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Division III  
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**COA NO. 35737-6-III**

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

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**IN RE ESTATE OF REUGH, K. WENDELL,  
JoLynn Reugh-Kovalsky, Mark Reugh, and Jim Reugh,**

**Appellants**

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**OPENING BRIEF  
OF APPELLANT BENEFICIARIES  
JOLYNN, JAMES, AND MARK REUGH**

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**I. IDENTITY OF APPELLANTS.**

The Appellants are JoLynn, Mark, and James Reugh, the adult children of K. Wendell Reugh, deceased, the intestate beneficiaries of his estate, hereafter “The Beneficiaries,” and respondents to a motion for removal in the trial court.

**II. ORDER APPEALED FROM**

This appeal is taken from the December 22, 2017 order of the Hon. Tony Hazel, which construed a trust document to 1) remove Mr. Reugh’s co-personal representatives JoLynn Reugh and Steven Gill as the personal representatives of his Estate, 2) remove Mr. Reugh’s co-trustees of an inactive trust, and 3) appoint Northwest Trustee and Management Services LLC as the successor personal representative and trustee. *CP 831-836.*

**III. INTRODUCTION.**

A trial court is without jurisdiction to intervene in a nonintervention probate unless the particular statutory process for the requested relief requested is followed. *In re Estate of Rathbone*, 412 P.3d 1283, 1288 (2018). That did not happen here, because a petition for the removal of either a personal representative of an estate or a trustee of a trust must be filed by a party with statutory standing, and the party requesting removal here had no such statutory standing. This trial court had no jurisdiction to

remove the named personal representatives from their proper administration of this estate. Moreover, a personal representative of an estate cannot be removed from administering an estate without evidence of waste, embezzlement, mismanagement, or like conduct which damages that estate. That was not present here, and none of those actions were found to have occurred here. Instead, this trial court improperly and summarily entertained a “motion” for removal from a party without statutory standing. It judicially construed the language of governing documents against their plain meaning, and against the proper construction given them by the personal representatives, to give that illegitimate party standing. As a result of its own judicial misconstruction, it thereupon determined that a conflict of interest existed. Without any showing of harm from its now fashioned conflict, it found that conflict to be disqualifying. It improperly removed the estate personal representatives/trustees from their unequivocally proper administration of the estate to install a financial predator’s co-conspirator into the role of personal representative/trustee, in direct contravention of statute, and of both governing documents. In sum, this trial court improperly construed documents to hand over an estate worth tens of millions of dollars to two illegitimate financial predators, on behalf of a party who is neither a beneficiary of this estate, nor of any trust.

Short of opening the hearing on May 8, 2017, nothing done by this trial court on December 8 and December 22, 2017 was done in accordance with statute or precedent; the court's processes, the definitions given, and the illegitimate result imposed, all contravene the testator's intent and the plain language of his estate documents. This trial court's order should be vacated as void. Co-personal representatives and co-trustees JoLynn Reugh and Steven Gill should be restored to their rightful positions administering this Estate of K. Wendell Reugh, and administering whatever living trust may or may not be ultimately deemed valid.

**IV. ASSIGNMENTS OF ERROR/ISSUES FOR REVIEW.**

The Appellant Beneficiaries challenge the following "Findings and Conclusions of Law":

- 1) Findings #2-6, in that a trial court has no subject matter jurisdiction to hear a removal motion from a party without standing;
- 2) Findings #2-6, in that the mandatory procedure of RCW 11.68.070 must be followed to allow a trial court to resume jurisdiction over a non-intervention estate in order to hear a motion to remove personal representatives;
- 3) Findings #7, 10-16, in that a trial court may not construe plain terms of a will contrary to that construction given by the personal

representatives to support their removal;

4) Findings #7, 10-16, in that a trial court may not construe the terms of a will contrary to the definitions of the plain terms used;

5) Findings #13-16, in that a personal representative or trustee does not breach of fiduciary duty where no findings are made, nor could be made, of bad faith, fraud, mismanagement, or waste of that estate or trust;

6) Findings #13-16, in that none of the trial court's findings support a breach of a fiduciary duty to either the estate or the trust, nor to the beneficiaries of either;

The Beneficiaries also challenge the trial court's conclusions and order:

7) Removing Reugh and Gill as personal representatives of the estate of Wendell Reugh, much less removing him "pursuant to RCW § 11.68.070 and RCW § 11.28.250";

8) Removing the same two individuals as trustees of the K. Wendell Reugh Revocable Living Trust at all, much less removing them "pursuant to RCW § 11.98.039"; and,

9) The trial court's appointment of Northwest Trustee and Management Services, LLC as the new personal representative of the

estate, and as the new trustee of a non-existent trust, in direct violation of the testator/settlor's governing will and trust succession processes.

## V. EVIDENCE.

On March 27, 2015, JoLynn Kovalsky Reugh ("Reugh") and Steven Gill ("Gill") were appointed as personal representatives of the Estate of K. Wendell Reugh. *CP 18-19*. Reugh is the adult daughter of K. Wendell Reugh. Mr. Reugh died on March 22, 2015. *CP 1*. Mr. Reugh's will is dated January 4, 2011, and it directs his two co-personal representatives to act on his behalf in a non-intervention probate. *CP 1-10 (Petition for Probate of Will); CP 7 (Will, Article IV(B))*. Mr. Reugh granted his PRs administration authority over his estate without the intervention of any court, and "unrestricted" non-intervention powers ..., "for the administration of my estate." *Id.* On March 27, 2015, an order was entered admitting Mr. Reugh's will to probate. *CP 18-19*. The estate was declared solvent. *CP 19: 3-4*. The order grants Reugh and Gill non-intervention powers. *Id.* It orders Reugh and Gill to "administer the estate without further intervention of the court..." *Id.* Reugh and Gill filed their oaths as ordered. *CP 20, 21*. They then set about their ordered duties.

During the personal representatives' administration of Mr. Reugh's estate, Reugh and Gill discovered a number of anomalies surrounding a

January 4, 2011 living trust document that Mr. Reugh had executed in conjunction with his January 4, 2011 Will. *CP 28-41 (Petition to Contest the Validity of a Trust)*; *CP 51-63 (K. Wendell Reugh Revocable Living Trust)*. Unlike what would be found in Mr. Reugh's other trusts, *see e.g. 699-702*, this "Living Trust" had no property and had never been funded. *CP 36-39*. A question arose as to Mr. Reugh's intent. JoLynn Reugh, along with her brothers Mark and Jim Reugh, thereby petitioned under RCW § 11.103.050 relating to revocable trusts in seeking a judicial determination of the validity of this living trust. *CP 28-41*. The petition would now prevent the distribution of trust property until a validity determination was made, but there was no trust property to distribute in any event. *See, e.g., CP 316. See RCW § 11.103.050.*<sup>1</sup> The invalidity process would assist the estate in its administration and ultimate asset distributions. The Beneficiaries stated that the petition was brought "to promote and benefit the true interest and intent of K. Wendell Reugh's Estate." *CP 40: 17-20*.

The validity action needed to be determined first, because it would impact the administration of the estate via its taxation; the personal

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<sup>1</sup> While the trust chapter does not apply to personal representatives. *See RCW § 11.106.010*, the trustee is bound.

representatives' counsel at the time of the Beneficiaries' petition was Amber Myrick, and she was communicating with the IRS on this issue. *CP 311, 313*. Reugh and Gill thus answered the Beneficiaries' petition for invalidity through their counsel, agreeing that anomalies existed as to this unfunded living trust, and that validity needed to be resolved before the estate distribution could be confirmed. *CP 67-77*.

At this point, "Inland Northwest Community Foundation" (INWCF) appeared in the nonintervention probate by motion. INWCF requested that Reugh and Gill be removed as personal representatives of the estate, and as co-trustees of the non-existent trust on grounds that they "have **refused to honor the bequest to INWCF**, claiming that Mr. Reugh never intended to make such a gift." *CP 82-84, 86, emphasis in original*. INWCF asserted that it was "entitled to receive any funds that remain in the Estate after other beneficiaries had been paid." It asserted that its "anticipated bequest to INWCF will exceed \$16 million." *CP 86: 1-3*. It claimed that Wendell Reugh's Will was a "pour over will" and called for his assets to be transferred to this unfunded living trust and distributed to the "beneficiaries," of which it was one. *CP 85: 27 – CP 86: 7*. It claimed that it was a "reminder (sic) beneficiary" of this non-existent living trust. *Id., CP 85: 29 – CP 86: 1*. It claimed that the nature of its "anticipated

bequest” was a “gift.” *CP 85: 27 – CP 86: 7*. INWCF also complained that the personal representatives “paid all other beneficiaries of the trust ...” *CP 86: 8-9*. It complained that Reugh and Gill’s “cooperation” with the Beneficiaries’ invalidity petition was a refusal to “honor the bequest to INWCF,” and they were “attempting to divert the residuary of the Estate,” which “committed a clear breach of their fiduciary duties.” *CP 86: 14-17*.

The Beneficiaries responded and objected to INWCF’s motion for removal. They argued, *inter alia*, that INWCF had not followed the requisite removal process mandated by RCW § 11.68.070. *CP 109-129*. They argued that the evidence INWCF presented would not justify the issuance of a show cause order, much less final relief, under RCW § 11.68.070 or § 11.68.250. *CP 110-113*. They asserted that the only right INWCF had to anything would come through a presently non-existent trust. *CP 110: 5-17*. They asserted that INWCF’s claim that it was the intended recipient of a “gift” was not correct. *CP 116: 5-12*. The trust document does not use that term. *CP 116:8-9*. Moreover, it had since been discovered that INWCF could not fulfill even the role potentially assigned to it by the trust document, if any, because the testator’s favored charities were “outside the reach, and are not permissible donees, of (INWCF).” *CP 202*.

Personal representatives Reugh and Gill also responded by objection, in part noting that INWCF is *not* named as a beneficiary of Mr. Reugh's estate, and that the will does not make a "bequest" to INWCF. *CP 306: 24-27*. Reugh and Gill note, "INWCF is not named in the Will at all." *CP 309*.

Reugh and Gill also asserted that they had been diligently performing their duties for the estate—"the Estate administration was complex due to the Decedent's high net worth, the diversity of Estate investments, and the business and tax planning vehicles implemented by Decedent...;" they asserted they "have been working diligently and faithfully over the past two-and-a-half years to value and administer the Estate assets so that the Estate can settle its debts and identify the proper beneficiaries of the Estate assets." *CP 309-310*. The IRS's tax examination of an Estate of this size can take more than three years to complete. *CP 310*.

Reugh and Gill also noted the anomalies with the trust, and with INWCF's even being named in it. In particular, the living trust document contained a default "savings clause." They explained that the norm in such a provision would be to default any such residuary to an *unnamed* 501(c)(3) qualified charitable organization selected by the personal

representatives of the settlor's estate during the administration of the estate "in their absolute discretion," and provided that the selected charitable institution could receive the distribution. *CP 308: 12-19.*<sup>2</sup> Reugh and Gill noted that, "for reasons unknown to the co-PRs," and atypically, INWCF had been specifically inserted. *CP 308: 23-24.*

No harm had come to INWCF in any fashion at this stage in any event, and none was offered by INWCF. There were no assets in any living trust to yet distribute. *CP 316.*

Both the Beneficiaries and the Co-PRs requested dismissal of INWCF's motion, and attorney fees awarded to both for having to respond. *CP 128, 319.*

On December 8, 2017, the superior court granted INWCF's motion for removal. *RP 1-44.* Its formal order was entered on December 22, 2017. JoLynn Reugh and Steven Gill were removed from their positions as estate personal representatives, and as co-trustees of the living trust. *CP 824-829 (refiled at 831-836).* The trial court appointed INWCF's

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<sup>2</sup> 26 U.S.C.A. § 501, I.R.C. § 501, is entitled "Exemption from tax on corporations, certain trusts, etc." A subsection (c) organization is exempt from taxation, and section (3) defines such as corporations, and any community chest, fund, or foundation, "organized and operated exclusively for ...charitable... purposes,... no part of the net earnings of which inures to the benefit of any private shareholder or individual,..."

proposed financial institution, Northwest Trustee and Management Services, LLC, as both the successor personal representatives of the estate and trustee of the living trust. *CP 827, Order, ¶ 19.*

The Beneficiaries appealed this removal and appointment, joined by the now former personal representatives. *CP 723, 727.* The Beneficiaries sought a stay of the underlying probate and declaratory relief actions, but this Court's Commissioner denied the stay. *Commissioner's Order denying Stay, January 4, 2018.* The Commissioner held that any damage from the potentially erroneous order at this point would be speculative. The Beneficiaries requested modification of that ruling, but were denied. *Order Denying Motion to Modify, March 20, 2018.*

The Beneficiaries submit that the trial court's order is void, that INWCF is a financial predator acting to defraud the Reugh family, and that it should not be allowed to do so through an illegitimate court process. The trial court's order of removal should be vacated, and the Reugh Estate's personal representatives and co-trustees reinstated to complete their administration of this estate.

## VI. ARGUMENT.

### 1. The standard of review is de novo.

An appellate court will uphold challenged findings of fact and treat the findings as verities on appeal if the findings are supported by substantial evidence. *In re Estate of Jones*, 152 Wn.2d 1, 8–9, 93 P.3d 147 (2004). This trial court chose not to entertain live testimony, however, and this reviewing court is therefore not bound by the trial court's factual findings. *In re Estate of Hayes*, 185 Wn. App. 567, 608–09, 342 P.3d 1161 (2015) citing *Cornu–Labat v. Hosp. Dist. No. 2*, 177 Wn.2d 221, 229, 298 P.3d 741 (2013). The de novo standard is proper.

Conclusions of law and questions of statutory interpretation are reviewed de novo. *Estate of Rathbone*, 412 P.3d at 1286; *Estate of Jones*, 152 Wn.2d at 9. The existence of jurisdiction is also a question of law reviewed de novo. *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wn. App. 799, 807, 292 P.3d 147, 151–52 (2013), *aff'd* on other grounds, 181 Wn.2d 272 (2014).

### 2. The trial court had no jurisdiction to entertain INWCF's motion for removal.

A superior court's jurisdiction over a nonintervention probate is statutorily limited. *Estate of Jones*, 152 Wn.2d at 9–10; *Estate of*

*Rathbone*, 412 P.3d at 1286. The purpose of a non-intervention estate is to prevent the court from managing or second-guessing the testator's personal representatives' decisions in administering the estate. *Rathbone* at 1289. "The court has no role in the administration of the estate except under narrow, statutorily created exceptions that give courts limited authority to intervene." *Id.* at 1286. Once an order of solvency is entered in a probate, the court loses jurisdiction. *Jones at 9-10*. Here, an order of solvency was entered. *CP 19: 3-4*. The superior court lost jurisdiction over appointed personal representative/trustee Reugh and Gill's administration of this estate on March 27, 2015. The trial court may regain jurisdiction only if a person with statutorily conferred authority invokes such jurisdiction. *Id.*, *Rathbone*, *Jones, supra*; and see *Matter of Estate of Hookom*, 52 Wn. App. 800, 803, 764 P.2d 1001 (1988). That did not occur.

- a. INWCF has no standing to petition for removal, and the trial court had no jurisdiction to hear its motion.

Whether a party has standing to sue is a question of law reviewed de novo. *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 199, 312 P.3d 976, 984 (2013). A question of statutory interpretation is reviewed de novo. *Rathbone*, at 1286.

The parties with standing to request the removal of a personal representative are named in RCW 11.68.070. The latter removal statute limits the parties who are allowed to petition for removal of personal representatives of an estate to “unpaid creditors of the estate” who have filed a claim, or any heir, devisee, legatee of the estate. *In re Estate of Hitchcock*, 140 Wn. App. 526, 532, 167 P.3d 1180 (2007). INWCF moved for relief under RCW 11.68.070, but INWCF is none of these authorized parties. INWCF is only listed in a living trust document, but a “trust beneficiary” lacks standing to file an RCW 11.68.070 removal petition. *Id.* *Hitchcock* applies here.

More specifically, “[A] ‘devisee’ is defined as ‘[a] recipient of property by will.’” *Hitchcock*, supra, citing BLACK'S LAW DICTIONARY, 484 (8th Ed. 2004). INWCF is not the recipient of property by Wendell Reugh's will. It is not named in that will. *CP 44-47*. “A ‘legatee’ is ‘[o]ne who is named in a will to take personal property; one who has received a legacy or bequest.’” *Id.* at 916, *emphasis added*. INWCF is not “named in a Will.” INWCF does not receive any bequest under the Will. INWCF is not a legatee under RCW 11.68.070. *CP 44-47*. An “heir” is any person who is entitled by law to receive the decedent's real or personal property if the decedent died intestate. *Id.* at 532, citing RCW

11.02.005(6). INWCF would receive nothing if Mr. Reugh died intestate. INWCF is not an heir.

Under the plain terms of RCW 11.68.070, and per *Hitchcock*, INWCF had no standing to petition for removal of this estate’s personal representatives. The order entered on INWCF’s motion is void.

- b. A personal representative of an estate with non-intervention powers has the sole authority to interpret a will. The trial court accorded standing to INWCF by misconstruing the will and trust, and acted beyond its authority.

The trial court accorded INWCF standing under RCW § 11.68.070 by construing the will and trust contrary to their terms. It has no authority to do so. A personal representative of an estate with non-intervention powers has the sole authority to interpret a will for purposes of any removal action. *Rathbone*, 412 P.3d at 1288. “The power to administer an estate and ‘construe’ a will’s directions lies with the personal representative in a nonintervention probate—not the courts.” *Id* at 1289. Moreover, a court may not construe a will in a manner different than the personal representative, as to do so would exceed its authority. *See Estate of McAnally*, 35054-1-III, 2018 WL 2069521, at \*5 (Wash. Ct. App. May 3, 2018) (*unpub’d*). Moreover, “where there is room for construction, that

meaning will be adopted which favors those who would inherit under the laws of intestacy.” *In re Brooks' Estate*, 20 Wn. App. 311, 313, 315, 579 P.2d 1351 (1978)( adopting the construction most favorable to the testator’s children).

Here, the trial court accorded INWCF standing by construing the governing documents to accord INWCF “trust beneficiary” status contrary to the construction given by the personal representatives of the estate. Reugh and Gill concluded that INWCF was not a beneficiary of Mr. Reugh’s estate, and was only a “potential” or “purported” remainder beneficiary, but the proper “beneficiaries” were yet to be established. *CP* 307, 313. The trial court thus acted beyond its authority in construing the will and trust documents prematurely, and in contravention of the personal representatives’ right to do so, for purposes of a removal action. *Rathbone* at 1289; *McAnally*, at \*5.

Its order must be vacated.

- c. The court’s construction of INWCF as a “beneficiary of the trust” to give it standing is in direct contravention of the trust document itself, and the law. INWCF is at best a restricted default custodian of funds.

The same standing requirement applies to the removal of co-

trustees of a trust. RCW § 11.98.039(4) allows only “any beneficiary of a trust, the trustor, if alive, or the trustee” to likewise petition the superior court having jurisdiction for the appointment or change of a trustee or co-trustee...(c) for any other reasonable cause.” The trial court concluded that INWCF was listed as a “remainder beneficiary of the Trust on the face of the Trust Agreement.” *CP 826, Finding 10.* It defined that remainder beneficiary status as a “gift beneficiary” status, when it accorded INWCF equal beneficiary status with the named Appellant Beneficiaries. *CP 826-827, Findings 12-16.* INWCF defined its beneficiary interest as a “bequest” and as a “gift.” *CP 86:6-7, 14-15.* But nowhere does the word “gift” or “bequest” appear anywhere in reference to INWCF. Conversely, the Beneficiaries are specifically “gifted” funds in the trust in just those words. *Article VI, Section D* states “The successor Trustee shall make the following pecuniary *gifts* to Settlor’s descendants.” *CP 54.* What the trust document *does* show is that where Mr. Reugh meant gift, he said it. The word “gift” explicitly appears in a multitude of other paragraphs of the Trust. *See CP 53, Article VI (C),* stating, “The successor Trustee shall make the following pecuniary gifts ...;” *and see Article VI (D); Article VI (E)(1)-(5); and Article VI (F).* No such gift language appears with INWCF. *Article VI (G)(2).*

In fact, INWCF can be found only in the trust’s residuary default provision, and therein, surrounded by limiting language. Specifically, were the trust document to ultimately be deemed valid, then Article VI § (G) creates two categories of residuary. Section (G)(1) envisions an active charitable foundation or a donor-advised fund established by Mr. Reugh during his lifetime. Had Mr. Reugh created such a foundation himself, then the residuary would be distributed “to” his charitable foundation or donor-advised fund. *CP 56, Art. VI § (G)(1)*. But if Mr. Reugh had not created his (G)(1) private entity, then the residuary would default under G(2). The quality of the distribution thereupon materially differs. A defaulted residuary would land with INWCF only “*to be held as an endowed donor-advised fund known as the Wendell and Mary Ann Reugh Family Fund.*” *CP 56, Art. VI § (G)(2), emphasis added.*

The language of these two section G provisions is thus materially different, which denotes an intent to distinguish between the nature of the distributions. *See American Continental Ins. Co. v. Steen*, 151 Wn.2d 512, 519-522, 91 P. 3d 864 (2004). In judicial construction, where certain, e.g., statutory language is used by the legislature in one instance, and different language in another, then there is a difference in legislative intent. *Id.* The same applies here. The testator’s “to hold as” language is different

than “a distribution to,” signifying a difference on testator intent. The phrase “to hold as” places INWCF only in the role of an administrator or trustee of the funds, not as an owner, gift beneficiary, or beneficiary at all. *CP 56*. Even in “holding as” Reugh funds, the default entity may hold those funds only in a very specific form, under a very specific name, with Mr. Reugh’s descendants to be the advisors of the fund, and to direct the distributions. *Art. VI § (G)(2)*. Attorney Tom Culbertson in fact advised Mr. Reugh that the default provision would expressly *not* pass funds to INWCF, but “to a fund known as the Wendell and MaryAnn Reugh Family Fund.” *CP 217, dated Nov. 24, 2010, at ¶ 7*. INWCF would only be used to “set up and administer” the fund. *Id.*

In construing INWCF as a beneficiary of the trust under “the plain terms of the document,” the trial court ignores the trust’s plain language, including *Art. VI § G’s* distinctions between (1) and (2). It violates the rules of construction, which demand that clear language be given its plain and ordinary meaning ascertained from a standard dictionary. *American Continental Ins. Co.* at 518. It ignores the very purpose for which INWCF was inserted in the document, per Mr. Culbertson’s letter.

But the personal representatives did not ignore this language difference in respecting Mr. Reugh’s intent. *CP 308*. They explained to

the trial court why INWCF is not a beneficiary of this will, and why it may only be a potential beneficiary of the trust. They explained what a default clause of a trust is to mean, and why personal representative discretion is typically given to ensure that any selected charitable institution via default can receive the distribution. *CP 308: 12-19*. This discretion is a protection against what occurred here, because during the estate administration, it was discovered that INWCF could not fulfill the purpose of the custodial role potentially assigned to it; the testator's favored charities were "outside the reach, and are not permissible donees, of (INWCF)." *CP 202*. Moreover, INWCF began demanding status as a gift beneficiary via an alleged "bequest," *CP 86:6-7, 14-15*, not simply status as the intended custodian of funds with a fiduciary duty to the donor. Here, a remedy is built into the will for INWCF's lack of suitability. While Mr. Reugh specifically named INWCF in a default clause, he also gave his personal representatives the authority to *disclaim* that "trust legacy fund" clause entirely if something went awry, such as what has occurred here. *CP 47, Will, Art. IV(D)*. This is discussed at Section 2(d) *infra*. INWCF is not a beneficiary because it is not gifted anything, and because it has no entitlement to anything.

Even applying dictionary definitions shows this to be correct. A “beneficiary” has a litany of definitions. *See* BLACK'S LAW DICTIONARY (10th ed. 2014), pps.186-187 defining the various types of “beneficiary.” INWCF claimed it was a gift beneficiary via a bequest, and the court construed it as such, but it is not. *CP* 86:6-7, 14-15. A gift is a bequest, with the latter defined as the act of giving property by a will. *See* BLACK'S LAW DICTIONARY (10th ed. 2014), defining “bequest.” A gift is a voluntary transfer of property “to” another without compensation. *See* BLACK'S LAW DICTIONARY, defining “gift.” The trust’s residuary clause does not use the word “bequest” or “gift.” *CP* 6. The (G) clause materially differs from the multitude of trust clauses which use *both* words “bequest” and “gift.” *See CP* 53-56, including Article VI(C); Article VI(D) (“*Pecuniary Bequests to Settlor’s Descendants*”; Article VI(E)(1)-(5) (“*Specific Bequests Regarding Certain Business Entities*”); and Article VI (F)(“*If not, such gift shall lapse.*”). There is no such bequest or gift language as to INWCF, nor in the entire (G) clause.

Conversely, the word “hold,” as used with INWCF, can mean to simply keep in custody, or under an obligation. *See* BLACK'S LAW DICTIONARY, 10<sup>th</sup> Ed., defining “hold,” definition 4. INWCF’s role, if any, is not just “to hold,” but “to hold as” because it may hold only under

very specific limitations—as a very specific form, under a very specific fund name, directed by very specific advisors—Reugh family descendants. At best, INWCF is to keep in custody someone else’s funds.

Consistent with this distinction is *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 833–34, 355 P.3d 1100, 1107 (2015). A “holder” is not necessarily an “owner”; in fact, the term “holder” is ambiguous. *Id.* The ambiguity is such that even using the term “holder” can render the document ineffective. *Trujillo*, at 833.

*Analytical Methods, Inc. v. Dep’t of Revenue*, 84 Wn. App. 236, 243, 928 P.2d 1123, 1126 (1996) is also instructive. Therein, the court distinguishes between various transfer words, such as “contribution,” “contribute,” or “donate.” *Id.* “These definitions require a gratuitous purpose that is missing from the [Program at issue].” *Id.* The Reugh trust’s Art. VI § (G)(2) clause is similarly missing any terms confirming a gratuitous purpose. The phrase “... to be held as...,” conveys no gratuitous purpose. *Art. VI § (G)(2)*.

It was thus error for the trial court to construe INWCF as a gift beneficiary. INWCF did not argue any sort of lesser generic beneficiary

status; it demanded gift status. *CP 86:6-7, 14-15.*<sup>3</sup> That asserted beneficiary status is plain error, and the trial court fails to note or honor the distinct language in this trust in granting that status. INWCF had no standing to request the removal of a personal representative under RCW §11.68.070, nor to request removal of the co-trustees of the trust under RCW § 11.98.039(4). The order entered on both removal requests must be vacated.

- d. INWCF has no enforceable interest as the trust administrator. Its designation even as a default holder is discretionary on the part of the estate's personal representatives.

The trial court's findings 10 and 12, which construe INWCF as a gift beneficiary of the trust, also ignore a critical will disclaimer provision. INWCF's role even as a fund custodian is entirely at the pleasure of the personal representatives. Mr. Reugh gave his personal representatives the authority to disclaim the Trust's Art. VI §(G) charitable residuary clause, under the will's Art. IV § D. *CP 47*. This disclaimer right is consistent with what Reugh and Gill noted to be a typical 501(c)(3) default clause,

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<sup>3</sup> See BLACK'S LAW DICTIONARY (10th ed. 2014), pps.186-187 defining the various types of "beneficiary."

which would allow the personal representatives the right to ensure the ultimate propriety of any selected charitable entity for the residuary. *CP 308: 12-19*. This personal representative discretion authority becomes critical when, as occurred here, it turns out that the testator's favored charities were "outside the reach, and are not permissible donees, of (INWCF)." *CP 122, citing to CP 202*. It becomes critical when the default entity begins demanding status as an entity gifted funds, when it has not been so gifted. Consistently, even though Mr. Reugh named INWCF in his default clause, he also gave his personal representatives authority to disclaim the trust's default residuary entirely if its purposes would not be served, or, in the will's own language, if the clause acted in a manner "fundamentally inconsistent with the provisions of this will and of my estate plan." *CP 47, Will Art. IV §(D)*.

The disclaimer clause allows INWCF to serve in default only at the pleasure of the personal representatives. They may disclaim "any devise or legacy or any interest ... under any trust instrument at any time within nine (9) months after the date of the transfer which created an interest in me." *CP 47*. The Trust's Art. VI, § (G)'s residuary clause is such a legacy created under a trust instrument. The clause, if used, would create an interest in Mr. Reugh because it sets up an endowed donor-advised fund in

Mr. Reugh and his wife's name. Mr. Reugh is benefitting his own legacy in perpetuity.<sup>4</sup> Because Article VI §(G) is purely a personal legacy clause, and because the INWCF residuary entity may not be able to carry out the purpose of that endowment or fund (and now refuses to do so), then the residuary clause may be disclaimed. This disclaimer clause is a check on any involved institution's practices, because it can be used *for up to nine months* after the date of any transfer to such an entity. *Will, Art. IV §(D)*.

In sum, INWCF has no entitlement to even the role as a default administrator of Reugh family funds. The very purpose of Mr. Reugh's disclaimer clause was to protect his estate from financial predators, such as evolved here.

Once again, the trial court's order finding INWCF to be a "gift beneficiary" of this trust is plain error of construction, action outside its authority, and action in direct contravention of this estate plan. *Rathbone*, at 1289; *Estate of McAnally*, at \*5. Because this erroneous construction was used to accord INWCF standing to move for relief under both RCW § 11.68.070, and under RCW § 11.98.039(4), the trial court's order must be vacated.

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<sup>4</sup> See *infra* at section e, discussing the trust phrase "endowed donor-advised fund."

- e. In construing gift status for INWCF under the Trust, the trial court ignored or misconstrued the meaning of an “endowed” fund.

In already acting outside its authority in construing a trust, the trial court also ignored another key phrase of the Trust’s Art. VI § (G)(2)’s clause—that of estate funds being defaulted “to be held as an endowed donor-advised fund known as...” The phrase “endowed donor advised fund” cannot be properly construed as a gift to INWCF either.

An “endowment” has been defined as “a permanent fund, the earnings of which are devoted to the support of *the endowed institution...*” *Analytical Methods, Inc. v. Dep’t of Revenue*, 84 Wn. App. at 241–42, citing *Lakeside Country Day School v. King County*, 179 Wash. 588, 590–591, 38 P.2d 264 (1934), *emphasis added*. In *Analytical Methods, Inc.*, the court held that certain funds given businesses under the Small Business Innovation Development Act of 1982 (SBIR Program funds) were not endowments for those businesses, in part because the funds did not pay the income *to the small businesses*. Moreover, the funds were not contributions nor donations, because there was a conditional exchange—“the federal agency acquires intellectual property rights in exchange for the funds.” 84 Wn. App. at 241–42. University endowments are another

ready example. Such endowments are funds that a donor contributes to a university for the purpose of supporting *the university's* educational mission. See Christopher J. Ryan, Jr., *Trusting U.: Examining University Endowment Management*, 42 J.C. & U.L. 159, 165–66 (2016).

Mr. Reugh's trust language is not an endowment "to" INWCF to support INWCF's mission. The trust document does not "endow INWCF." Instead, it distributes funds to "be held as an endowed donor-advised fund." The endowment is to the Wendell and MaryAnn Reugh Family Fund, not to INWCF. The income generated by this endowed fund is to be used for other charities, not for INWCF's support.<sup>5</sup>

The trial court has misconstrued "endowed" family fund as a "gift" to someone else to accord standing to that party. This is error of law, action outside the authority of the trial court, and error in construing trust language contrary to the plain terms of the trust document and contrary to the personal representative and co-trustees proper construction of that document. The order must be vacated.

f. The trial court lacked subject matter jurisdiction over this

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<sup>5</sup> Even where endowments provide money to be spent on a University's own programs and expenses, even that use can be restricted by the donors. Universities are often sued for giving themselves funds from endowments in ways not contemplated by the terms of endowment instruments. *Id* at 186-187, citing the Uniform Prudent Management of Institutional Funds Act § 3 Comments (Supp. 2008).

controversy, and its Dec. 22, 2017 order is void.

For want of trial court compliance with any requirement of RCW 11.68.070, or RCW § 11.98.039(4), the order removing the personal representatives and co-trustees is void for lack of subject matter jurisdiction.

A void judgment exists whenever the issuing court lacks personal or subject matter jurisdiction over the claim. *Marley v. Dep't of Labor & Indus. of State*, 125 Wn.2d 533, 539, 886 P.2d 189, 193 (1994); *Ullery v. Fulleton*, 162 Wn. App. 596, 604-605, 256 P.3d 406 (2011), quoting *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 580, 958 P.2d 962 (1998) (holding that a dismissal due to lack of standing is tantamount to a finding that the trial court lacks subject matter jurisdiction to hear the claim). In Washington, a defense of lack of standing may be waived. *Ullery*, 162 Wn. App. at 604. But not in a nonintervention probate. In the latter, standing is a prerequisite to trial court jurisdiction, and must be affirmatively established under both RCW 11.68.070 and RCW § 11.98.039(4)'s statutory process. *Rathbone*, 412 P.3d at 1289. The critical concept in determining whether a court has subject matter jurisdiction is the type of controversy. *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 199, 312 P.3d

976 (2013). In a nonintervention estate, the type of controversy involved with a removal petition does not vest the trial court jurisdiction through waiver, but only through methodical compliance with RCW § 11.68.070 and/or RCW § 11.98.039(4), both of which first requires a certain type of applicant. “TEDRA does not independently give trial courts authority when there is another statute through which a beneficiary must invoke authority.” *Rathbone*, 412 P.3d at 1289. A removal process is thus the type of controversy that *requires* standing as a subject matter jurisdictional threshold. *Id.* Compliance with the statute is mandatory.

Consistently, both RCW §11.68.070 and § 11.98.039(4) require a very specific process to invoke trial court authority. A petition and show cause process is required under RCW 11.68.070 as the only means allowed to “invoke authority” to allow the trial court to “cite such personal representative to appear before it,…” for a hearing. *RCW 11.68.070*. Similarly, under RCW § 11.98.039, a petition is also required. No such petition process was invoked by INWCF in either case, nor completed. The statutes through which any party must invoke trial court authority were ignored. *Rathbone*, 412 P.3d at 1289. For want of such compliance with either RCW 11.68.070 or RCW § 11.98.039, the order of removal is void for lack of subject matter jurisdiction.

g. The beneficiaries did not waive subject matter jurisdiction.

The trial court's finding 5 suggests a sort of waiver—it implies that the Appellant beneficiaries agreed to “proceed with oral argument.” Proceeding with oral argument is not conceding subject matter jurisdiction. The Beneficiaries moved to dismiss INWCF's motion because it failed to comply with RCW 11.68.070's process for re-invoking the jurisdiction of the trial court. The Beneficiaries agreed to proceed with oral argument, but only for purposes of dismissal. *CP 109-129 (Response to Motion for Removal)*; *RP of Dec. 8, 2017, at pp. 6: 20 – 7: 3*. The record shows that when the trial court offered to set a later “hearing,” Beneficiary counsel argued that whenever it might be set, such a hearing could only be for the prima facie show cause process “that would enable the Court then to set [the removal motion] for hearing.” Counsel argued that INWCF had made no prima facie showing “to even set it for a hearing.” *Id.* The Beneficiaries asserted that this trial court could only hear the issue of whether it had jurisdiction to summon the personal representatives, and that it did not, because INWCF had not followed the statutory petition and show cause process.

The trial court acknowledged that it understood the distinction being made. *RP 7: 13-14*. It then removed the PRs summarily without

issuing a show cause order, or setting a removal hearing. *RP 37: 25 – 38: 11; RP 7: 10-12*. There was no waiver of any jurisdictional threshold of RCW 11.68.070.

- h. RCW 11.103.050 allowing for a petition for trust invalidity does not give a trial court jurisdiction to hear a removal petition.

At presentment, the trial court concluded that it had reassumed removal jurisdiction under RCW 11.68.070 “when Petitioners filed their First Amended Petition to Contest the Validity of a Trust, which was filed months before the instant motion...” Because the Beneficiaries filed a petition for invalidity under RCW § 11.103.050, it held, “jurisdiction had previously been reestablished,” and it was not compelled “to make a separate jurisdictional determination under RCW 11.68.070.” *CP 825, Finding ¶ 4*. This jurisdictional “whack-a-mole” ignores the plain language of both RCW 11.68.070 and RCW 11.103.050.<sup>6</sup>

RCW § 11.103.050 is a separate statutory action relating only to the validity of a trust, not to removal of a trustee, and certainly not to the

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<sup>6</sup> In *Taylor v. State*, 162 So. 3d 780, 790 (Miss. 2015), in a section entitled “Whack–A–Mole Jurisprudence,” the dissenting justice notes that “Every time a factor pops up that appears to favor the defendant, this Court whacks it into conformity with the desire to affirm.”

removal of an estate personal representative. Whether or not a trust is valid has no relationship to how a trustee is carrying out trust duties. Validity differs from administration. Moreover, “TEDRA does not independently give trial courts authority when there is another statute through which a beneficiary must invoke authority.” *Rathbone*, 412 P.3d at 1289. *Finding ¶ 4* is error of law. Jurisdiction for removal is not established by a petition for invalidity of a trust, and the court’s conclusion that it was not compelled “to make a separate jurisdictional determination under RCW 11.68.070” is error. The trial court did not properly resume jurisdiction under RCW 11.68.070 and its order must be vacated.

**3. Even if the trial court obtained jurisdiction under RCW §11.68.070, or RCW § 11.98.039, none of its findings support removal of the designated personal representatives or co-trustees.**

- a. The co-personal representative and co-trustees were not found to have committed any of the acts described in RCW 11.68.070 or 11.28.250, and were improperly removed.

The non-intervention powers of a personal representative of an estate are listed in RCW 11.68.090. Under RCW 11.68.070, a personal

representative of an estate may be removed only where that representative fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250. Under RCW § 11.28.250, removal may occur where the court:

“has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his or her charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary...”

*RCW § 11.28.250.*

The “for any other cause or reason which to the court appears necessary” requires behavior similar to the included “bad faith” behavior. *See Rathbone*, 412 P.3d at 1288.

None of the required findings are made by the trial court. There is no mention of waste, embezzlement, mismanagement, fraud, or attempt at any of the latter. There is no mention of incompetence, nor wrongful neglect. As in *Rathbone*, “no misconduct was found by the trial court.” 412 P.3d at 1289. Similar to *Rathbone*, all that occurred here is that “[The trial court's interpretation of the will violated (the personal representative's) construction authority as personal representative with

nonintervention powers.” 412 P.3d at 1289. The trial court’s order of removal must be reversed. There was no proper basis for that removal.

- b. The co-trustees had no duty to INWCF as described in RCW 11.98.078.

The trial court also erroneously held that the personal representatives of the estate had a “duty to INWCF.” This is error of law mixed with error of construction. Under the Revocable Trust statute, *RCW § 11.98.078*, a trustee must administer the trust “solely in the interests of the beneficiaries.” A trustee is a fiduciary who owes the highest degree of good faith, diligence and undivided loyalty *to the beneficiaries*. *In re Estate of Ehlers*, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996). INWCF is not a beneficiary, and the representatives/co-trustees were properly acting in the sole interest of the trust beneficiaries in fending off the predatory INWCF.

- c. The court’s conclusion that a disqualifying conflict of interest exists is error.

A conflict of interest exists where, e.g., a party owes duties to a party whose interests are adverse to those of another. *See, e.g., State v. White*, 80 Wn. App. 406, 411 (1995) (attorney conflict). But as noted above, the duty of a trustee runs only to the beneficiaries of the trust, and

INWCF is not a trust beneficiary. *RCW § 11.98.078*. The court’s finding of a “conflict of interest” between two equal parties is error. *CP 826, Findings 12-14*.

Moreover, to be a disqualifying conflict, not only must a conflict exist, it must also cause harm. *See In re Gomez*, 180 Wn.2d 337, 348-349 (2014). There is no finding that the conflict envisioned by the trial court resulted in any harm to anyone. Even if a conflict existed, it is not a disqualifying conflict. *Id.* In estate work, the principle remains the same. Families use members as both personal representatives of an estate, and as beneficiaries of the same estate. Distributions made by a personal representative to themselves as a beneficiary are therefore not a disqualifying conflict. *Estate of Rathbone*, 412 P.3d 1283; *Estate of Ehlers*, 80 Wn. App. 751. An “irreconcilable conflict of interest” is explicitly not a basis for removal under *RCW § 11.68.070* unless the personal representative is also failing to execute his or her trust faithfully, i.e., acting in bad faith, or behaving in a fashion similar to the behavior identified in *RCW § 11.28.250*. *Estate of Rathbone*, 412 P.3d at 1288. Here, even if a conflict existed, this trial court failed to find that any self-distribution of funds caused harm to any beneficiary, or that removal is “clearly necessary to save the trust property.” *Estate of Ehlers*, 80 Wn.

App. at 761; *Bartlett v. Betlach*, 136 Wn. App. 8, 20, 146 P.3d 1235 (2006)( holding that even under the premise of the expansive powers, removal must still be necessary to save the trust even where a conflict of interest, breach of fiduciary duty, or bad will generated by litigation exists).

The evidence does not support harm, even had such findings been made. Again, INWCF is not a beneficiary, and thus it cannot claim harm. Second, even if it were a beneficiary, there are no assets in the trust for which INWCF could be presently deprived. Third, Ms. Reugh and her brothers would still receive the same amounts from any living trust residuary before any remainder would default to INWCF “to be held as...,” because the trust’s Art. VI §§ (C) and (D) distributions precede any residuary distribution at § (G) in any event. INWCF showed no harm to any beneficiary, nor even to any interest it might ultimately have, and the trial court found none. The conflict envisioned by the trial court is not a proper basis for removal. Removal was arbitrary and improper, and it must be reversed. *Estate of Jones*, 152 Wn.2d at 8.

- d. All actions taken by the PRs were taken in accord with the authority granted them by the testator/settlor;
  - 1) “Inconsistent” dealings with the trust were proper,

because the trust itself differentiates between named beneficiaries and INWCF.

Non-pro rata actions taken by personal representatives or trustees can be entirely proper, and a court's criticism of them improper, because such criticism "fails to take into account the discretionary powers granted to personal representatives absent the will's limits on those powers." *Ehlers*, 80 Wn. App. at 763.

This trial court found that the personal representatives engaged in "inconsistent dealings with the treatment of the trust" as a basis for removal. *RP 37: 25 – 38: 11*. But inconsistent dealings are not a finding of mismanagement, waste, embezzlement, or neglect per RCW § 11.68.070 or § 11.28.250. Nor do inconsistent dealings necessarily cause harm to the beneficiaries. Here, inconsistencies are proper, because INWCF's status is *different* than the Beneficiaries' status. The Beneficiaries are direct "gift" beneficiaries of both the will and the trust, and recipients of certain sums. *CP 44-45, Art. II (Specific Bequests); and CP 54 (Pecuniary Bequests to Settlor's Descendants)*. Conversely, INWCF is not a devisee under the will, or a beneficiary of the trust. *See supra*. Treating two different classes differently is not an inconsistency. It is required.

Moreover, Mr. Reugh gave his personal representatives the right to

selectively advance funds from the estate at their discretion under the will. *CP 7, Art. IV(B)(2)*. Even non-pro rata actions would be proper here. The trial court improperly “fails to take into account the discretionary powers granted to personal representatives absent the will's limits on those powers.” *Ehlers*, 80 Wn. App. at 763.

Moreover, while the personal representatives indeed issued checks to Reugh and her brothers in the spring of 2015, *CP 827* at Finding 15, they did so at the directive of counsel. The personal representatives were instructed by their then-counsel to “distribute the pecuniary bequests to extended family....” *CP 569, “Action Items.”* A trustee is “entitled to rely on the recommendations of others hired to assist in the performance of the trustee's duties, as long as the trustee uses reasonable care in selecting such persons.” *Ehlers*, 80 Wn. App. at 759, citing *RCW 11.98.070(27)*.

Finally, as noted above, no harm is evidenced to any beneficiary of the trust from any inconsistency, or any conflict, because even if INWCF could ultimately be construed as some sort of trust beneficiary, the residuary that would ultimately flow into the Trust's Article VI § (G) residuary would still flow into it bereft of the same Article VI § (D) gift bequests made to the Beneficiaries. *CP 54, leading into CP 56*.

INWCF evidenced no harm to anyone from any perceived

inconsistencies, and none was found. It was error to then remove these trustees.

- 2) The personal representatives have a duty to comply with a requested determination of a trust validity.

The trial court also criticizes the personal representatives for acknowledging the Beneficiaries' petition seeking declaratory relief, and agreeing to the majority of the invalidity concerns. This legal position, holds the court, "has created an irreconcilable conflict of interest." *CP 827, Finding 13: 27*. Again, this is not so. The personal representatives are not in a conflict position as to INWCF, as they owe it no duty. Co-trustees must administer a trust "solely in the interests of the beneficiaries." *RCW § 11.98.078*. The Beneficiaries are the appellant Beneficiaries, not INWCF. Second, any action to invalidate an invalid trust would necessarily benefit the estate from a potentially void trust instrument, not harm it. The Beneficiaries stated that their petition was brought "to promote and benefit the true interest and intent of K. Wendell Reugh's Estate," even if they might benefit from their father's true intent. *CP 40: 17-20*. Third, wherever room for construction exists, the meaning adopted must favor those who would inherit under the laws of intestacy. *In re Brook's Estate*, 20 Wn. App. at 313.

RCW § 11.48.010 requires a personal representative to settle the estate “as rapidly and as quickly as possible, without sacrifice to the probate or non-probate estate.” This duty includes prosecuting actions that pertain to the management and settlement of the estate. It includes settling claims. Agreeing to uncontroverted facts, the plain meaning of documents, and the perceived applicable law is not grounds for removal of the personal representative. *Rathbone, Ehlers, Jones, McAnally, supra*.

INWCF accuses the personal representatives of “taking sides” against its entitlement, but the personal representatives are fully vested by RCW § 11.48.010 and by the will with the authority to do just that. Mr. Reugh expressly gave his personal representatives the authority to even disclaim any legacy clause in any trust instrument where such a clause may operate against his estate planning. *CP 47, Art. IV ¶ D*. Moreover, the personal representatives’ position in accord with invalidity is harmless—even if the living trust document is ultimately deemed valid under the Beneficiaries’ petition, the personal representatives can now respect that validity, but disclaim the residuary clause entirely. *Will, Art. IV(D)*. The personal representatives have simply chosen to have the validity issue resolved before disclaimer decisions are made.

The personal representatives’ responding to the invalidity action is

proper, and provides no basis for removal.

- 3) All actions taken by the personal representatives were specifically authorized by Mr. Reugh's will.

The personal representatives acted in a manner entirely consistent with, and authorized by, the testator in all respects. As examples:

- The court finds that the personal representatives “admitted” the Petitioners’ allegations about the purported invalidity of the trust. *CP 827, Finding 14*. But, as noted above, the personal representatives have a duty to take a position in administration of the estate in a non-intervention will. *RCW § 11.48.010*. A trustee must administer a trust “solely in the interests of the beneficiaries.” *RCW § 11.98.078*. The Beneficiaries are trust beneficiaries. INWCF is not.

- The court finds that the personal representatives paid certain beneficiaries of the trust, including a trust allocation to Reugh herself in the spring of 2015. *CP 827, Finding 15*. But, as noted above, the will allows the personal representatives to do so, and the named adult children beneficiaries are specifically named as gift beneficiaries, whereas IWNCF is not. *CP 54 at Article VI, Section D, versus Article VI (G)(2)*.

- The court finds that “if the Co-PRs and Co-Trustees are correct that the Trust is invalid, the payments of \$1.5 million to Ms.

Kovalsky and her siblings from the ‘Estate’ would be expressly prohibited by the language of the Will ...” *CP 827, Finding 15*. This is plain wrong. If the trust is invalid, the Beneficiaries will receive the *entire* estate as intestate beneficiaries, not just \$1.5 million each. *See CP 93, INWCF at 20-26*.

- The court finds that the personal representatives breached their duty by taking a position appearing adverse to INWCF’s purported entitlement, holding that personal representative Reugh was “no longer in a position to treat INWCF with the highest degree of good faith, diligence, and undivided loyalty.” *CP 826-827, Findings 12-16*. But as detailed above, INWCF is neither a beneficiary of Mr. Reugh’s will, nor is it a beneficiary of Mr. Reugh’s trust, and it is owed no such duty that might accompany such a status. INWCF can also be disclaimed entirely by the estate personal representatives, along with any default legacy in this trust instrument. *CP 47, ¶ D*.

- The court finds that the personal representatives breached their fiduciary duty by making a direct offer of nearly \$2 million dollars to INWCF to settle INWCF’s dispute. The trial court criticizes the offer, and speculates that it was a “heavily discounted offer.” It speculates as to what “anticipated amount of the distribution” might exist in a residuary. *CP*

827, *Finding 16*. But INWCF is not entitled to own anything under this trust. Moreover, these findings challenge the personal representatives' management of a very complex estate over a two year period, which they are authorized to do, and which includes the statutory authority to settle any claims. *RCW § 11.48.010*.

In sum, all of the actions taken by the personal representatives were well within their authority as expressly given them by Mr. Reugh's will, and by *RCW § 11.48.010*. The court's order improperly construes the will and trust to create conflicts and criticize the administration of this estate where no such criticism is allowed, or warranted. The order should be reversed.

- 4) The personal representatives must acknowledge trust anomalies that should be determined, especially where no one has formally contested the invalidity petition.

The PRs properly chose to allow a validity action by the Beneficiaries to pave the way for further action in the estate because validity issues abound. A number of trust anomalies are validly raised by the Beneficiaries' "Petition to Contest the Validity of a Trust." *CP 28-40*. As only one example, the living trust document mandates the creation of a

funded living trust *during Mr. Reugh's lifetime*, commencing on January 4, 2011, with a specific transfer of \$100 from him to himself as trustee of the trust. *CP 51, Art. II*. Mr. Reugh never made that transfer. This anomaly contradicts the document, and it contradicts Mr. Reugh's historical estate planning practices. All other Reugh family trusts were well funded during Mr. Reugh's lifetime, including a family trust, a credit shelter trust, and both an exempt QTIP and a non-exempt QTIP trust, as shown in 2009. *CP 237*. Mr. Reugh did not fund this living trust.

The January 4, 2011 trust document also contemplated that Mr. Reugh would continue to add and thereafter manage all assets in the trust during his lifetime to ensure that the trust will have sufficient assets to pay the debts assigned to it on Mr. Reugh's death. *See, e.g., CP 51-61, including Article II, "Trust Property;" Art. IV, § A(1 ("While Settlor Lives"); Art. V ("While Settlor Lives"); Article VI; Art. VI(A); Art. XIII(A); Art. VIII(C)(2); Art. X(A)*. Mr. Reugh did not add or manage any such assets in the living trust. Unfortunately, it was not until the summer of 2016, over a year after Mr. Reugh's death, that any of these anomalies were discovered. *CP 28-41; PR's Answer at CP 67-76*.

The existence of anomalies with this trust was never challenged by INWCF in any answer. Even by the time of the removal hearing, the

asserted anomalies leading to the Beneficiaries' invalidity assertions were not challenged. INWCF had never answered the Beneficiaries' petition to contest it. While INWCF thus discusses why it is a beneficiary of the trust in its motion for removal, it never challenged the invalidity petition itself. *CP 85-96*. The trial court overlooked this fact as well when it began construing a trust document alleged to be invalid, without challenge to that allegation.

- e. The trial court violated both governing documents contrary to the testator's intent, because it interfered with his personal representatives' administration of his estate.

As discussed above, trial court may not interpret a will under RCW § 11.68.070 under the guise of removal jurisdiction. "A party may not use RCW 11.68.110 to challenge a personal representative's reasonable decisions in interpreting a will's directions." *Rathbone*, 412 P.3d at 1288. Mr. Reugh, as the Testator, made his intentions clear—he granted his personal representatives unrestricted non-intervention powers, to exercise such "for the administration of my estate." *CP 46, Art. IV(B)*. The probate court deemed this a non-intervention estate, with the personal representatives granted non-intervention powers. *CP 19*. The trial court's interference with the personal representatives' administration of this estate

without RCW 11.68.070 cause, and its construing the will in favor of a challenger to the proper administration of the estate, is prohibited under *Rathbone*. 412 P.3d at 1286.

The trial court's order of removal is arbitrary and improper, and must be reversed. *In re Estate of Jones*, 152 Wn.2d at 8.

**4. The trial court has no authority to appoint Northwest Trustee and Management Services, LLC as a successor personal representative of the estate or as a trustee of the living trust.**

- a. The trial court's successor appointment violates the governing documents, and must be vacated.

Where jurisdiction exists, a trial court is mandated to implement the intent of the testator. "All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them." *Rathbone*, 412 P.3d at 1286, quoting from RCW 11.12.230. In a nonintervention will, respect for the testator's wish that "a court not be involved in the administration of (his) estate must frame our analysis." *Id.*

Mr. Reugh directed that if any personal representative was no longer able or willing to serve, then the existing personal representatives were to appoint any successor. *CP 46, Art. IV(B)(3)*. The same applies to

the trust. Any “successor trustee” was to be appointed by either a remaining co-trustee and/or by the Settlor’s children, who would select by majority vote from among nominees. *CP 59, Art. IX (B)(1)*. The trial court’s appointing Northwest Trustee and Management Services, LLC as both a successor personal representative of the Estate and a successor trustee of the trust violates the Testator’s plain intent. *Rathbone* is dispositive. The order must be reversed.

- b. The trial court’s successor appointment violates RCW § 11.98.039, and must be vacated.

The trial court’s appointment of a successor trustee in violation of the trustor/settlor’s intent is also prohibited under RCW § 11.98.039(4). No permissible party *petitioned* for any judicial change of trustee, which is required by the statute. *Id.* Only the existing trustee, or a “beneficiary” of the trust, may petition. *RCW § 11.98.039(4)*. INWCF neither petitioned, nor qualified to do so. Moreover, a “vacancy” would have occurred by any proper removal of the co-trustees. Where a vacancy occurs for “any reason,” the governing documents’ succession processes are to be followed. *RCW § 11.98.039(1); and see RCW 11.28.010*. They were not.<sup>7</sup>

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<sup>7</sup> RCW 11.98.039(1) reads, in relevant part:

The entire “change of trustee” discussion arose only at the end of the court’s December 8<sup>th</sup> oral ruling on removal. *RP 42: 17-18*. INWCF proposed NWT, the Beneficiaries objected, and the trial court allowed INWCF to submit its proposal for the court’s selection. *RP 43: 14-17*. At presentment, the Beneficiaries argued that “this Court does not have authority to proceed further to appoint a successor or do anything further than enter the order on removal.” *RP 52: 10-13; RP 55: 11-19*. The Beneficiaries noted that the successor process was not properly before the court, and the court had earlier confirmed it to be a “separate issue,” *RP 54: 18-24* (referring back to the trial court stating, “That a different issue.” *RP 42: 20*). The trial court appointed a successor personal representative *and* a successor Trustee over objection, failing to adhere to any aspect of RCW § 11.98.039(1) or (4), or the governing documents’ plain terms.

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“1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee *and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, ... whether arising because of the trustee's resignation or because of any other reason, ...* The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument is entitled to act as trustee except for good cause or disqualification....”

*RCWA § 11.98.039(1), emphasis added.*

The court's order removing JoLynn Reugh and Steven Gill from their positions as trustees of the trust is contrary to RCW § 11.98.039's jurisdictional limitations and process criteria, and directly violates the testator's intent. The court's order must be reversed and vacated.

**VII. ATTORNEY FEES.**

The Beneficiaries should recover all attorney fees under RAP 18.1. INWCF's motion for removal was brought without standing, without merit under RCW § 11.68.070 and under RCW§ 11.98.039, contrary to plain terms of Mr. Reugh's will and trust, and improperly challenging the personal representatives' construction of governing documents. RCW § 11.96A.150(1) allows fees to be ordered in favor of any party and against any party where relevant and appropriate. Here, the Beneficiaries' effort to protect their father's estate and the family legacy from a financial predator is a proper basis for fees. The Beneficiaries' objection to INWCF's predatory effort to remove their father's personal representatives and co-trustees, their appealing the trial court's removal, bringing the motion for a stay, and presenting this appeal, are all actions taken in protection of their father's estate, and fees should be granted.

**VIII. CONCLUSION.**

The trial court's order entered December 22, 2017 should be

vacated.

Respectfully submitted this 9<sup>th</sup> day of May, 2018.

**MARY SCHULTZ LAW, P.S.**

**/s/ Mary Schultz WSBA #14198**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on the 9<sup>th</sup> day of May, 2018, she electronically filed the foregoing document with the Court of Appeals, Division III, and thereby served a copy to the following individuals in the manner indicated below:

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Appellant Beneficiaries Opening Brief

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