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IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON – DIVISION III

IN RE THE ESTATE OF K. WENDELL
REUGH,

JoLynn Reugh-Kovalsky, Mark Reugh, and
Jim Reugh

Petitioners/Appellants.

APPEAL NO. 35737-6-III

Spokane County Superior Court Case No.
15-4-00471-1

ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR SPOKANE COUNTY

BRIEF OF RESPONDENT NORTHWEST TRUSTEE AND
MANAGEMENT SERVICES, L.L.C.

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Wendell Reugh Revocable Living Trust, U/T/A
dated January 4, 2011

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I. INTRODUCTION

Respondent Northwest Trustee & Management Services, L.L.C. (“Northwest Trustee”), in its capacities as successor personal representative of the Estate of K. Wendell Reugh, deceased (the “Estate”), and as successor trustee of the K. Wendell Reugh Revocable Living Trust, U/T/A dated January 4, 2011 (the “Trust”), by and through its legal counsel Ahrens DeAngeli Law Group, LLP, hereby submits the following Brief of Respondent in opposition to the Appeals filed by Appellants JoLynn Reugh-Kovalsky (“JoLynn”¹), Mark Reugh, and Jim Reugh (collectively, “Appellant Heirs”) and Appellants JoLynn and Steve Gill (“Steve”) in their capacities as the removed co-personal representatives of the Estate and the removed co-trustees of the Trust (collectively, “Appellant Fiduciaries”) seeking review of the December 22, 2017 Order (the “December 22, 2017 Order”) of the Honorable Tony Hazel in the above-captioned trial court matter removing Appellant Fiduciaries as co-personal representatives of the Estate and as co-trustees of the Trust and appointing Northwest Trustee as successor personal representative and trustee.

¹ The parties and other noteworthy individuals are referred to by their first names solely for the sake of brevity and to avoid confusion with other family members. No disrespect is intended.

II. RESTATEMENT OF THE ISSUES

1. Did the trial court properly exercise subject matter jurisdiction to hear the Motion to Remove Appellant Fiduciaries as co-personal representatives of the Estate and as co-trustees of the Trust (the “Motion to Remove”) filed by Inland Northwest Community Foundation (“INWCF”) on November 22, 2017?

2. Was INWCF a proper party to bring its Motion to Remove?

3. Did the trial court properly find bad faith, fraud, mismanagement, and/or waste by Appellant Fiduciaries with respect to the Estate and Trust?

4. Did the trial court properly hold that Appellant Fiduciaries breached their fiduciary duties to INWCF and other beneficiaries of the Estate and Trust?

5. Did the trial court properly removed Appellant Fiduciaries as co-personal representatives of the Estate pursuant to RCW 11.68.070 and/or RCW 11.28.250?

6. Did the trial court properly remove Appellant Fiduciaries as co-trustees of the Trust pursuant to RCW 11.98.039?

7. Did the trial court properly exercise its authority to appoint Northwest Trustee as successor personal representative of the Estate and successor trustee of the Trust?

III. RESTATEMENT OF THE CASE

A. Statement of the Facts.

1. K. Wendell Reugh's Estate Plan.

Wendell executed his Last Will and Testament (the "Will") on January 4, 2011. (Clerk's Papers ("CP") at 5-10.) Contemporaneously, he executed a trust agreement (the "Trust Agreement") creating the Trust and appointing himself as the initial trustee. (CP at 51-62.) In Article II of the Trust Agreement Wendell declares that he "hereby transfers to the Trustee [Wendell] the sum of One Hundred Dollars (\$100.00)." (CP at 51.)

Article III of the Will designates the trustee of the Trust as residuary beneficiary of the Estate "to be held, administered, and distributed in accordance with the provisions of said Trust Agreement as if [the residuary estate] had constituted a part thereof on the date of my death." (CP at 7.) Article I of the Will expressly states, "[e]xcept as provided below, I make no provisions in this Will for any of my children who survive me, whether named herein or hereafter born or adopted, nor for the descendants of any child who does not survive me." (CP at 5) (Emphasis added).

Article VI of the Trust Agreement provides several pecuniary bequests to various individuals and entities upon Wendell's death, including \$1,500,000 for each of Wendell's children, which are subject to offsets for prior family gifts. (CP at 54-56.) Unless Wendell established a charitable

foundation or a charitable donor advised fund, the Trust Agreement designated Inland Northwest Community Foundation (“INWCF”) as the residuary beneficiary of the Trust, “to be held as an endowed donor-advised fund known as the Wendell and MaryAnn Reugh Family Fund.” (CP at 56-57.) It is undisputed that Wendell did not establish a charitable foundation or a charitable donor advised fund during his lifetime. (CP at 309.)

2. Appellant Fiduciaries’ Maladministration of the Estate and Trust after Wendell’s death.

Wendell died on March 22, 2015. (CP 1.) On or about January 8, 2016, Attorney Thomas Culbertson, acting at the time as counsel for Appellant Fiduciaries, explained in a letter that INWCF is the recipient of the Trust’s residuary and instructed Appellant Fiduciaries of their duty of impartiality and full disclosure to all beneficiaries. (CP at 185-186.) Attorney Culbertson further warned Appellant Fiduciaries that “you cannot (consistent with your fiduciary duties) treat [INWCF] as an adversary, as you might if you had a dispute with another party as to which you owe no fiduciary duties.” (*Id.*) In a letter dated January 26, 2016, Dominic Zamora, acting at the direction of JoLynn and Steve as co-personal representatives of the Estate, notified Peter Witherspoon, the attorney for INWCF, that “Mr. Reugh’s will contains a charitable disposition. As such, we are prepared to transfer approximately \$2.2 million to the Inland Northwest Foundation

[sic].” (CP at 585.) That same letter, which was copied to JoLynn and Steve, concluded, “[w]e ask that you talk with your client for the purposes of considering our proposal. If [INWCF] finds this proposal suitable, we will have the necessary documents drawn up and complete the process of the transfer.” (*Id.*) That letter did not disclose the fact that INWCF was named as the Trust’s residuary beneficiary, despite Attorney Culbertson’s instructions to Appellant Fiduciaries as to their duties of full disclosure to INWCF.

On June 21, 2016, JoLynn and Steve signed a Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return (the “706”) for the Estate, which reported a charitable bequest of \$16,675,286 to “Inland Northwest Community Foundation Receiving 100% of Estate Residue,” as well as \$719,680 to the Doreen Decker CRUT, \$25,000 to United Central Methodist Church, and \$10,000 to “The Shriner’s Hospital for Cripples [sic] Children,” all of which is consistent with Article VI of the Trust Agreement. (CP at 483-521.) On July 8, 2016, Amber Myrick, the attorney for JoLynn and Steve in their capacities as co-personal representatives and co-trustees, sent a letter to Attorney Witherspoon indicating that JoLynn and Steve had distributed \$376,000 out of \$395,000 of the general pecuniary bequests “pursuant to Article VI.C. of the Trust [Agreement].” (CP at 199.)

3. Appellant Heirs' Trust Contest Petition.

On or about January 27, 2017, Appellant Heirs' attorney, Mary Schultz, emailed a letter (the "January 27, 2017 Schultz Letter") to Attorney Witherspoon asserting that the Trust was invalid because (A) Wendell named himself as the initial trustee and (B) because Wendell allegedly never transferred assets to the Trust during his lifetime. (CP at 578-583.) The letter also described Appellant Heirs as Wendell's "sole beneficiaries" and concluded with a threat of Appellant Heirs' "intent to claim their father's estate." (*Id.*) On February 13, 2017, Attorney Witherspoon transmitted a reply letter (the "February 13, 2017 Witherspoon Letter") to Attorney Schultz explaining that RCW 11.98.008 does not preclude a trust settlor from serving as trustee, which is common practice with respect to revocable living trusts, and that under RCW 11.12.250 "[t]he existence, size, or character of the corpus of the trust is immaterial to the validity of the gift," made in a will to a trust. (CP at 211-15.) Attorney Myrick was copied on both letters.

Although Appellant Heirs and Appellant Fiduciaries were on notice that RCW 11.98.008(2) allows a settlor to create a trust by declaring that he or she "holds identifiable property as trustee," as Wendell did in Article II of the Trust Agreement, and although they knew that RCW 11.12.250 validates a gift made to a trust in a will without regard to the "existence,

size or character of the corpus of the trust,” Appellant Heirs nevertheless filed and subsequently amended the Trust Contest Petition. (CP at 25-63.) The Trust Contest Petition not only sought to invalidate the Trust based on the clearly erroneous legal theory that Wendell did not transfer assets to another person as trustee and that the Trust owned no property at Wendell’s death, the petition even demanded the invalidation of Article III of Wendell’s Will. On March 15, 2017, the trial court signed an Order consolidating the Trust Contest Petition (brought under TEDRA chapter 11.96A RCW) into the probate matter. (CP at 64-66.) The Order of Consolidation was presented by Appellant Heirs and approved by Appellant Fiduciaries and INWCF. (*Id.*)

On March 20, 2017, Appellant Fiduciaries filed, on behalf of the Estate, a Response to the Trust Contest Petition (the “Petition Response”). (CP at 67-77.) In the Petition Response, and contrary to RCW 11.98.008 and 11.12.250, Appellant Fiduciaries admitted to Appellant Heirs’ clearly erroneous legal assertions that the Trust is invalid because Wendell named himself as trustee and because the Trust purportedly owned no assets at the date of Wendell’s death. (CP at 71-75.) Although they had a clear legal duty to defend in good faith the Will and Trust Agreement, and to treat the Estate’s and Trust’s beneficiaries with impartiality, Appellant Fiduciaries raised no affirmative defenses of any kind in the Petition Response,

including RCW 11.12.250 and 11.98.008 and the other authorities cited in the February 13, 2017 Witherspoon Letter of which they had full knowledge. In paragraph 1.5 of both the Trust Contest Petition and the Petition Response, Appellant Heirs and Appellant Fiduciaries mutually conceded that the trial court had jurisdiction to hear the matter due to its jurisdiction over the probate of Wendell's Estate and by operation of TEDRA statutes RCW 11.96A.040 and RCW 11.96A.020. (CP 28-29; 68.) Appellant Fiduciaries did not respond, on behalf of the Trust, to the Trust Contest Petition in their capacities as co-trustees of the Trust.

B. Procedural History.

On November 22, 2017, INWCF moved to remove Appellant Fiduciaries as co-personal representatives of the Estate and as co-trustees of the Trust. (CP at 82-84.) In its supporting memorandum, INWCF argued that Appellant Fiduciaries had breached their fiduciary duties based on their refusal to distribute the residuary gift to INWCF, JoLynn's conflict of interest as a competing claimant to the residuary gift under the Trust Contest Petition, and Steve's complicity in the effort to invalidate the Trust by making blanket admissions adverse to the Estate and Trust in the Petition Response. (CP at 85-96.) INWCF also argued that Appellant Fiduciaries breached fiduciary duties by offering \$2.2 million to INWCF without

disclosing the estimated \$16 million of assets INWCF stood to receive under the terms of the Trust Agreement. (*Id.*)

On December 1, 2017, Appellant Fiduciaries, acting on behalf of the Estate, filed an Objection to INWCF's motion, which did not explain why they admitted virtually every material allegation of fact and law raised in the Trust Contest Petition. (CP at 305-320.) Instead, they merely speculated that Wendell did not understand the significance of naming INWCF the Trust's residuary beneficiary and claimed, *inter alia*, that they had answered the Trust Contest Petition to the best of their knowledge. (*Id.*) Appellant Fiduciaries further insisted that they "could have petitioned the Court for a determination of validity in order to obtain clarification as to the proper beneficiaries of the Estate assets under the TEDRA. *See* RCW 11.96A.080" and welcomed the Trust Contest Petition as a request "for a determination of the validity of a trust . . . that will provide the necessary guidance to the Co-PR's to enable them to distribute the Estate assets to the proper beneficiaries, which is a duty of the Co-PRs." (*Id.*) Appellant Fiduciaries did not, however, challenge at the trial court INWCF's standing to bring the Motion to Remove.

On December 4, 2017, Appellant Heirs also filed a Response to INWCF's Motion to Remove. (CP at 109-129.) Appellant Heirs' arguments in opposition to the Motion to Remove included alleged

procedural irregularities by INWCF for bringing the action as a motion instead of a petition supported by an affidavit² showing prima facie cause for removal. (CP at 110-111.) Appellant Heirs also argued, *inter alia*, that the Trust was invalid because Wendell allegedly did not fund the initial \$100 into the Trust. (CP at 117-118.) They did not, however, assert that INWCF lacked standing to bring its Motion to Remove under RCW 11.68.070.

After a hearing on INWCF's Motion to Remove, the trial court issued the December 22, 2017 Order removing JoLynn and Steve as co-personal representatives and co-trustees and appointing Northwest Trustee as successor personal representative and trustee. (CP at 824-829.) The trial court found and determined, *inter alia*, that (1) INWCF substantially complied with the procedures for removing JoLynn and Steve, (2) JoLynn has an irreconcilable conflict of interest due to her competing claim to assets of the Estate under the Trust Contest Petition, (3) JoLynn's conflict of interest imputed to Steve due to his complicity in admitting the material allegations of the Trust Contest Petition, (4) payment of \$4.875 million to nine beneficiaries listed in the Trust (including JoLynn) while subsequently contending the Trust is invalid and despite language in the Will making no

² The Motion to Remove was supported by two accompanying Declarations of James McPhee. (CP at 97-103; 327-722.)

provision for Wendell's children, (5) that JoLynn and Steve breached fiduciary duties to INWCF by offering a heavily discounted settlement distribution without fully disclosing INWCF's likely distribution amount as residuary beneficiary under the terms of the Trust Agreement, and (6) that JoLynn and Steve are "no longer in a position to treat INWCF with the highest degree of good faith, diligence and undivided loyalty." The trial court further held that any deviation by INWCF from the procedural requirements of RCW 11.68.070 was harmless because the trial court "was not required to make a separate jurisdictional determination" under that statute since the court had already reassumed jurisdiction over the probate as a result of the Trust Contest Petition. Appellant Heirs and Appellant Fiduciaries filed notices of appeal seeking review of the trial court's removal of Appellant Fiduciaries as co-personal representatives and co-trustees.

IV. ARGUMENT

A. Standard of Review.

Removal of a personal representative is reviewed on an abuse of discretion standard. *In re Estate of Ardell*, 96 Wn. App. 708, 720 (1999) (citing *Matter of Aaberg's Estates*, 25 Wn. App. 336, 340 (1980)); see also *In re Estate of Jones*, 152 Wn. 2d 1, 10 (2004) ("[I]f even one ground for removal is valid, the decision should be upheld on appeal."); *Matter of*

Estate of McAnally, 2018 WL 2069521, *6 (Wn. Ct. App. Div. 3 2018) (*unpublished*) (“The trial court has broad discretion in determining whether and for what grounds to remove a personal representative.”); *In re Blodgett’s Estate*, 67 Wn. 2d 92, 95 (1965) (“The probate court has authority by law to remove one administrator and appoint another for any cause it deems sufficient, and the ruling is subject to review only if it is arbitrary and capricious.”). Likewise, a trial court’s removal of a trustee is only reversible on appeal based on manifest abuse of discretion. *In re Estate of Ehlers*, 80 Wn. App. 751, 761 (1996).

B. The Trial Court Properly Considered INWCF’s Motion to Remove.

1. The Trust Contest Petition and Appellant Fiduciaries’ Petition Response Invoked the Trial Court’s Jurisdiction to Hear the Motion to Remove.

Appellate Heirs and Appellate Fiduciaries contradict their own pleadings by arguing for the first time on appeal that the trial court lacked jurisdiction over the Estate as a nonintervention probate. Appellant Heirs asserted at paragraph 1.5 of the Trust Contest Petition that the trial court “has taken jurisdiction over the above numbered probate of the Estate” and, therefore, RCW 11.96A.040 endowed the trial court with jurisdiction over “all matters concerning” the Estate and Trust. (CP at 28-29, n. 1.) Appellant Fiduciaries, at paragraph 1.5 of their Petition Response, admitted,

“[t]o the extent a response is required,” that the trial court held broad jurisdiction as asserted in the Trust Contest Petition. (CP at 68.) Appellant Heirs and Appellant Fiduciaries actually went so far as to consolidate the Trust Contest Petition into the probate matter. (CP at 64-66.)

JoLynn alleged, as an heir, that the trial court had jurisdiction under RCW 11.96A.040 to hear the patently absurd legal arguments made in the Trust Contest Petition that the Trust and Article III of Wendell’s Will are invalid. Shortly thereafter, she and Steve, as co-personal representatives of the Estate, consented to that jurisdiction and admitted those absurd arguments despite being fully informed in the February 13, 2017 Witherspoon Letter that the grounds for challenging the Trust were completely meritless. (CP at 211-15.) On page 30 of their opening brief on appeal, Appellant Fiduciaries admit that “[a]lthough [JoLynn] filed the action as a beneficiary, she and [Steve] were entitled to file that action to secure proper guidance from a court on the correct distribution of Estate assets” By agreeing to the assertions of jurisdiction of the Trust Contest Petition, Appellant Fiduciaries invoked the trial court’s jurisdiction to hear all matters concerning the Estate and Trust under RCW 11.96A.040.

Having invoked the trial court’s jurisdiction to hear the Trust Contest Petition, Appellant Fiduciaries invited the trial court to scrutinize the obvious breach of their fiduciary duties in their Petition Response’s

failure to object to the absurd legal arguments of the Trust Contest Petition. *Cf. Proctor & Gamble Co. v. King County*, 9 Wn. 2d 655, 659 (1941) (“Ordinarily, one is bound by the allegations of his pleading.”). While it is generally true that “the nonintervention personal representative does not waive his nonintervention powers or invoke the court’s jurisdiction merely by petitioning for an order or decree during the administration of the estate,” requests for judicial relief by personal representatives, such as petitions to approve or set fees, “generally invest the court with jurisdiction over that issue.” *In the Matter of the Estate of Ardell*, 96 Wn. App. 708, 716 (1999) (citing *In re Estate of Coates*, 55 Wn. 2d 250, 258 (1959); *In re Estate of Megrath*, 142 Wn. 324, 328 (1927)). In *In re Perry’s Estate*, for example, the Court permitted a devisee of a nonintervention will to object to the fees claimed by an executor and his legal counsel in a final accounting and petition for distribution, noting:

it clearly appears that here the executor **invoked the jurisdiction of the superior court** in the matter of the determination of the allowances to be made to the executor and his counsel, and, in his supplemental final account, asked that he be credited with the amounts which he had paid pursuant to the order fixing the same.

168 Wn. 428, 432 (1932) (emphasis added).

A personal representative’s invocation of a trial court’s jurisdiction as to particular grounds for relief is a double-edged sword. The *Ardell*

Court, for instance, prohibited a personal representative who had petitioned for court approval of his fees from reestablishing his nonintervention powers by withdrawing the petition. 96 Wn. App. at 716-17. Notwithstanding the general rule of RCW 11.68.120 that a personal representative does not waive nonintervention powers “by obtaining any order or decree during the course of his or her administration of the estate,” the *Ardell* Court held that “the trial court’s jurisdiction was ongoing as long as the court was investigating the issue of fees and possible misconduct by the personal representative.” *Id.* Just as a personal representative’s petition for approval of fees invokes a trial court’s jurisdiction to determine the reasonableness of any single fee item from a bundle of fees (*e.g.*, termination fees, investment fees, real estate management fees, etc.), Appellant Fiduciaries’ invocation of the trial court’s jurisdiction to invalidate provisions of the Will and void the Trust in its entirety (both actions that would result in loss of fiduciary authority) provided the trial court with jurisdiction to exercise the far less extreme authority of removing and replacing the personal representatives and trustees.

The trial court’s authority to provide the relief sought in INWCF’s Motion to Remove falls within the jurisdiction invoked by Appellant Fiduciaries. On frivolous grounds, JoLynn and the other Appellant Heirs attempted to authorize the trial court to apply the broad scope of

Washington's TEDRA Act (chapter 11.96A RCW) to invalidate the Trust and provisions of the Will³. Switching to her fiduciary role, JoLynn abused her power as a co-personal representative by rubber-stamping admissions of her own Trust Contest Petition, including the allegations of the trial court's TEDRA jurisdiction, and by ignoring the Trust Contest Petition entirely in her capacity as a co-trustee. Steve was complicit in JoLynn's improper admissions and inaction. INWCF moved to remove Appellant Fiduciaries as co-personal representatives and co-trustees precisely because of those improprieties. As the *Ardell* decision makes clear, by invoking the trial court's extensive jurisdiction under TEDRA to invalidate the Trust and Article III of the Will, Appellant Fiduciaries have also invoked the trial court's jurisdiction to merely remove the co-personal representatives and co-trustees.

Appellant Heirs' and Appellant Fiduciaries' reliance on *In re Estate of Rathbone* is unavailing. In that case, a beneficiary of a nonintervention estate attempted to use TEDRA (Ch. 11.96A RCW) to tack a judicial construction action onto his RCW 11.68.110 petition for an accounting. 190 Wn. 2d 332, 334 (2018). The Court held that RCW 11.68.110 only

³ Appellant Heirs' attempt, on page 31 of their opening brief on appeal, to cloak the Trust Contest Petition as strictly a trust contest action ignores 5.1 of its prayer for relief, expressly demanding the trial court's judicial declaration "[t]hat Article III of the Reugh Will provision activating a trust is invalid." The Trust Contest Petition, by its requested relief alone, is just as much a probate matter as it is a trust matter.

authorized the trial court to decide the accounting issues and that TEDRA did not provide the trial court with jurisdiction over the judicial construction action in the nonintervention probate. *Id.* at 340, 346. The Court, however, noted that “[t]he court can regain [its limited authority to intervene] only **if the executor** or another person with statutorily conferred authority properly invokes it.” *Id.* at 339.

Unlike the facts in *Rathbone*, the Estate’s personal representatives invoked the trial court’s jurisdiction by their stipulations to the Trust Contest Petition, which Appellate Heirs brought under TEDRA. INWCF’s Motion to Remove was brought *in response* to those stipulations. As Appellant Fiduciaries’ opening brief on appeal makes clear in footnote 16 at page 30, the Trust Contest Petition was brought under TEDRA. Moreover, Appellant Fiduciaries admitted in the Petition Response that the trial court may exercise that jurisdiction. Since Appellant Fiduciaries, as co-personal representatives, had already invoked TEDRA as the basis for hearing the Trust Contest Petition (*i.e.*, original jurisdiction over “probate and trust matters” and “all matters concerning the estates and assets of deceased persons including trust matters”), the *Rathbone* holding does not preclude INWCF from utilizing TEDRA to request removal of Appellant Fiduciaries from the offices of personal representative and trustee. As held in *Estate of Ardell* and *In re Perry’s Estate*, actions brought by personal

representatives in nonintervention estates “generally invest the court with jurisdiction over that issue.”

Under the authorities outlined above, Appellant Fiduciaries should not and cannot be allowed to advance JoLynn’s personal interests by invoking the trial court’s jurisdiction to invalidate portions of the Will and *all* of the Trust while simultaneously using nonintervention powers to prevent anyone (including the trial court) from protecting the Trust and its beneficiaries from Appellant Heirs’ unfounded attempt to invalidate the Will and Trust. Accordingly, when Appellant Fiduciaries invoked the trial court’s jurisdiction by conceding to the Trust Contest Petition and its application of TEDRA, the trial court correctly held that it had “reassumed jurisdiction” over the Estate and Trust which included the authority to hear INWCF’s Motion to Remove.

2. Because Appellant Fiduciaries Had Already Invoked the Trial Court’s Jurisdiction, the Trial Court Did Not have to Determine Jurisdiction under RCW 11.68.070 before Removing Them as Co-Personal Representatives.

In the December 22, 2017 Order, the trial court appropriately held that once jurisdiction had been reestablished, “the Court was not required to make a separate jurisdictional determination under RCW 11.68.070.” After Appellant Fiduciaries willingly came before the trial court, RCW 11.28.250 authorized their removal as co-personal representatives

“[w]henver the court [had] reason to believe” they had committed any of the misconduct cited in that statute. As an example, *In re Beard’s Estate* held that a trial court with jurisdiction over an estate could remove personal representatives even in the absence of a petition by an interested party. 60 Wn. 2d 127, 131-32 (1962). Citing Art. IV, § 6 of the Washington Constitution, RCW 11.28.160, and RCW 11.28.250, the Court explained:

a superior court **which has jurisdiction over an estate** may remove an executor **for any proper cause**, after citation and a hearing, notwithstanding the source of the information justifying the removal. The court's power to remove executors for proper cause is not contingent upon a petition being filed by parties interested in the estate. A contrary holding would place an undue limitation on the exercise of the court's duty in the administration of estates brought within its jurisdiction Therefore, respondents **need not have been parties interested in the estate** in order for the court to have had the power to remove appellants from the administration of the estate **upon valid grounds disclosed by respondents**.

Id. at 132 (emphasis added) (internal citations omitted).⁴ Thus, once a trial court reassumes jurisdiction over an estate for any reason, the Court is authorized to remove a personal representative “for any proper cause” as

⁴ The *Beard* holding is equally applicable whether or not the personal representative originally obtained nonintervention powers. As noted above, the *Ardell* Court held that petitions filed by personal representatives reinvest the probate court with jurisdiction over a nonintervention estate with regard to the issues raised in such petition. 96 Wn. App. at 716; *cf. In re Estate of Jones*, 152 Wn. 2d 1, 10, n. 2 (2004) (noting that “[a]lthough *Beard* is not a nonintervention will case, it is still valid authority for the [standard of review] principles cited.”).

the Court determines regardless of how or from whom the Court learns of the personal representative's misconduct.

In the matter at hand, once the Trust Contest Petition was before the trial court (and especially after it was consolidated into the Estate probate), the trial court had jurisdiction to remove the co-personal representative under RCW 11.28.250, even in the absence of a petition brought by a proper party under RCW 11.68.070. After reassuming jurisdiction over the Estate to hear the Trust Contest Petition, the trial court had every right to consider (1) Appellant Heirs' indefensible grounds for demanding invalidation of the Trust and Article III of the Will, (2) the Petition Response of Appellant Fiduciaries and their blanket admissions to the Trust Contest Petition's groundless allegations adverse to the Estate and Trust, (3) Appellant Fiduciaries' failure to raise *any* affirmative defenses to the Trust Contest Petition in their Petition Response, (4) JoLynn's conflicting roles in the litigation as both an heir of Wendell, who stood to receive substantial personal benefits from her Trust Contest Petition, and as a fiduciary who answered that same petition on behalf of the Estate and Trust, and (5) the allegations and evidence raised by INWCF in its Motion to Remove. In light of the overwhelming evidence of such misconduct, as analyzed in greater detail in Section C below, the trial court had full authority to remove Appellant Fiduciaries on its own determination once Appellant Heirs and

Appellant Fiduciaries brought the matter to the court. It was not necessary to decide whether INWCF was a proper party under RCW 11.68.070 or whether it followed the procedural requirements of that statute.

3. INWCF Was a Proper Party to Bring an Action to Remove Appellant Fiduciaries as Co-Personal Representatives under RCW 11.68.070.

Even though, as explained in the previous subsection, the trial court did not have to determine jurisdiction under RCW 11.68.070 to remove Appellant Fiduciaries, INWCF did qualify as a proper party under RCW 11.68.070 to bring its Motion to Remove. That statute allows removal of a personal representative, even in a nonintervention estate, “for any reason specified in RCW 11.28.250 . . . upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers.”

Appellant Heirs and Appellant Fiduciaries rely on *In the Matter of the Estate of Hitchcock*, 140 Wn. App. 526 (2007), for the proposition that INWCF, as a beneficiary of a pour-over trust, cannot bring a petition under RCW 11.68.070 because INWCF is not an “heir, devisee [or] legatee” of Wendell’s Estate. *Estate of Hitchcock*, however, is distinguishable because the petitioner (a beneficiary of a testamentary trust created under a will)

merely complained that “he had not been contacted by the Personal Representatives/Trustees and that he had not received funds for his family's care, maintenance, or education” under the trust. *Id.* at 529. It did not address a situation where, as here, the trustee entirely abdicated its fiduciary duties to the trust-devisee and its beneficiaries by failing to defend the integrity of the trust-devisee. The *Hitchcock* Court made no indication that the personal representative of the estate had refused to fund the testamentary trust or even acknowledge its existence. The decision only recounted that the beneficiary had not been contacted by or received funds from the trustees or personal representatives. *Id.* The Court further clarified that RCW 11.106.040 provided a remedy for the trust beneficiary to request petition for an accounting. *Id.*

Since, unlike here, the *Hitchcock* case did not involve the trustee's express abdication of the duty to defend and administer the trust in the interest of the beneficiaries, the Court did not address a situation where an aggrieved trust beneficiary brings an equitable action on behalf of the trust-devisee as outlined in Section 282(2) of the Restatement (Second) of Trusts. That Section states:

If the trustee **improperly refuses or neglects to bring an action** against the third person, the beneficiary can maintain a suit in equity against the trustee **and the third person**.

(Emphasis added).

INWCF's Motion to Remove sought the exact relief prescribed in the Restatement. Appellant Fiduciaries, as co-trustees of the Trust, neglected to object to the Trust Contest Petition's spurious arguments that the Trust was invalid and did not seek to remove the co-personal representatives for that obvious failure and breach of duty. They did not even raise the unassailable affirmative defenses that INWCF's attorneys communicated to them in the February 13, 2017 Witherspoon Letter. (CP at 211-15.) Instead, Appellant Fiduciaries immediately threw up a white flag in a shocking dereliction of their fiduciary duties to the trust beneficiaries. Under Section 282(2) of the Restatement (Second) of Trusts, INWCF had the right, as a trust beneficiary, to stand in the shoes of the co-trustees (who had improperly refused and neglected to object to the Trust Contest Petition or request the co-personal representatives' removal) to bring an action on behalf of the trust-devisee to remove Appellant Fiduciaries as co-personal representatives under RCW 11.68.070. Accordingly, INWCF was a proper party for bringing its Motion to Remove on behalf of the Trust that is the "devisee" or "legatee" in this matter.

4. Appellant Heirs and Appellant Fiduciaries Waived All Challenges to INWCF's Standing by Not Submitting Them to the Trial Court.

Appellant Heirs' and Appellant Fiduciaries' misplaced reliance on *Estate of Hitchcock* as a basis for precluding INWCF's Motion to Remove

also confuses standing with jurisdiction. While RCW 11.68.070 provides a particular avenue for reassuming jurisdiction over a nonintervention estate, challenges to a party's standing to raise a court's jurisdiction are waived on appeal if not raised at the trial court level. *See Tyler Pipe Indus., Inc. v. State Dept. of Rev.*, 105 Wn. 2d 318, 327 (1986) ("If the issue of standing is not submitted to the trial court, it may not be considered on appeal.") (*vacated on other grounds by Tyler Pipe Indus., Inc. v. State Dept. of Rev.*, 483 U.S. 232 (1987)); *see also* Philip A. Talmadge, *Understanding the Limits of Power: Judicial Restraint in General Jurisdiction Court Systems*, 22 Seattle U. L. Rev. 695, 718 (1999) ("In federal courts, standing is a requirement for subject matter jurisdiction. In Washington, however, the parties may waive the question of standing by not submitting it to the trial court.").

As an example of this distinction, *Krause v. Catholic Community Services* refused to hear challenges, raised for the first time on appeal, that the Respondent organization did not have standing to bring a parental rights termination petition, even though RCW 13.34.180(1) only allows such petitions to be brought by a "party to the dependency proceedings concerning that child." 47 Wn. App. 734, 748 (1987). Similarly, in the case at hand, Appellant Heirs and Appellant Fiduciaries argue for the first time on appeal that INWCF did not belong to any specified class of parties

allowed to bring a petition to remove a personal representative under RCW 11.68.070. However, that argument merely questions INWCF's standing to bring a removal action under that specific statute, rather than the trial court's jurisdiction to remove a personal representative under that same statute if "it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250." Since Appellant Heirs and Appellant Fiduciaries did not dispute INWCF's standing before the trial court, the December 22, 2017 Order may not be reversed on such grounds. Furthermore, as Northwest Trustee has argued in the previous sections of this brief, it is not even necessary to consider whether INWCF was a proper party to seek removal under RCW 11.68.070, since it is beyond dispute that Appellant Fiduciaries had revested the trial court with jurisdiction to remove the co-personal representatives under RCW 11.28.250 even in the absence of a valid petition by INWCF.

5. Even if INWCF's Motion to Remove the Co-Personal Representatives Had Been Jurisdictionally Defective, which It Was Not, INWCF's Motion to Remove *the Co-Trustees* Was Properly Before the Trial Court.

RCW 11.98.039(4) permits "any beneficiary of a trust, the trustor, if alive, or the trustee [to] petition the superior court having jurisdiction for the appointment or change of a trustee or co-trustee under the procedures

provided in RCW 11.96A.080 through 11.96A.200: (a) [w]henver the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) **for any other reasonable cause.**” (Emphasis added).

Contrary to Appellant Heirs’ arguments, INWCF does not cease to be a Trust “beneficiary” for purposes of RCW 11.98.039(4) just because the Trust Agreement requires it to administer its residuary distribution as a donor-advised fund. Washington’s Principal and Income Act, at RCW 11.104A.005 defines “beneficiary” to include “in the case of a trust, an income beneficiary and a remainder beneficiary,” and defines “remainder beneficiary” as “a **person** entitled to receive principal, including when an income interest ends.” (Emphasis added). That same statute further defines “person” broadly to include, *inter alia*, a “public corporation.”

Here, INWCF recently changed its name to Innovia Foundation⁵, which is listed as a Washington “Public Benefit Corporation” on the website of the Washington Secretary of State’s office, and INWCF is entitled to receive principal under the Trust Agreement. Thus, INWCF satisfies the definition of “beneficiary” under RCW 11.104A.005.

⁵ See Washington Secretary of State corporation search, <https://www.sos.wa.gov/corps/business.aspx?ubi=601141467>; see also Rachel Sun, *Community Foundation Celebrates New Name*, The Spokesman Review, June 6, 2018, available at <http://www.spokesman.com/stories/2018/jun/05/community-foundation-celebrates-new-name/>.

INWCF also satisfies the definition of “beneficiary” in Black’s Law Dictionary 6th ed. “[a]s it relates to trust beneficiaries,” which includes “a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.” (Emphasis added). Comment f. of Section 348 of the Restatement (Second) of Trusts specifies that gifts to charitable corporations, such as INWCF, which are made subject to a donor’s express restrictions, effectively create charitable trusts where the charitable corporation is the trustee.⁶ Hence, INWCF is also a “beneficiary” under the Black’s Law Dictionary definition because it is entitled to enforce the “charitable trust” that was effectively created as a donor advised fund under the Trust Agreement.

Appellant Heirs’ tortured arguments on pages 16-23 of their opening brief on appeal that INWCF is not a trust beneficiary entitled to bring an action to remove Appellant Fiduciaries as co-trustees under RCW 11.98.039(4) once again imply, for the first time on appeal, that the Petition

⁶ That comment of the Restatement clarifies that even in jurisdictions that do not recognize the creation of a charitable trust under such circumstances, the distinction “is a mere matter of terminology. The important question is whether and to what extent the principles and rules applicable to charitable trusts are applicable to charitable corporations. Ordinarily the principles and rules applicable to charitable trusts are applicable to charitable corporations.”

to Remove was jurisdictionally defective due to INWCF's alleged lack of standing as a trust beneficiary. As explained above⁷, all questions of a party's standing are waived on appeal if they are not brought before the trial court. Moreover, merely placing restrictions on a testamentary gift, such as the Trust Agreement's condition that INWCF hold the Trust residue in a donor-advised fund, does not make the recipient any less of a "beneficiary" for purposes of RCW 11.98.039(4). Under Appellant Heirs' strained interpretation, a gift of property to hold as trustee in trust for a beneficiary could never be enforced by the trustee because the property is intended to benefit the beneficiary. This would produce unjust results in such commonplace situations as a testamentary gift to a child to be held in trust by the child's parent as trustee for the child's benefit until the child reaches a certain age. In that case, the parent would lose the opportunity to bring a removal action. Even a recipient of property subject to a possibility of reverter would be left with no means of recourse against a breaching trustee, under Appellant Heirs' interpretation. Nothing in the plain language of RCW 11.98.039(4) prescribes such absurd results.

As a beneficiary of the Trust, INWCF had "reasonable cause" to bring an action to remove Appellant Fiduciaries as co-trustees and to

⁷ See discussion at subsection B.4, *supra*; see also *Tyler Pipe Indus., Inc.* 105 Wn. 2d at 327.

appoint Northwest Trustee as a successor. In addition to their assortment of fiduciary duty breaches detailed in the following section of this brief, Appellant Fiduciaries did not even *file* any answer or response to the Trust Contest Petition in their capacities as co-trustees of the Trust. The Petition Response, which improperly greenlighted many meritless allegations of fact and law in the Trust Contest Petition, was signed solely in Appellant Fiduciaries capacities as co-personal representatives. In addition to there being reasonable cause for removal under RCW 11.98.039(4), Appellant Fiduciaries' improper neglect of their fiduciary duty to maintain an action to protect INWCF's interest in the Trust gave rise to a cause of action against the co-trustees as described in Restatement (Second) of Trusts, § 282(2). Therefore, even if the trial court's order could properly be reversed with respect to the removal of the co-personal representatives, which it cannot, the trial court was nevertheless authorized, upon a finding of "reasonable cause" to remove Appellant Fiduciaries as co-trustees and to appoint Northwest Trustee as successor trustee of the Trust.

As a practical matter, reversing the December 22, 2017 Order with respect to the removal Appellant Fiduciaries as co-personal representatives, but not as co-trustees, would only burden the trial court and all parties with needlessly duplicative litigation. As the court-appointed successor trustee, it is beyond question that Northwest Trustee has standing under RCW

11.68.070 to petition for removal of Appellant Fiduciaries as co-personal representatives since the Trust is a “devisee” under Wendell’s Will. Northwest Trustee also has a fiduciary duty⁸ to seek the removal of the co-personal representatives in order to defend the integrity of the Trust and ensure the Trust receives its bequest under the Will. The burden of needless re-litigation of the same issues at the trial court is just one more reason to reject the tenuous arguments raised by Appellant Heirs and Appellant Fiduciaries. Accordingly, this Court should affirm, in full, the trial court’s December 22, 2017 Order removing Appellant Fiduciaries as both the co-personal representatives of the Estate and as co-trustees of the Trust.

C. The Trial Court Did Not Abuse Its Discretion by Removing Appellant Fiduciaries as Co-Personal Representatives of the Estate and as Co-Trustees of the Trust.

RCW 11.68.070 allows a trial court to remove any personal representative who “fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250.” With or without a petition properly brought under RCW 11.68.070, a trial court with jurisdiction over an estate may remove a personal representative under RCW 11.28.250 in any instances 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

⁸ See discussion re fiduciary duties of trustees to defend trusts in the following section, *infra*.

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**.

(Emphasis added).

A trial court also has broad authority to remove a trustee under RCW 11.98.039(4) for any “reasonable cause.” Conflicts of interest between a trustee and beneficiaries of a trust constitutes reasonable cause for removal. *See Porter v. Porter*, 107 Wn. 2d 43, 55-56 (1986) (affirming removal of trustee for conflict of interest who “asserted a community property interest in the cash value policies which were intended to fund the trust.”); *see also Estate of Ehlers*, 80 Wn. App. 751, 761 (1996); *Waits v. Hamlin*, 55 Wn. App. 193, 198-99 (1989).

Breaches of fiduciary duties to beneficiaries are also grounds for removal of personal representatives and trustees. *In re Estate of Jones*, explained that the purpose of RCW 11.68.070 and 11.28.250 “is to provide protection to beneficiaries and other interested parties when a personal representative breaches his fiduciary duties.”) 152 Wn. 2d 1, 11 (2004); *see also Estate of Ehlers*, 80 Wn. App. at 761 (“A trustee who breaches his or her duties may be removed as trustee by petition of the beneficiary.”). The record is amply clear that Appellant Fiduciaries breached many of their

fiduciary duties and harbored irreconcilable conflicts of interest, such that the trial court did not abuse its discretion by removing them as co-personal representatives and co-trustees.⁹

First, Appellant Fiduciaries had duties (1) to comply in good faith with the terms of the Will and Trust Agreement (*see* Restatement (Third) of Trusts § 76 (“The trustee has a duty to administer the trust, diligently and in good faith, **in accordance with the terms of the trust** and applicable law”) (emphasis added); *see also In re Bonness’ Estate*, 13 Wn. App. 299, 307 (1975) (holding that “it was necessary [for the personal representative] to show that all assets expended by her complied with the terms of the will and the trust”); (2) to provide accurate information to the beneficiaries (*see* RCW 11.98.072, “[a] trustee must keep all qualified beneficiaries of a trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests”); and (3) to act impartially

⁹ Appellant Heirs’ argument on page 24 of their opening brief on appeal that the personal representatives can somehow “disclaim” the residuary devise to the Trust is frivolous. Wendell’s estate plan only disposed of the assets he owned at death, as there is no indication in the record that his Estate received a gift or inheritance after his death. Neither Wendell, nor his personal representative, could disclaim the assets Wendell already owned. Rather, the disclaimer provisions under Article IV, section D. of the Will merely allow the personal representatives to disclaim interests in *other* trusts or estates that become payable to Wendell after his death at any time within nine months of transfer. RCW 11.86.031. This allows the personal representative to avoid undesired increases in the size of Wendell’s taxable estate, but it does not enable the personal representatives to disclaim assets that Wendell or his Estate already owned. *See* RCW 11.86.051(1) (“a beneficiary may not disclaim an interest if . . . [t]he beneficiary has accepted the interest or a benefit thereunder.”).

and loyally with respect to the beneficiaries of the respective estate and trust. See RCW 11.98.078 (a trustee “must administer the trust solely in the interests of the beneficiaries” and “[i]f a trust has two or more beneficiaries, the trustee **must act impartially** in administering the trust and distributing the trust property, giving due regard to the beneficiaries’ respective interests”) (Emphasis added); *Matter of Estate of Larson*, 103 Wn. 2d 517, 521 (1985) (A personal representative “stands in a fiduciary relationship to those beneficially interested in the estate. He is obligated to exercise the utmost good faith and diligence in administering the estate in the best interests of the heirs.”).

Appellant Fiduciaries breached *all* of those fiduciary duties when they did not disclose to INWCF the residuary gift described in Article VI of the Trust Agreement which would provide for approximately \$16 million to INWCF while simultaneously offering to distribute \$2.2 million to INWCF in satisfaction of that gift. Appellant Fiduciaries also violated their duty of impartiality and loyalty by distributing almost \$5 million among several beneficiaries (including JoLynn and other family members) in the amounts specified in the Trust Agreement (inconsistent with their position that the Trust is not even valid), while disputing the validity of the Trust

Agreement and INWCF's residuary gift made thereunder.¹⁰ Those actions also contradicted Appellant Fiduciaries' representations to the IRS in the 706 and the Washington State Department of Revenue in the Washington Estate Tax Return, which reported a charitable bequest of over \$16 million to INWCF, and potentially expose the Estate to tax penalties and substantial interest charges.

Second, Appellant Fiduciaries breached their duty to defend the terms of the Will and Trust in good faith. *See In re Jennings' Estate*, 6 Wn. App. 537, 538 (1972) ("An executor who is in possession of a will has a duty to file it in court and, when probated, defend it."); *see also In re Eustace Estate*, 198 Wn. 142, 147 (1939) ("A trustee, accepting a trust, is estopped from contesting the title of the creator of the trust to the property conveyed to the trustee and from setting up a claim to the trust estate, as against the beneficiary under the trust, or denying the title or estate of the person for whose benefit the trust was created or for whom he holds it."); Bogert, *The Law of Trusts and Trustees*, § 581 ("Equity imposes upon the trustee the duty of defending the integrity of the trust, if he has reasonable ground for believing that the attack is unjustified or if he is reasonably in doubt on that subject.").

¹⁰ By taking the position that the Trust is invalid, Appellants could also jeopardize the validity of prior distributions to several other beneficiaries of the Trust, other than Appellant Heirs.

In the Petition Response, Appellant Fiduciaries failed to defend the terms of the Will and Trust from the clearly erroneous legal conclusions that the Trust was invalid due to Wendell naming himself as trustee and the purported fact that the Trust held no assets at Wendell's death. Rather than citing clear statute authority (*i.e.*, RCW 11.98.008(2) and 11.12.250) to establish that the Trust is valid under such circumstances, Appellant Fiduciaries simply admitted Appellant Heirs' obviously incorrect legal argument. This action constituted a blatant (and in JoLynn's case, self-serving) breach of fiduciary duty to defend the Will and Trust in good faith. Having received the February 13, 2017 Witherspoon Letter (CP at 211-15), containing the clearly correct counter-analysis to the legal positions raised in the Trust Contest Petition, the failure of Appellant Fiduciaries to raise affirmative defenses to the Trust Contest Petition was a knowing and bad faith breach of their fiduciary duty. In light of these severe breaches of Appellant Fiduciaries' duties, the trial court did not abuse its discretion by removing them as co-personal representatives and co-trustees and the December 22, 2017 Order should be affirmed.

D. The Trial Court Did Not Abuse Its Discretion by Appointing Northwest Trustee as Successor Personal Representative of the Estate and as Successor Trustee of the Trust.

Under RCW 11.28.160, "[t]he court appointing any personal representative shall have authority for any cause deemed sufficient, to

cancel and annul such letters **and appoint other personal representatives in the place of those removed.**” (Emphasis added). Where cause for removal of a personal representative is established, RCW 11.28.250 likewise provides, “it shall be the duty of the court **to immediately appoint some other personal representative.**” (Emphasis added).

These statutes do not constrain the trial court to follow the provisions for appointment of successor personal representatives in Article IV of Wendell’s Will, particularly when they do not apply to the fiduciary vacancy situation that was before the trial court. Article IV of Wendell’s Will only permits his children to vote on successor nominees in the event (A) either Dominic Zamora or James M. Simmons is or becomes unwilling or unable to serve as personal representative *and* (B) the remaining one of them (*i.e.*, Dominic Zamora or James M. Simmons) “nominate[s] three individuals to serve as co-Personal Representative with him.” (CP at 7.)

Neither prong applies to the appointment of a personal representative to succeed Appellant Fiduciaries. First, the trial court did not remove Dominic Zamora or James M. Simmons as personal representative since neither one of them was serving at the time of the December 22, 2017 Order. Second, the rights to nominate three successor co-personal representatives were personal to Dominic Zamora and James M. Simmons, solely in the event one of them was serving as personal representative at a

time when the other one of them ceased to serve. Since neither of them was an acting personal representative when Appellant Fiduciaries were removed, the Will did not authorize anyone to nominate successor personal representatives, nor did it allow Wendell's children to vote on any nominees. Even if Wendell's children (*i.e.*, Appellant Heirs) had any rights to nominate or select a successor personal representative, which they did not, there is nothing in the record to indicate that they attempted to exercise these rights in any way, nor did they even suggest an alternative successor in lieu of Northwest Trustee. Therefore, the trial court acted within its discretion to appoint Northwest Trustee, a disinterested and independent institutional trustee, as successor personal representative of the Estate.

E. Appellant Heirs and Appellant Fiduciaries Have Failed to Show any Unfitness by Northwest Trustee to Serve as Successor Personal Representative and Trustee.

Appellant Heirs' unsubstantiated accusations, on page 2 of their opening brief, that Northwest Trustee is a "financial predator's co-conspirator" as well as an "illegitimate financial predator" rise to the level of defamation. Appellant Fiduciaries' description of Northwest Trustee as "pliant" and "puppeting INWCF's position," on pages 45 and 12 of their opening brief, is unprofessional at best. Neither Appellant has provided any evidence of misconduct by Northwest Trustee, before or after Northwest Trustee's appointment as successor personal representative and trustee.

Appellant Fiduciaries, for instance, criticize Northwest Trustee for “hir[ing] new counsel for the Estate, discharging its former counsel,” even though conflict-of-interest rules would certainly prevent the former counsel (who has appeared in this appeal on behalf of Appellant Fiduciaries) from representing Northwest Trustee while trying to remove them on appeal.

Appellant Fiduciaries also cannot support their charge that Northwest Trustee amended the Petition Response “to merely echo INWCF’s.” As explained many times in this brief, the Trust Contest Petition’s grounds for contesting the validity of the Trust and Article III of Wendell’s Will ignore controlling law that clearly establishes the validity of the Trust and the Will’s residuary gift to the Trust. It is ridiculous to imply that no independent fiduciary would conclude that the Trust is valid, absent a secret alliance with INWCF. The only conspiracy that is apparent in the record is between Appellant Heirs and Appellant Fiduciaries who played dual roles in capitulating to their own Trust Contest Petition to, in the words of Appellant Heirs’ counsel, “claim their father’s estate.” (CP at 582.) Thus, the trial court’s appointment of Northwest Trustee should be affirmed on appeal.

F. Appellant Heirs and Appellant Fiduciaries Are Not Entitled to an Award of Attorney Fees and Costs on Appeal.

Northwest Trustee disputes any and all claims of Appellant Heirs and Appellant Fiduciaries that they somehow benefitted the Estate by engaging in meritless litigation with the intent to override Wendell's desired property distribution at death. As detailed above, Appellant Fiduciaries (including JoLynn acting as both a fiduciary and as an heir of Wendell), engaged in serious breaches of their fiduciary duties, which placed their own personal interests above the named beneficiaries of the Estate and Trust. Therefore, the requests for attorney fee awards to Appellant Heirs and Appellant Fiduciaries must be denied.

G. Northwest Trustee Requests an Award of Attorney Fees and Costs Incurred by the Estate and Trust on Appeal.

With respect to actions to remove personal representatives, *In re Estate of Jones* explained that “[u]nder RCW 11.68.070, attorney fees may be awarded. Further, RCW 11.96A.150 allows costs in probate cases **to any party, from any party**, and is not limited by RCW 11.68.070.” 152 Wn. 2d 1, 20 (2004) (emphasis added). Combining the two provisions, the Court awarded attorney fees to the petitioners “including those incurred on appeal” and ordered the removed personal representative “to pay the costs personally.” *Id.* Here, this Court should exercise its broad discretion to award attorney fees under RCW 11.68.070, RCW 11.96A.150, and RAP

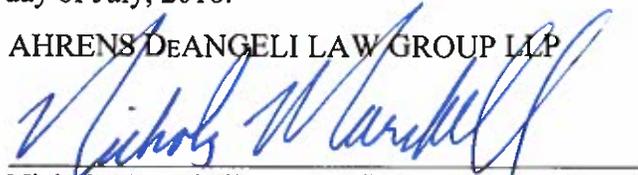
18.1 to require Appellant Fiduciaries and/or Appellant Heirs to personally pay all attorney fees incurred by the Estate and/or the Trust in this litigation, particularly in light of the frivolous positions taken by the Appellant Heirs and Appellant Fiduciaries as well as the benefit conferred to the Estate through Northwest Trustee's efforts to curtail Appellant Heirs' attempts to undermine Wendell's estate plan.

V. CONCLUSION

Based on the foregoing, Respondent Northwest Trustee & Management Services, L.L.C. respectfully asks this Court to affirm the order of the trial court removing Appellants JoLynn Reugh-Kovalsky and Steve Gill as co-personal representatives of the Estate of K. Wendell Reugh, deceased, and as co-trustees of the K. Wendell Reugh Revocable Living Trust, U/T/A dated January 4, 2011 and appointing Respondent Northwest Trustee & Management Services, L.L.C. as successor personal representative and trustee of that estate and trust, and further requests an award of attorney fees and costs for having to respond to this appeal.

DATED this 9th day of July, 2018.

AHRENS DEANGELI LAW GROUP LLP



Nicholas Marshall, WSBA # 47042

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Attorneys for Northwest Trustee & Management Services, L.L.C.

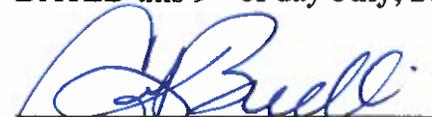
CERTIFICATE OF SERVICE

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 9th day of July, 2018, she served a copy of the foregoing document to the following individuals, in the manner indicated below:

SERVICE LIST	
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