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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 356531

**COURT OF APPEALS, DIVISION III
IN AND FOR THE STATE OF WASHINGTON**

In the Matter of the
GUARDIANSHIP OF ANNA MAY BLACK

LORI SORENSEN, GUARDIAN OF THE PERSON

Appellant,

v.

JAMES P. SPURGETIS, Trustee of the Second Amended and Restated
Living Trust of JACK P. BLACK and ANNA MAY BLACK;
RICHARD W. PEREDNIA, Guardian Ad Litem Under RCW 4.08.060
for ANNA MAY BLACK;
DEBORAH A. BLACK, Daughter of ANNA MAY BLACK; and
JOHN BLACK, Son of ANNA MAY BLACK

Respondents.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This matter involves the determination of whether a guardian is required to obtain Court approval prior to retaining an attorney to represent the guardian in carrying out their duties. Based on the statutory law governing guardianships, the plain language of the relevant statutes does not require a guardian to obtain court approval to retain an attorney to represent a guardian who has been duly appointed.

II. ASSIGNMENT OF ERROR AND STATEMENT OF ISSUES

A. Assignments of Error.

1. The trial court erred in finding that RCW 11.88.045(2) requires a guardian to obtain court approval of legal representation prior to the attorney providing legal services to the guardian.

2. The trial court erred in finding that RCW 11.88.045(2) requires a guardian to obtain court approval of legal representation prior to awarding attorney fees for the legal services provided to the guardian.

3. The trial court erred in finding that the due process rights of the trustee and beneficiaries of a trust were violated.

B. Issues Pertaining to Assignments of Error.

1. Whether RCW 11.88.045(2) requires a guardian to obtain court approval of legal representation prior to the attorney providing legal services to the guardian?

2. Whether attorney fees incurred by a guardian are barred from being awarded if a guardian does not obtain prior court approval of the representation of the guardian?

3. Whether RCW 11.92.180 is the appropriate statute that should be applied in determining whether attorney fees incurred by a guardian should be reviewed and approved by the court?

4. Whether the due process rights of the trustee and beneficiaries of a trust were violated when the guardian requested that the guardian's attorney fees be awarded when the guardian filed the annual report?

III. FACTUAL BACKGROUND

The factual background in this guardianship proceeding is convoluted and complex. However, this appeal narrowly relates to the retention of the law firm of Randall|Danskin, P.S. ("RD") by Lori Sorensen as the Guardian of the Person of Anna May Black ("Guardian") to assist her in discharging her duties.

The Guardian was appointed on May 22, 2015. CP 626. Following the Guardian's appointment, she filed an Initial Personal Care Plan on August 21, 2015. CP 286. The Court approved the Initial Personal Care Plan on September 18, 2015. CP 297. Due to difficulties the Guardian was having in the implementation of the Initial Personal Care Plan as well as Anna May being a named party in causes of action initiated following the Guardian's appointment, the Guardian retained RD in October 2015 to provide legal services to her in this matter. CP 253.

When RD was retained by the Guardian, a letter was sent to attorneys for Ms. Deborah A. Black and Mr. Lee Nordstrom the Co-Trustees under the Jack Black and Anna May Black Trust for an accounting of the Trust pursuant to RCW 11.106 and an accounting for the time period Ms. Deborah A. Black acted as the Attorney-in-Fact for Anna May Black pursuant to RCW 11.94. CP 91. On December 15, 2015, Ms. Lisa Malpass of Winton & Cashatt, P.S. filed a Request for Special Notice of Proceedings on behalf of Ms. Deborah A. Black as the daughter of Anna May Black. CP 78-79. On February 2, 2016, Ms. Malpass responded to the Guardian's request for an accounting indicating that the Guardian had no right to any accountings. CP 75-77.

Following the Guardian's appointment, Anna May's children instituted various actions in which she was an interested party. CP 664-

685. When the Guardian determined that Anna May's interests were not being represented in these other proceedings, the Guardian brought a Motion to Modify the Guardianship to allow her to represent Anna May's interests in these proceedings. CP 643-647. The Court denied this Motion and appointed Mr. Richard Perednia as the Guardian Ad Litem under 4.08.060 to represent Anna May's interests. CP 717-719.

A mediation was scheduled for April 22, 2016. CP 81. Mr. Perednia requested that the Guardian and her attorney Mr. William Buckholdt from RD attend the mediation. CP 236. The Guardian requested that Mr. Buckholdt attend the mediation to represent her at the mediation. CP 165. In anticipation of the mediation, the Guardian submitted a pre-mediation letter outlining several issues that needed to be addressed at the mediation. CP 188-193. As a result of the mediation, the parties agreed to appoint the Guardian as the Representative Payee of Anna May's social security benefits as well as other issues relating to the residence and care of Anna May. CP 216.

On August 23, 2016, the Guardian filed her initial Annual Report requesting approval of the actions she had taken as Guardian for the prior reporting year (May 22, 2015 through May 22, 2016) as well as requesting approval of all guardian fees and attorney fees associated with the administration of the guardianship during the reporting year. CP 1-15. At

the same time, the Guardian also filed a Periodic Personal Care Plan. CP 16-17. The Trustee of the Trust filed an Objection to Motion to Approve (1) Guardian's Report, Accounting, Proposed Budget and (2) Periodic Personal Care Plan. CP 49-71. Additionally, Mr. Perednia filed an Objection of Guardian Ad Litem For Anna May Black to Award of Attorney's Fees and Guardianship Fees. CP 239-241. Following several hearings, Commissioner Reis issued a letter ruling on December 7, 2016 denying the attorney fees. CP 474-476. In a supplemental letter ruling dated January 4, 2017, Commissioner Reis determined that the Guardian's fees were payable in full. CP 477. An order incorporating these rulings was entered on February 10, 2017. CP 478-480.

The Guardian filed a Motion to Revise the Commissioner's Ruling on February 21, 2017. CP 481-482. The hearing on the Motion to Revise was held before Judge Knodell on March 24, 2017. RP 6-72. On June 21, 2017, Judge Knodell issued a letter ruling denying the attorney fees. CP 498-501. In particular, Judge Knodell found that RCW 11.88.045(2) requires a guardian to petition the Court for approval prior to retaining an attorney. CP 500. Moreover, Judge Knodell issued a supplemental letter ruling on August 25, 2017. CP 554-556. These decisions were incorporated into an Order of the Court on September 22, 2017. CP 610-623.

On August 21, 2017, the Guardian filed her second Annual Report requesting approval of the actions she had taken as Guardian for the prior reporting year (May 22, 2016 through May 22, 2017) as well as requesting approval of all guardian fees and attorney fees associated with the administration of the guardianship during the reporting year. CP 516-523. Again, the Trustee and the Guardian Ad Litem under RCW 4.08.060 filed objections to the award of attorney fees. CP 572-582 and 557-559. Moreover, Ms. Deborah A. Black filed an objection to the approval of the Annual Report. CP 560-571. On September 22, 2017, the Court entered an Order approving the Guardian's Annual Report, but denying any attorney fees for the same reasons that were enumerated in Judge Knodell's previous letter ruling. CP 606-609.

IV. ARGUMENT

This case involves the interpretation of RCW 11.88.045(2) and RCW 11.92.180 in relation to a court approving the attorney fees incurred by a guardian in discharging their duties. Since RCW 11.88.045(2) only requires court approval of attorneys directly representing persons adjudicated to be incapacitated, a guardian does not need to petition the court to appoint an attorney to represent the guardian in discharging their duties as guardian. In particular, RCW 11.92.180 is the appropriate statute governing a guardian's retention of an attorney and the approval of the

attorney fees incurred by the guardian. Pursuant to the plain language of RCW 11.92.180 a guardian may request the approval of attorney fees after the attorney has performed services for the guardian.

A. The Rules of Statutory Construction are Well-Established and are Reviewed By the Court of Appeals Under a *de novo* Standard of Review.

Statutes are construed in accordance with well settled principles. The purpose of statutory construction is to give effect to the meaning of legislation. *Roberts v. Johnson*, 137 Wash.2d 84, 91, 969 P.2d 446 (1999). Statutes that are clear and unambiguous do not need interpretation. *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003). “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Whatcom County v. City of Bellingham*, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996). Construction of a statute is a question of law which an appellate court reviews *de novo*. *Cosmopolitan Eng'g Group, Inc. v. Ondeo Degremont, Inc.*, 159 Wash.2d 292, 298, 149 P.3d 666 (2006).

B. An Attorney Representing a Guardian in Discharging Their Duties Does Not Require Prior Court Approval As In the Case of an Attorney Directly Representing a Person Adjudicated To Be Incapacitated.

In outlining the role of the Court in construing a statute, the Court in *State v. LaPointe*, 1 Wn.App.2d 261, 268-9, 404 P.3d 610, 615 (Div. 1 2017) states:

When interpreting a statute, our fundamental goal is to ascertain and carry out the intent of the legislature. *State v. Armendariz*, 160 Wash.2d 106, 110, 156 P.3d 201 (2007). We seek to determine legislative intent solely from the plain language of the statute. *State v. Evans*, 177 Wash.2d 186, 192, 298 P.3d 724 (2013). “The ‘plain meaning’ of a statutory provision is to be discerned from the ordinary meaning of the language at issue.” *State v. Jacobs*, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). We derive legislative intent from the plain language of the statute by “considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.” *Evans*, 177 Wash.2d at 192, 298 P.3d 724. “[W]e do not analyze individual subsections in isolation from the other sections of the statute when doing so would undermine the overall statutory purpose.” *State v. Reis*, 183 Wash.2d 197, 209, 351 P.3d 127 (2015). We must also interpret and construe a statute to harmonize and give effect to the language used in the statute with no portion rendered meaningless or superfluous and assume the legislature means exactly what it says. *State v. Peterson*, 174 Wash.App. 828, 856, 301 P.3d 1060 (2013); *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003); *State v. Delgado*, 148 Wash.2d 723, 727, 63 P.3d 792 (2003).

As a result, in determining the plain language of RCW 11.88.045(2), the Court should review the ordinary meaning of the language in the statute. Additionally, the plain language of RCW 11.88.045(2) can be derived from the context in which this statute exists. Moreover, the Court should harmonize and give effect to all of the provisions of RCW 11.88 and 11.92 so that no provision of RCW 11.88.045(2) and RCW 11.92.180 are rendered meaningless or superfluous.

1. The plain language of RCW 11.88.045(2) states that it only applies to the direct legal representation of a person adjudicated to be incapacitated and does not apply to an attorney representing the guardian of the person adjudicated to be incapacitated.

The requirement of an attorney to obtain prior court approval before commencing any engagement with a person who is adjudicated to be incapacitated is set forth in RCW 11.88.045(2) which states:

During the pendency of any guardianship, any attorney purporting to represent a person . . . adjudicated to be incapacitated shall petition to be appointed to represent the . . . incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

The trial court incorrectly interpreted this statute to mean that the description of an individual “adjudicated to be incapacitated” included the guardian of such a person. However, the plain language of the statute clearly states that the direct representation of the person that was actually adjudicated to be incapacitated requires prior court approval.

If the meaning of a statute is plain on its face, the Court will not resort to tools of construction. *State v. Stutzke*, 2018 WL 1417688, at *3 (Wn.App. Div. 3, March 22, 2018), citing *Timberline Air Serv, Inc. vs. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312,884 P.2d 920 (1994). The text of RCW 11.88.045(2) never mentions a guardian. If the legislature intended a guardian to obtain court approval for the retention of an attorney under this provision, the Legislature could easily have

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included the term “guardian” in this statute. As a result, the plain language clearly does not require a guardian to obtain approval under RCW 11.88.045(2) prior to retaining an attorney.

Moreover, the language of RCW 11.88.045(2) is clear and unambiguous when it states that an attorney purporting to represent “a person who is alleged or adjudicated to be incapacitated” must be appointed by the court. The use of the phrase “a person” refers directly to the individual subject to the guardianship proceedings. The guardian is not “a person who is . . . adjudicated to be incapacitated” as the guardian is not “a person” who is the subject of the guardianship proceedings. In fact, a guardian cannot be someone who is adjudicated to be incapacitated as the guardian must have the requisite capacity to act on behalf of the adjudicated incapacitated person. Therefore, the requirement that the Court approve the retention of an attorney for a person adjudicated to be incapacitated is only applicable to the individual who is actually adjudicated to be incapacitated. In this case, Anna May is the person adjudicated to be incapacitated and any attorney directly representing Anna May would need court approval pursuant to RCW 11.88.045(2).

2. The statutory context of RCW 11.88.045(2) confirms that the plain language of the statute only applies to the direct representation of a person adjudicated to be incapacitated and does not apply to a guardian.

The Court in construing the plain language of a statute must consider the context of the statute in which the provision is found. *Douglass v. Shamrock Paving, Inc.*, 189 Wn.2d 733, 739, 406 P.3d 1155 (2017); *Swanson Hay Company v. State Employment Security Department*, 1 Wn.App.2d 174, 210, 404 P.3d 517 (Div. 3 2017). In this situation, the remainder of RCW 11.88.045 relates to the proceeding appurtenant to the determination that an individual is an incapacitated person requiring a guardian to be appointed. The term “adjudicated incapacitated person” is only used in RCW 11.88.045(1)(a) which states:

... When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person.

The use of the term “adjudicated incapacitated person” in RCW 11.88.045(1)(a) clearly only applies to the actual individual who is adjudicated to be incapacitated (such as Anna May). Moreover, this provision provides a court with the ability on its own motion to appoint an attorney to represent the interests of the “adjudicated incapacitated person”. This provision clearly provides that the attorney appointed by the court is directly representing the adjudicated incapacitated individual. In APPELLANT’S BRIEF - 11

this matter, if the court wanted to appoint an attorney to represent Anna May, it may do so at its own motion. However, the attorney would be representing Anna May and not the Guardian.

Moreover, the remainder of Chapter 88 of Title 11 involves the proceedings regarding the determination of whether an individual is incapacitated so that a guardian should be appointed to represent their interests. When an individual is adjudicated to be incapacitated, the individual no longer has the right to enter into contracts. *In re Guardianship of Decker*, 188 Wn.App. 429, 353 P.3d 669 (Div. 2 2015). The requirement that the Court approve any direct representation of an adjudicated incapacitated person protects said person. Therefore, it is necessary for the Court to supervise the retention of any direct representation of a person adjudicated to be incapacitated. Although a guardian does act for the benefit of and on behalf of a person adjudicated to be incapacitated, a guardian has the capacity to enter into an attorney-client relationship. As a result, the plain language of RCW 11.88.045(2) only applies to the direct representation of a person adjudicated to be incapacitated, especially when the language of RCW 11.88.045(2) is read in context with the remainder of Chapter 88 of Title 11.

3. The cross reference to RCW 11.92.180 within RCW 11.88.045(2) confirms that only an attorney seeking a direct representation a person adjudicated to be incapacitated requires court approval and such prior approval does not apply to an attorney representing the guardian of a person adjudicated to be incapacitated.

The second sentence of RCW 11.88.045(2) provides “fees for representation described in *this section* shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.” (emphasis added). The use of the term is “in this section” confirms the Legislative intent that this provision is different than the provision applying to the award of attorney fees incurred by guardians. All attorney fees incurred by a guardian are subject to court approval under RCW 11.92.180. If RCW 11.88.045(2) applied to attorneys representing guardians, then there would be no need to cross reference 11.92.180 and use the phrase “in this section.” In other words, without the second sentence in RCW 11.88.045(2) attorney fees for direct representation of persons adjudicated to be incapacitated would not be subject to court approval. If RCW 11.88.045(2) applied to guardians, then the second sentence of RCW 11.88.045(2) would not be necessary. Additionally, if the Court construes the plain language of RCW 11.88.045(2) to include guardians then the second sentence of RCW 11.88.045(2) would be duplicative and superfluous. Therefore, construing this provision to require a guardian to

obtain court approval prior to representing the guardian would be a reading that is inconsistent with the actual language of RCW 11.88.045(2).

C. The Statute Governing Court Review of Attorney Fee Awards in a Guardianship Proceeding Clearly Contemplates Awarding Attorney Fees for Services Provided Prior to Petitioning the Court to Approve the Retention of the Attorney.

In the case of the award of attorney's fees for representing a guardian, the proper statutory scheme is set forth in RCW 11.92.180 which states as follows:

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable . . . Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian . . . In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and *for attorney's fees for services already performed* . . . (Emphasis added)

The request for compensation by guardian and payment of expenses incurred by a guardian including attorney fees during the administration of the guardianship by the guardian is governed by RCW 11.92.180. *In re Guardianship of Beecher*, 130 Wn.App. 66, 72, 121 P.3d 743 (Div. 1 2005). In particular, RCW 11.92.180 clearly contemplates that a guardian

may retain an attorney prior to requesting court approval of the retention of the attorney by the guardian. The Court maintains administrative oversight with respect to the guardianship proceedings by reviewing any attorney fee request by a guardian. A reading of RCW 11.88.045(2) to require court approval of attorneys representing guardians would cause the language in RCW 11.92.180 stating “for services already performed” to be ineffective. If RCW 11.88.045(2) requires a guardian to obtain court approval to appoint an attorney for the guardian, then there would never be a time when the court would award attorney fees “for services already performed” as the requirement for court approval would always pre-empt an attorney fee request for services performed prior to the appointment under RCW 11.88.045(2).

The requirement for a court to approve an attorney prior to an attorney providing services as found by the trial court would cause judicial inefficiency. For example, if RCW 11.88.045(2) requires all attorneys to petition the court for approval prior to representing a guardian, those guardians who desire legal representation in filing an annual report would have to follow a two-step process. First, the guardian would be required to file a petition to receive court approval of hiring the attorney assisting with the annual report. Second, assuming the court approves the attorney providing legal services to the guardian to assist with the filing of the

annual report, then the attorney would actually perform the services to prepare the annual report and represent the guardian at the hearing regarding the annual report. The requirement that the guardian obtain court approval of retaining an attorney for filing an annual report (and all other matters relating to the administration of a guardianship) would add additional fees and costs to the guardianship process that is not required by the governing statutes, especially when RCW 11.92.180 clearly allows a guardian to request the payment of attorney fees “for services already performed.” The process outlined in RCW 11.92.180 clearly allows for the court to retain its supervisory role in the administration of guardianships by requiring the guardian to request the approval of any attorney fees incurred. The provisions of RCW 11.92.180 provides the trial court the discretion to determine whether the attorney fees requested by a guardian are appropriate. The trial court in this matter never actually reviewed whether the attorney fees in this guardianship were appropriate due to its error of finding that RCW 11.88.045(2) required prior court approval of the retention of an attorney which and the failure to obtain court approval acts as a bar to the award of attorney fees. If the trial court instead reviewed the attorney fees under RCW 11.92.180, the trial court would need to explain its rationale for awarding the amount of attorney fees. In particular, if the trial court did not award the attorney fees in full,

it would need to explain why the trial court would award the guardian's fees in full, but find the attorney fees should not be awarded in full.

The proper statute for determining the award of attorney fees requested by a guardian is RCW 11.92.180. In particular, the provisions of RCW 11.88.045(2) are inapplicable to the determination of attorney fees requested by a guardian.

D. The Trustee and Beneficiaries of the Trust Had Notice and an Opportunity to be Heard So Their Due Process Rights Were Not Violated.

The 14th Amendment of the United States Constitution provides that a State shall not deprive any person of life, liberty or property without due process of law. Since the enactment of the 14th Amendment, the Courts have found that persons are entitled to both procedural due process and substantive due process. *State v. Beaver*, 184 Wn.2d 321, 332, 358 P.3d 385 (2015). Procedural due process prohibits the State from infringing on an individual's protected liberty interests without notice and an opportunity to be heard. *Segaline v. State Dep't of Labor & Indus.*, 199 Wn.App. 748, 765, 400 P.3d 1281 (Div. 1 2017), *review denied sub nom. Segaline v. State*, 189 Wn.2d 1043, 409 P.3d 1064 (2018); *Mathews v. Eldridge*, 424 U.S. 319, 332-33, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976). Substantive due process protects individuals against arbitrary and capricious government action regardless of the fairness of the procedures

to implement the government action. *State v. Shelton*, 194 Wn.App. 660, 666, 378 P.3d 230 (Div. 1 2016); *Swanson Hay Company*, 1 Wn.App at 222. In this matter, the Trustee of the Trust and the beneficiaries of the Trust were afforded adequate due process both procedurally and substantively.

Initially, from a procedural standpoint, RCW 11.92.150 allows any interested party in a guardianship to file a request for special notice of proceedings. The Trustee, Ms. Deborah A. Black and Mr. John Black all filed the request for special notice under RCW 11.92.150. CP 721-724. In addition, the Guardian provided notice to the interested parties of the filing of both Guardian's Reports. The Trustee and Mr. Perednia filed objections to the initial Guardian's Report. CP 49-71 and 239-241. Ms. Deborah A. Black joined the Trustee's and Mr. Perednia's objections to the second annual Guardian's Report. CP 557-582. In no manner did the interested parties not receive notice and the opportunity to be heard regarding the approval of attorney fees of the guardian. On the contrary, all the interested parties filed pleadings and participated at the hearings regarding the Guardian's Report. At no time did the Trustee or the beneficiaries not have notice of the Guardian's Report and an opportunity to be heard regarding the Guardian's Report. Therefore, the Trustee and

the beneficiaries of the Trust were afforded adequate procedural due process.

Additionally, the Trustee and the beneficiaries substantive due process rights would not be violated by the payment of the Guardian's attorney fees. The Trustee and the beneficiaries are fully aware that the Trust would pay any administrative costs associated with the guardianship. In fact, the Trust has paid the Guardian's fees from the Trust and the trial court approved the payment of the Guardian's fees from the Trust. CP 480 and 608. The award of the Guardian's attorney fees to assist her in carrying out her duties would not be an arbitrary or capricious act of the trial court. The Trustee and the beneficiaries should not be shocked to find that the Guardian's attorney fees are payable from the Trust. *Estate of Lee ex rel. Lee v. City of Spokane*, 101 Wn.App. 158, 170, 2 P.3d 979 (Div. 3 2000). Therefore, the Trustee's and beneficiaries' substantive due process rights are not violated.

E. The Court of Appeals May Award Costs and Attorney Fees to the Appellant Under Relevant Statutory Authority.

The Appellant is moving the Court of Appeals to award costs under RAP 14.1 and 18.1. Moreover, the Appellant moves the Court to award attorney fees for pursuing this appeal pursuant to the Court's authority under RCW 11.92.180 and RCW 11.96A.150. In particular, the

Court has supervisory authority over all guardianships in the State of Washington. *In re Gaddis' Guardianship*, 12 Wn.2d 114, 123, 120 P.2d 849 (1942); *In re Guardianship of Knutson*, 160 Wn.App. 854, 864, 250 P.3d 1072 (Div. 1 2011). In the Court's supervisory capacity, the Court has the authority to approve an award of attorney's fees in pursuing this appeal. RCW 11.92.180. Additionally, RCW 11.96A.150 authorizes this Court to award fees on appeal. Therefore, the Appellant requests that the Court of Appeals award attorney fees and costs associated with pursuing this appeal.

V. CONCLUSION

The plain language of RCW 11.88.045(2) clearly requires attorneys who are directly representing a person adjudicated to be incapacitated to obtain court approval prior to their commencing legal representation of the individual. However, this provision does not apply to attorneys representing guardians. The approval of attorney fees incurred by a guardian is subject to Court review under RCW 11.92.180. The clear language of RCW11.92.180 allows an attorney to provide services to the guardian prior to requesting approval of their attorney fees. As a result, an attorney who performs legal services for a guardian does not need prior court approval before commencing their engagement. Moreover, the failure to obtain prior court approval for legal

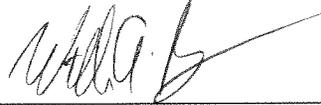
representation of a guardian does not act as a bar to the award of attorney fees. As a result, the Appellant requests that the Court reverse the trial court and remand this case for further proceedings consistent with the determination that RCW 11.88.045(2) does not bar an award of attorney fees in this matter.

Since all of the Appellees and the beneficiaries of the Trust have had ample notice and an opportunity to be heard, the procedural due process rights of the Appellees and other beneficiaries of the Trust have not been violated. Moreover, the award of attorney fees is not an arbitrary and capricious act that violates the Appellees and other Trust beneficiaries substantive due process rights. Therefore, Appellant requests that the Court reverse the trial court's finding that the Trustee's and the beneficiaries due process rights would be violated if the court approves the Guardian's attorney fees.

Finally, this Court has the authority under RAP 14.1 and 18.1 to award costs to the Appellant for pursuing this appeal. Moreover, under RCW 11.92.180 and 11.96A.150 the Court has the authority to award attorney fees to the Appellant for pursuing this appeal. The Appellant requests that this Court award costs and attorney fees.

DATED this 6th day of April, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the APPELLANT'S OPENING BRIEF on the 6th day of April, 2018, addressed to the following:

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