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No. 362388

WASHINGTON STATE COURT OF APPEALS  
DIVISION III

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IN THE MATTER OF THE ESTATE OF:

ANNE LORRAINE TROYER, DECEASED

TIMOTHY M. TROYER,  
Petitioner - Appellant,

v.

LORI A. TROYER,  
Respondent - Appellee.

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OPENING BRIEF OF APPELLANT

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## INTRODUCTION

Timothy M. Troyer (Tim) is named in his mother's will as personal representative of her estate to serve with nonintervention powers. His sister, Lori A. Troyer (Lori), a beneficiary of their mother's will, along with Tim and sister Irene Ornvitz (Irene), objected to Tim's appointment because of some things he said in text messages to her about her treatment of their mother during the final days of her life.

Lori sought to have a person appointed as the administrator with the will annexed. The court held that Tim was not qualified to administer the estate because he "has threatened to use the powers that would be granted to him as personal representative to retaliate against Lori and Irene." The court continued, "the court is persuaded on a clear and convincing evidence basis, that Tim cannot fulfill the fiduciary duties of good faith, diligence undivided loyalty he would owe to Lori and Irene as beneficiaries. The court, therefore, sustains the objection."

The court went on to appoint "a neutral third-party to protect the interests of the beneficiaries." On the court's "own choosing," James Spurgetis was appointed administrator of the estate.

## ASSIGNMENTS OF ERROR

### Order Sustaining Objection to Appointment ... and Appointing Administrator CP 109

#### Errors of Fact

No. 18 "Tim's statements reflect an intent to use the powers that would be granted to him as the personal representative to retaliate against Lori, and to a lesser extent Irene, for decisions that Lori made about the Decedent's care."

No. 19 "The Court finds, by clear and convincing evidence, that Tim is not capable of fulfilling the fiduciary duties that he would owe to Lori and Irene if appointed as the personal representative. Having directly threatened to use the appointment to "[. . .]" them and "make [them] pay," Tim is not in a position to treat Lori and Irene with the good faith, diligence and undivided loyalty that the appointment requires."

No. 20 "The Court does not credit Tim's testimony that he would be able to administer the estate impartially without retaliating against Lori or Irene. Based upon the totality of the evidence presented, that testimony is not credible."

#### Errors of Conclusions of Law and Combined Fact and Law

No. 22. "RCW 11.28.020 requires an objecting party to prove, by clear and convincing evidence, that the named personal representative is not qualified to administer the estate."

#### Combined Fact and Law

No. 23. "Lori has proven by clear and convincing evidence that Tim is not qualified to administer the estate. Tim has threatened to use the powers that would be granted to him as the personal representative to retaliate against Lori and Irene. The Court is persuaded, on a clear and convincing evidence basis, that Tim cannot fulfill the fiduciary duties of good faith, diligence and undivided loyalty he would owe to Lori and Irene as beneficiaries. The Court therefore sustains the Objection."

No. 24. "RCW 11.28.020 is not unconstitutional. Like other

statutes governing the conduct of personal representatives (see, e.g., RCW 11.68.070 and RCW 11.28.250), RCW 11.28.020 allows a court to intervene in the administration of an estate when necessary to protect the interests of the beneficiaries. The decision to intervene is addressed to the court's discretion. That discretion is properly exercised where, as here, there is clear and convincing evidence that the named personal representative will not fulfill the fiduciary duties attendant to the position. Appointment of a neutral third-party is needed to protect the interests of the beneficiaries. The Court will appoint an administrator of its own choosing.”

### **ISSUES ABOUT ASSIGNMENTS OF ERROR**

A. Whether the court has authority under RCW

11.28.020 to reject the appointment of the personal representative provided for in the will of the deceased, on the basis of an objection by a beneficiary of the will that the personal representative by “clear and convincing evidence is not qualified to administer the estate.” Finding of Fact No. 22.

B. Whether findings of fact (Nos.18, 19, and 20) establish that Tim Troyer, the designated personal representative under Decedent’s will, is disqualified under RCW 11.36.010.

### **STATEMENT OF THE CASE**

#### **I. STATEMENT OF FACTS**

Appellant Timothy L. Troyer (Mr. Troyer) petitioned the court to admit his deceased mother's (Anne Lorraine Troyer) will

into probate, to appoint him the personal representative of his mother's estate, declare the estate solvent, and to issue letters testamentary to him with nonintervention powers.

Mrs. Troyer's will (CP 1-2) provides:

VI

I hereby nominate and appoint my husband, JOHN PHILIP TROYER, the executor of this my LAST WILL AND TESTAMENT. The event that he does not desire to act, or qualify as executor qualifying fails to act, or resigns, then in that event I hereby nominate and appoint TIMOTHY MICHAEL TROYER in his place and stead.

I direct that my executor shall administer and settle my estate as in this last will and testament provided, without the intervention of any court or courts, except insofar as such intervention may be required by law, and that my executor serve without bond as such...

Tim's sister, Lori Troyer (Lori), filed an objection to her brother's appointment pursuant to RCW 11.28.020 ("Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.").

## II. STATEMENT OF PROCEDURE

After the hearing, the Probate Court refused to appoint Tim personal representative and instead appointed James Spurgetis, a probate attorney in Spokane, Washington, who was recommended to the court by Ms. Troyer and her attorneys.

Mr. Spurgetis has no relation to the deceased nor does he have any relationship to the beneficiaries of Anne Troyer's estate.

### STANDARDS OF REVIEW

#### A. Overview - Two-Step Process.

*Ledcor Indus. v. Mut. of Enumclaw*, 150 Wash. App. 1, 8 n.5, 206 P.3d 1255 (2009) ("The standard of review for a trial court's findings of fact and conclusions of law is a two-step process. First, this court determines if the findings of fact were supported by substantial evidence in the record. If so, it determines whether those findings of fact support the conclusions of law. *Landmark Dev., Inc. v. City of Roy*, 138 Wash. 2d 561, 573, 980 P.2d 1234 (1999).")

#### B. Findings Of Fact Reviewed For Substantial Evidence.

*Sunnyside Valley Irrigation Dist. v. Dickie*, 111 Wash. App. 209, 214, 43 P.3d 1277 (2002), *aff'd*, 149 Wash. 2d 873, 73

P.3d 369 (2003) ("Findings of fact are reviewed under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash. 2d 169, 176, 4 P.3d 123 (2000). If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it might have resolved a factual dispute differently. *Croton Chem. Corp. v. Birkenwald, Inc.*, 50 Wash. 2d 684, 314 P.2d 622 (1957)").

**C. Conclusions Of Law Are Reviewed De Novo.**

*Sunnyside Vly. Irrig. Dist. v. Dickie, supra* 149 Wash. 2d at 880 (2003) ("Questions of law and conclusions of law are reviewed de novo. *See Veach v. Culp*, 92 Wash. 2d 570, 573, 599 P.2d 526 (1979).")

*State v. Mullen Trucking 2005, Ltd.*, No. 76310-5-I, at \*8 (Wash. Ct. App. Oct. 22, 2018) ("Statutory interpretation is a question of law that we review de novo. *City of Spokane v. Rothwell*, 166 Wash. 2d 872, 876, 215 P.3d 162 (2009). Our primary duty in interpreting a statute is to discern the intent of the legislature. *State v. J.P.*, 149 Wash. 2d 444, 450, 69 P.3d 318 (2003). We begin with the statute's plain language, which may

be discerned ‘from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.’ *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash. 2d 1, 11, 43 P.3d 4 (2002). If the plain meaning of the statute is unambiguous, our inquiry is at an end. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wash. 2d 516, 526, 243 P.3d 1283 (2010).”)

**D. Mixed Questions Of Law And Fact Reviewed De Novo.**

*Edmonson v. Popchoi*, 172 Wash. 2d 272, 278 (2011)

("Questions and conclusions of law are reviewed de novo.

*Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash. 2d 873, 880, 73 P.3d 369 (2003).”)

*Port of Seattle v. Pollution Control*, 151 Wash. 2d 568, 588 (2004) ("however, "[t]he process of applying the law to the facts . . . is a question of law and is subject to de novo review." *Id.*; see also, *Franklin County Sheriff's Office v. Sellers*, 97 Wash. 2d 317, 329-30, 646 P.2d 113 (1982) (explaining that mixed questions of law and fact, also known as problems of application of law to facts, are subject to de novo review, meaning the court must determine the correct law independent of the agency's decision and then apply the law to established facts de novo).")

*Franklin County v. Sellers*, 97 Wash. 2d 317, 329-30

(1982) ("Mixed questions of law and fact, or law application issues, involve the process of comparing, or bringing together, the correct law and the correct facts, with a view to determining the legal consequences. As we said in *Daily Herald Co. v. Department of Empl. Sec.*, 91 Wash. 2d 559, 561, 588 P.2d 1157 (1979), mixed questions of law and fact exist "where there is dispute both as to the propriety of the inferences drawn by the agency from the raw facts and as to the meaning of the statutory term". We have invoked our inherent power to review de novo those issues. See *Daily Herald*; *Department of Rev. v. Boeing Co.*, 85 Wash. 2d 663, 538 P.2d 505 (1975); *Weyerhaeuser Co. v. Department of Rev.*, 16 Wash. App. 112, 553 P.2d 1349 (1976).")

**E. Abuse of Discretion.**

*State v. Curry*, 423 P.3d 179, 184 (Wash. 2018) (" Under an abuse of discretion standard, we do not reverse a trial court's decision unless the trial court applied the wrong legal standard, based its decision on facts unsupported by the record, or made a decision that is manifestly unreasonable-even if we may have reached a different conclusion on de novo review").

*Mickelson v. Mickelson (In re Estate of Mickelson)*, No. 49056-1-II, at \*6-7 (Wash. Ct. App. Oct. 24, 2017) ("When a superior court exercises its discretion in a case where it had the right to exercise such discretion, we will not disturb the holding absent a clear showing of abuse of discretion. *In re St. Martin's Estate*, 175 Wash. 285, 289, 27 P.2d 326 (1933) (affirming the superior court's appointment of an administrator of the estate who was not the person selected and agreed upon by the petitioners). This is a rule of general application; thus, it extends to matters involving probate. *Id.*; see *In re Estate of Black*, 153 Wash. 2d 152, 171-72, 102 P.3d 796 (2004) (reviewing a probate court's refusal to hear all challenges to the validity of a will at a probate proceeding under an abuse of discretion standard). A superior court abuses its discretion when its ruling is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *DeLong v. Parmelee*, 157 Wash. App. 119, 164, 236 P.3d 958-59 (2010), *dismissed on remand*, 164 Wash. App. 781, 267 P.3d 410 (2011).")

## SUMMARY

The purpose of this case is to decide who should be appointed the personal representative of the estate of Anne

Lorraine TROYER, deceased. The dispute is between Tim and Lori. Tim petitioned the court to probate Mrs. Troyer's last will. Tim also petitioned to be appointed the personal representative of the estate to serve with nonintervention powers. Lori objected to this asserting that Tim was not qualified to be the personal representative. The trial court agreed with Lori, because of things Tim had texted to Lori regarding his concerns and objections to the way Lori had stepped in to take over control of their mother during the last several weeks of their mother's life. Lori simply did not want Tim to be the personal representative. And, Lori did not want to be the administrator of the estate. She wanted James Spurgetis to be the administrator. The court, utilizing RCW 11.28.020, heard Lori's objections to Tim's appointment and determined that Tim was not qualified to be the personal representative and appointed Mr. Spurgetis.

Under Washington law, the court under RCW 11.28.020 may disqualify one who is perceived to be unqualified. However, this is not true where the person seeking to be the personal representative is designated the personal representative of the decedent's will. In such an event, the court can only prevent the personal representative from being qualified as personal

representative if he is, at the time, disqualified under RCW 11.36.020. That statute says that a person is disqualified, --“not qualified” -- if the person is of “unsound mind” or has “been convicted” of any “felony or any crime involving moral turpitude.” *Id.*

Tim is not disqualified under RCW 11.36.020. Under Washington law, Tim has a right to be appointed personal representative of the estate because that was his mother’s expressed intention under the terms of her will.

There are certain factual findings in the matter wherein the court found that because of what Tim texted to Lori after their mother had died, and that in the judge’s mind, that disqualified him. CP 109. These findings are not relevant because they do not establish that Tim is “not qualified to act as personal representative” under RCW 11.36.020.

Also, were the court to be able to prevent Tim from being the personal representative of his mother’s estate, the court would be infringing upon fundamental constitutional rights of Tim Troyer, a liberty interest, a property interest, rights protected by amendments to the United States Constitution. Under such him circumstances, the infringement of Tim’s

fundamental rights could only be upheld if they met strict scrutiny analysis under the Constitution. Strict scrutiny means that the infringement can only be allowed if there is a compelling state interest to allow the fundamental right invasion. Under the law of Washington and the law of the United States, the invasion of Tim's fundamental rights cannot be justified under strict scrutiny.

**A. Tim Troyer Has a Right to Be Appointed Personal Representative of His Mother's Estate: Conclusions of Law Are in Error.**

In this case, the deciding issue is whether the court under RCW 11.28.020 has the authority to appoint someone other than the person designated as the personal representative under the will of the decedent.

About 30 years after Washington became a state, the Supreme Court in *In re Langill's Estate* held that the court had power to appoint a person who was not one who was designated under the provisions relating to executors of an estate where the decedent died intestate. The court held that it did. *In re Langill's Estate*, 117 Wash. 268, 201 Pac. 28 (1921).

In 1934, the Supreme Court addressed the issue but this time in the context of the direction of the decedent's will as to

whom the decedent wanted to be appointed the personal representative under the will of the decedent's estate. The case is *State ex rel. Lauridsen v. Superior Ct.*, 179 Wash. 198, 204, 37 P.2d 209, 211, 95 A.L.R. 819 (1934).

This court has declared that, in the absence of some controlling statute, the power to name an executor to administer an estate is coextensive with the power to devise or bequeath the estate itself. *In re Guye's Estate*, 54 Wash. 264, 103 P. 25, 132 Am. St. 1111."

The court analyzed the matter this way. "The first and fundamental question to be decided is whether the right of a testator to name and appoint an executor to administer his, or her, estate may be superseded by the court by appointing an administrator of the estate, and if so, under what circumstances the court may so act." After analysis, the court arrived at the substance of the law: "[I]n the absence of some controlling statute, the power to name an executor to administer an estate is coextensive with the power to devise or bequeath the estate itself." citing *In re Guye's Estate*, 63 Wash. 167, 114 Pac. 1041 (1911). *Lauridsen v. Superior Ct.*, 179 Wash. 204.

The court said "The weight of authority, generally, is also to the effect that the statutory grounds of disqualification are

exclusive, and that the courts have no right to add thereto, unless the court has been given a discretionary power in that respect. 1 BANCROFT'S PROBATE PRACTICE, pp. 423-4, § 228” and arrived at this:

Upon the first and fundamental question, therefore, we hold that, in the absence of fraud connected with the will or the estate, and in the absence of any statutory disqualification, the right of the testator to appoint an executor of his will may not be superseded by the court by appointing an administrator in his place.

*Lauridsen v. Superior Ct.*, 179 Wash. 198, 207 (Wash. 1934).

The court’s reasoning begins at page 202 and ends at 207:

The first and fundamental question to be decided is whether the right of a testator to name and appoint an executor to administer his, or her, estate may be superseded by the court by appointing an administrator of the estate, and if so, under what circumstances the court may so act.

Even under the rule followed in this state, the will of the testator must govern, unless the court finds that the executor named by him is, in fact, disqualified.

Upon the first and fundamental question, therefore, we hold that, in the absence of fraud connected with the will or the estate, and in the absence of any statutory disqualification, the right of the testator to appoint an executor of his will may not be superseded by the court by appointing an administrator in his place.

*State ex rel. Lauridsen v. Superior Ct.*, 179 Wash. 202-7. See also, *In re Raat's Estate. Frandsen et al. v. Raat*, 102 Utah 482, 486-87, 132 P.2d 136 (1942).

The rule is the same in *Estate of Daigh*, 59 Cal. 2d 367, 368-69 (Cal. 1963) wherein the court considered statutory language the same as Washington's. ("The fact that a person nominated in a will as executor has an interest adverse to decedent's estate does not disqualify him for appointment in the absence of a statute which authorizes disqualification on that ground.")

In *In re Odman's Estate*, 51 Wash. 2d 840, 841-42 (1958), the court said "[1] In the case of *State ex rel. Lauridsen v. Superior Court*, 179 Wash. 198, 37 P.2d 209, 95 A.L.R. 819 (1934), this court adopted the following rule, which is controlling in this case:

We hold that, in the absence of fraud connected with the will or the estate, and in the absence of any statutory disqualification, the *right of the testator to appoint an executor of his will may not be superseded* by the court by appointing an administrator in his place. [Italics in the original].

**B. Findings of Fact Are In Error.**

The findings of fact to which error is assigned above

(supra 2) are in error because they do not pertain to the question of whether Tim is disqualified to act as the personal representative under the provisions of the statute which specify when a person is statutorily disqualified. RCW 11.36.010. That is to say, the conclusions of fact do not address Tim's competence. Instead, the conclusions of fact are the personal views of the judge that "Tim is not in a position to treat Lori and Irene with good faith, diligence, and undivided loyalty that the appointment requires." Finding of Fact 19. Finding of fact, 18 tells us that the judge considering text messages from Tim to Lori saying "that they reflect an intent to use the powers that would be granted to him as the personal representative to retaliate against Lori, and to a lesser extent, Irene for decisions that Lori made about the decedent's care."

The judge ends with this": [T]he court does not credit Tim's testimony that he would be able to administer the estate impartially and without retaliating against Lori or Irene. Based upon the totality of the evidence, that testimony is not credible."

The judge does not describe what the entirety of the evidence is. The entirety is something that she arbitrarily and without any standards concludes that what Tim has testified do

not overcome the bad words he used in his time of grief and loss for his mother and the way in which Lori had assumed control over their mother without considering the wishes of her brother who had been providing the daily care for their mother over many years. These findings are not findings of fact. They are statements of the judge's personal opinion.

None of these findings are relevant. The judge's personal opinion as to her perception of Tim's conduct has no bearing on whether or not Tim is disqualified under the provision which sets forth the qualifications which must be met before a person is accepted by the court as the designated personal representative under the decedent's will, that is RCW 11.36.010.

**C. Fundamental Rights and Strict Scrutiny.**

Tim's mother designated Tim as the personal representative of her estate and directed that he serve without the intervention of the court. Tim's mother had lived with him over many years, Tim was devoted to her, he held her in high regard, and she held him in high regard. Tim made many personal sacrifices; he was a fine son to his mother. Her selection of Tim as personal representative was an honor, and expression of love, and an expression of the confidence she had

in Tim. Anne Troyer named Tim as the successor to Mrs. Troyer's husband and Tim's father, the first personal representative designated. Mrs. Troyer did not name Lori or Irene as the successor to Tim.

Not only did Mrs. Troyer have the right to name Tim as personal representative, but Tim also had the right to be the personal representative if he accepted his mother's choice, her confidence, her love for Tim. Tim petitioned to have Mrs. Troyer's will admitted to probate, and in it, he asked that he as the personal representative named will be designated the personal representative of the estate. This was a right, a liberty right, a property right, a right of recognition of his mother's confidence in him and his honor in accepting the position.

These rights are fundamental rights under the Constitution of the United States. They are rights protected by due process of law and procedural due process of law under the Fifth and Fourteenth Amendments to the United States Constitution.

In today's constitutional jurisprudence, the Supreme Court requires that before a fundamental right can be infringed provided the infringement is allowed under strict scrutiny. This

means that there must be a legitimate reason for infringing or taking these rights, these fundamental constitutional rights.

“We review de novo whether an individual's due process rights were violated. *Aiken v. Aiken*, 187 Wash. 2d 491, 501, 387 P.3d 680 (2017). No person may be deprived of life, liberty or property without due process of law. Const. art. I, § 3; U.S. Const. Amend. XIV. This constitutional guarantee requires notice and the opportunity to be heard and defend before a competent tribunal in an orderly proceeding adapted to the nature of the case. *In re Marriage of Ebbighausen*, 42 Wash. App. 99, 102, 708 P.2d 1220 (1985) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)).

*In re Custody Smith*, 137 Wash. 2d 1, 15 (1998) (“Where a fundamental right is involved, state interference is justified only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved. *See Roe v. Wade*, 410 U.S. 113, 155, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); *O'Hartigan v. Department of Personnel*, 118 Wash. 2d 111, 117, 821 P.2d 44 (1991); *In re Welfare of Sumey*, 94 Wash. 2d 757, 762, 621 P.2d 108 (1980).”)

*Parentage of L.B.*, 155 Wash. 2d 679, 710 (2005)

("Additionally, in *In re Custody of Smith*, 137 Wash. 2d 1, 969 P.2d 21 (1998), this court applied a strict scrutiny analysis in discerning whether a grandparent's invocation of the visitation statute infringed on the biological parent's "fundamental 'liberty' interest." 137 Wash. 2d at 15. In doing so, this court stated that "state interference is justified only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved." *Id.*; see also *In re Parentage of C.A.M.A.*, 154 Wash. 2d 52, 57-58, 109 P.3d 405 (2005) (reaffirming *Smith's* strict scrutiny analysis).")

In this case, it cannot be established the state has no compelling interest to interfere. Indeed, state probate law and statute provide otherwise. See part I above.

Were the court to decide otherwise would be a violation of Tim's constitutional rights.

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### III. CONCLUSION

The court should reverse the trial

December 24, 2018.

Respectfully submitted,

s/ Stephen Kerr Eugster

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### **Certificate of Service**

I certify that the foregoing Opening Brief of Appellant and the appendix thereto will be notified of the filing and served by the Washington Court of Appeals under its JIS Link procedure.

Additionally, however, I have this day emailed copies to the lawyer for the respondent and to the administrator of the estate at the following email addresses:

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December 24, 2018.

s/Stephen Kerr Eugster

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## IV. APPENDIX

RCW 11.28.010

### **Letters to executors—Refusal to serve—Disqualification.**

After the entry of an order admitting a will to probate and appointing a personal representative, or personal representatives, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will.

[ 1974 ex.s. c 117 § 28; 1965 c 145 § 11.28.010. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

RCW 11.28.020

### **Objections to appointment.**

Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.

[ 1965 c 145 § 11.28.020. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

RCW 11.28.280

### **Successor personal representative.**

Except as otherwise provided in RCW 11.28.270, if a personal representative of an estate dies or resigns or the letters are revoked before the settlement of the estate, letters testamentary or letters of administration of the estate remaining unadministered shall be granted to those to whom the letters would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the successor personal representative shall perform like

duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise. A succeeding personal representative may petition for nonintervention powers under chapter 11.68 RCW.

[ 1997 c 252 § 6; 1974 ex.s. c 117 § 26; 1965 c 145 § 11.28.280. Prior: 1955 c 205 § 8; 1917 c 156 § 77; RRS § 1447; prior: Code 1881 § 1428.]

#### RCW 11.28.120

##### **Persons entitled to letters.**

Administration of an estate if the decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

- (1) The surviving spouse or state registered domestic partner, or such person as he or she may request to have appointed.
- (2) The next of kin in the following order: (a) Child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.
- (3) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the person or estate of the decedent, or attorney-in-fact appointed by the decedent, if any such a fiduciary controlled or potentially controlled substantially all of the decedent's probate and nonprobate assets.
- (4) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.
- (5)(a) The director of revenue, or the director's designee, for those estates having property subject to the provisions of chapter 11.08 RCW; however, the director may waive this right.
- (b) The secretary of the department of social and health services for those estates owing debts for long-term care services as defined in \*RCW 74.39A.008; however the secretary may waive this right.

(6) One or more of the principal creditors.

(7) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate.

[ 2007 c 156 § 28; 1995 1st sp.s. c 18 § 61; 1994 c 221 § 23; 1985 c 133 § 1; 1965 c 145 § 11.28.120. Prior: 1927 c 76 § 1; 1917 c 156 § 61; RRS § 1431; prior: Code 1881 § 1388; 1863 p 219 § 122; 1860 p 181 § 89.]

RCW 11.36.010

**Parties disqualified—Result of disqualification after appointment.**

(1) Except as provided in subsections (2), (3), and (4) of this section, the following persons are not qualified to act as personal representatives: Corporations, limited liability companies, limited liability partnerships, minors, persons of unsound mind, or persons who have been convicted of (a) any felony or (b) any crime involving moral turpitude.

(2) Trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of an individual's estate or of the estate of an incapacitated person upon petition of any person having a right to such appointment and may act as personal representatives or guardians when so appointed by will. No trust company or national bank may qualify as such personal representative or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank.

(3) Professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners,

respectively, are exclusively attorneys, may act as personal representatives.

(4) Any nonprofit corporation may act as personal representative if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW.

(5) When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of (a) any felony or (b) any crime involving moral turpitude, the court having jurisdiction must revoke his or her letters.

(6) A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative must file a bond to be approved by the court.

[ 2013 c 272 § 1; 1983 c 51 § 1; 1983 c 3 § 14; 1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

# EUGSTER LAW OFFICE PSC

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