (208) 448-2100

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**DECLARATION OF COUNSEL:**

I, Andrew Mitchell, being first duly sworn to oath and subject to the penalty of perjury under the Laws of the State of Washington, declares as follows:

1. I am counsel for the Personal Representative in the above captioned matter and authorized to make this declaration on her behalf. I am over the age of eighteen and competent to testify to the matters set forth herein. All statements set forth herein are based upon personal knowledge.

2. Counsel for the parties contesting the will of Marth Booheister filed the Will Contest pleadings on or about August 19, 2016 and set the matter for trial on October 20, 2016. Challenges to the will of Martha Booheister are being made on the grounds of fraud and competence.

3. Following my appearance in this matter, I contacted Mr. S Charles Sprinkle, counsel for the Contestors, to discuss moving the hearing date and conducting discovery.

4. Mr. Sprinkle replied indicating he would not strike the hearing date, but would not oppose a motion for continuance. Mr. Sprinkle's September 21, 2016 correspondence is attached hereto as Exhibit A.

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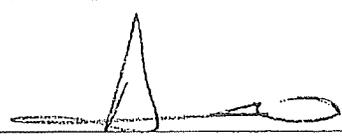
MOTION AND DECLARATION FOR TRIAL  
CONTINUANCE - 2

*LAKE CITY LAW GROUP PLLC  
50 Main Street, Ste 201  
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5. Following the discovery conference, Mr. Sprinkle and I should have a better understanding of the necessary discovery in this matter and will begin conducting the same. A 160 day continuance should permit time to conduct the necessary discovery and re-set the trial date.

DATED this the 26<sup>th</sup> day of September, 2016 at Spokane, Washington.

  
\_\_\_\_\_  
ANDREW MITCHELL

MOTION AND DECLARATION FOR TRIAL  
CONTINUANCE - 3

LAKE CITY LAW GROUP P.L.L.C  
50 Main Street, Ste 201  
Priest River, Idaho 83856  
PHONE: (208) 448-1300  
FAX: (208) 448-2100

# EXHIBIT A

Sprinkle Law Firm, PC

406-293-5539

p.1

# SPRINKLE LAW FIRM

S. Charles Sprinkle, Esq.  
Attorney and Counselor at Law  
*Licensed in Montana and Washington*

P.O. Box 795  
Mineral Plaza Building, Suite 3  
417 Mineral Avenue, Libby, Montana 59923  
PHONE: (406) 293-6267 - FAX: (406) 293-5539  
E-mail: [sprinklelawfirm@frontiernet.net](mailto:sprinklelawfirm@frontiernet.net)

September 21, 2016

Andrew J. Mitchell  
Lake City Law  
1710 N. Washington Street, #200  
Spokane, WA 99205

*Re: Estate of Martha D. Booheister  
Cause No. 16-4-00025-1*

Dear Mr. Mitchell:

Thank you for your letter dated September 20, 2016.

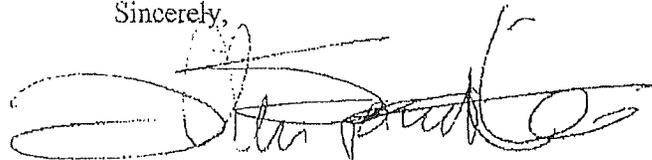
I wish to correct what may have been a miscommunication when I left a message for Ms. Jovick. I had agreed that I would not object to a continuance which request would be filed from your office. My Clients did not give me authority to strike the Hearing altogether.

All documentation and records received as a result of the Subpoenas issued in this case will be forwarded to you upon receipt.

A discovery conference should, as you suggested, be scheduled. I will contact Darla Arnold in the next few days and we can schedule a date for such a discovery conference.

I thank you for your assistance.

Sincerely,



S. CHARLES SPRINKLE

AKW

Cc: Debbie Mackinnon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26<sup>th</sup> day of September, 2016, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

S. Charles Sprinkle	<input type="checkbox"/>	U.S. MAIL
Attorney at Law	<input type="checkbox"/>	HAND DELIVERED
417 Mineral Avenue, Suite 3	<input type="checkbox"/>	OVERNIGHT MAIL
P.O. Box 795	<input checked="" type="checkbox"/>	TELECOPY (FAX)
Libby, Montana 59923	<input type="checkbox"/>	EMAIL
406.293.5539 (fax)		

Betty Lapp	<input checked="" type="checkbox"/>	U.S. MAIL
515 Riverside Park Road	<input type="checkbox"/>	HAND DELIVERED
Bismarck, North Dakota 58504-5373	<input type="checkbox"/>	OVERNIGHT MAIL
	<input type="checkbox"/>	TELECOPY (FAX)
	<input type="checkbox"/>	EMAIL

Joan Stafford	<input checked="" type="checkbox"/>	U.S. MAIL
10253 South 4422	<input type="checkbox"/>	HAND DELIVERED
Locust Grove, Oklahoma 74352-6091	<input type="checkbox"/>	OVERNIGHT MAIL
	<input type="checkbox"/>	TELECOPY (FAX)
	<input type="checkbox"/>	EMAIL

*Darla Arnold*  
Darla Arnold

MOTION AND DECLARATION FOR TRIAL  
CONTINUANCE - 4

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PEND OREILLE**

In the Matter of the Estate of:  
  
MARTHA D. BOOHEISTER,  
  
Deceased.

NO. 16-4-00025-1  
  
NOTE FOR HEARING  
  
RE TRIAL CONTINUANCE

**TO: CLERK OF THE COURT; and**

**TO: LORENCE GRABER, PETITIONER and their attorney S. CHARLES**

**SPRINKLE**

**NOTICE IS HEREBY GIVEN** that the Motion for Trial Continuance filed by Personal Representative, Alisha Krause, shall be heard on Thursday, October 13, 2016 at the hour of 1:30 p.m., or as soon thereafter as can be heard, at the Pend Oreille County Superior Court, 229 S. Garden Ave., Newport, Washington.

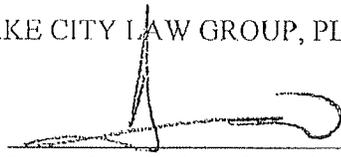
NOTE FOR HEARING - I

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DATED this 26<sup>th</sup> day of September, 2016.

LAKE CITY LAW GROUP, PLLC

By 

Fonda L. Jovick, WSBA 42120  
Andrew Mitchell, WSBA 30399  
Attorneys for Personal Representative

NOTE FOR HEARING - 2

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Darla Arnold  
Darla Arnold

NOTE FOR HEARING - 3

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