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

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In re the Guardianship of:

DOROTHY HELM O'DELL

Appellant.

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ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT

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RESPONDENT'S BRIEF

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....	3
III.	RESTATEMENT OF THE ISSUES RELATED TO THE ASSIGNMENTS OF ERROR .....	8
IV.	STATEMENT OF THE CASE .....	9
	A. Calhoun’s Background .....	9
	B. Calhoun’s Involvement with Helm.....	10
	C. Sale of Properties Pursuant to Care Management Agreement.....	13
	D. Helms Move Back to Yakima .....	16
	E. Helms Concerns About her Brothers; Her Involuntary Commitment; and the Filing of the Guardianship Action.....	17
	F. The Trial Court’s Findings of Good Faith and Voluntary Dismissal of the Guardianship Action.....	22
	G. Emergency Powers and Pre Assignment of Judge.....	27
	H. The Final Fight Over Fees and Helm’s Refusal to Let the Case End.....	28
V.	ARGUMENT .....	31
	A. Standard of Review .....	31

B. The Trial Court Did Not Commit an Abuse of Discretion in Finding that Calhoun Brought and Prosecuted the Action in Good Faith, and She is Entitled to Her Fees .....	31
1. Evidence supports a finding of good faith.....	36
2. Calhoun’s pre-filing conduct is not at issue in this case .....	41
3. Calhoun fulfilled any duty she had to ensure the validity of the DPOA .....	42
4. The service agreement did not create a conflict of interest .....	43
5. The sale of the properties was not made over objections of Helm, and is irrelevant to the issues before the Court.....	44
6. Calhoun did not sell properties to make quick cash to pay her own fees without a plan, and the allegation is not relevant.....	44
7. Calhoun did not charge excessive fees as attorney-in-fact, and it is not relevant to the issue before the court.....	45
8. The issue of the emergency TRO is not before this Court, and is not indicative of bad faith...	45
9. The Motion for Emergency Powers to Administer Helm’s Estate was not made in bad faith, and is not relevant to the issue before the Court.....	46
10. The Trial Court did not err with regard to application of the presumption of competence.....	46

11. Further unsupported allegations of bad faith are without merit.....	47
C. The Amount of Attorneys Fees and Costs Awarded to Calhoun was Not an Abuse of Discretion.....	47
D. Calhoun Should be Awarded her Additional Attorney's Fees and Costs on Appeal.....	49
VI. CONCLUSION.....	35

## TABLE OF AUTHORITIES

### Cases

<u>City of Aberdeen v. Regan</u> , 170 Wn.2d 103, 107, 239 P.3d 1102 (2010) .....	31
<u>In re Guardianship of Lamb</u> , 173 Wn.2d 173, 184, 265 P.3d 876 (2011) .....	31
<u>In re Guardianship of Spiecker</u> , 69 Wn.2d 32, 34-35, 416 P.2d 465 (1966) .....	31
<u>In re Estate of Black</u> , 153 Wn.2d 152, 173, 102 P.3d 796 (2004) .....	31
<u>In re Guardianship of Atkins</u> , 57 Wn. App. 771, 777, 790 P.2d 210 (1990) .....	32
<u>Ethridge v. Hwang</u> , 105 Wn. App, 477, 459-460, 20 P.3d 958 (2001).....	34
<u>In re Guardianship of Matthews</u> , 156 Wn. App. 201, 214, 232 P.3d 1140 (2010) .....	34
<u>In re Guardianship of Brown</u> , 6 Wn.2d 215, 225, 101 P.2d 1003 (1940). .....	34
<u>In re Guardianship of McKean</u> , 136 Wn. App. 906, 919 (2007)....	35
<u>In re Chapman’s Estate</u> , 133 Wash. 318, 322, 233 P. 657 (1925)...	36
<u>In re Hastings’ Estate</u> , 4, Wn.App. 649, 653, 484 P.2d 442 (1971)..	36

### Statutes

RCW 11.88.030(1) .....	32, 35
RCW 11.96A.150.....	32, 35, 50

RCW 11.24.050.....35  
RAP 14.2.....50  
RAP 18.1.....50

**Secondary Sources**

Allowance of Attorney’s Fee Out of Estate Of Alleged Incompetent  
For Services In Connection With Inquisition Into Sanity, 22 A.L.R.  
2d 1438 (2011).....32

## I. INTRODUCTION

Respondent Kristyan Calhoun (“Calhoun”), respectfully requests that this Court affirm the orders of the trial court entered on April 19, 2019, and May 24, 2019, determining that the Petition for Guardianship was filed in good faith and awarding fees and costs to Calhoun, her attorney, and the Guardian ad Litem.

Calhoun is an experienced professional fiduciary, appointed by Dorothy Helm O’Dell (“Helm”) to act as her attorney in fact under Helm’s Durable Power of Attorney (“DPOA”). After assisting Helm for a year, and at a time that Helm was involuntarily committed to Eastern State Hospital, Calhoun received a typed letter on or about December 13, 2017, purporting to be signed by Helm (though barely legible) directing Calhoun to “deliver the money to my brother Glenn Helm for safe keeping and invest as he sees fit.” Clerks Papers (“CP”) 12. The letter also contained a statement to Helm which said, “Dorothy write this letter in your own hand writing so the letter came from you not me.” *Id.* The letter was received by Calhoun from Sheri Hendon, a behavioral health administration worker at Easter State Hospital who expressed her concern to Calhoun that it represented an attempt by

Helm's brother, Glenn Helm ("Glenn") to commit financial exploitation. CP 759-60.

Helm had previously sent a letter to Calhoun informing her that she was fearful of her brothers, thought that they had stolen from her, and were not to be trusted. CP 321-22. Given that Helm's instructions contained in the December 13, 2017, letter were made at a time where she was extremely vulnerable to undue influence due to a psychotic episode and involuntarily committed to Eastern State Hospital, and that the letter contradicted clear directions provided by Helm, Calhoun filed the guardianship petition that is the subject of this appeal. Calhoun did not seek her own appointment as guardian, but merely the appointment of a certified professional guardian. CP 2.

Helm, with the assistance of her brother, retained counsel and sought a dismissal of the guardianship action. Helm's counsel expended fees of \$116,160 (CP 1082) in a scorched earth litigation campaign with a primary purpose of attacking Calhoun, as opposed to a focus on the question of capacity. A preliminary report of the Guardian ad Litem determined that Helm would likely require a guardian, and Calhoun expended approximately 60% of the fees

and costs expended by Helm in her attempts to move the proceeding forward.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the Court have a rational basis to enter a finding that the guardianship action was brought in good faith where evidence not reasonably in disputes shows that 1) Helm was extremely vulnerable to undue influence at the time the action was brought, having recently scored an 11/30 on Montreal Cognitive Assessment indicating a neurocognitive disorder (CP 238) and being involuntarily committed to Eastern State Hospital at the time the guardianship petition was filed; 2) Helm had signed a letter, drafted by her brother, under suspicious circumstances which asked Calhoun to give all of her money to her brother (CP 762); 3) social workers at Eastern State Hospital expressed significant concern to Calhoun over the circumstances surrounding the letter (CP 759); 4) Helm had previously written a letter to Calhoun expressing her significant distrust and fear of her brothers (CP 321-22), and 5) the appointed Guardian ad Litem

recommended in an interim report that “a guardian of both the person and estate is merited for Ms. Helm O’Dell” (CP 1152)?

2. Did the Trial Court exercise appropriate discretion under a reasonable basis standard in awarding fees to Calhoun where the Court found that she properly fulfilled her fiduciary duties and acted in good faith?

3. Where the amount of fees awarded to Calhoun by the Court were properly supported in the record without contradicting evidence of unreasonableness, should this Court uphold the discretionary decision of the Trial Court and find that there was no abuse of discretion?

4. Where the Appellant has failed to cite evidence to support a claim that the Trial Court disregarded the presumption of Helm’s capacity, and failed to prove any specific prejudice to Helm deriving from the alleged failure, should this Court find that such alleged error did not occur, or alternatively that it was harmless?

5. Where Appellant has failed to specify the specific manner in which it is alleged that the Trial Court failed to apply agency principles or the Uniform Power of Attorney Act, should

such claim be rejected as moot, or alternatively determined to be harmless error?

6. Where the Trial Court determined that sufficient evidence in the record demonstrated that Calhoun filed the guardianship action in good faith and that further hearings and discovery would be unproductive and expensive, should this Court uphold that discretionary decision of the Trial Court and determine that there was no abuse of discretion?

7. Where the Trial Court ruled orally that it did not consider inadmissible declaration testimony, was it error to not enter a written order to that effect, or alternatively if it was error not to issue such a written order, was that error harmless because the Trial Court did not consider the evidence complained of and there was sufficient evidence to which there was no objection to support the rulings of the Trial Court.

8. Where the GAL did in fact indicate in her preliminary reports and in oral presentations to the Trial Court that it was her opinion a guardian of the person and of the estate would be appropriate for Helm, and that she did in fact indicate that her opinion was based on her interview with Helm, as well as interviews of various professionals and family members familiar

with Helm, did the Trial Court abuse its discretion by entering Finding of Fact No. 6 in the January 10, 2019, Order which confirmed these facts; or alternatively was this issue rendered moot by virtue of the Court of Appeals ruling filed May 14, 2019, under case No. 36607-3-III?

9. Did the Trial Court abuse its discretion in entering Finding of Fact 13 in the January 10, 2019, order when evidence in the record supported the issuance of that finding; or alternatively, was it harmless error because that finding had no bearing on the Trial Court's ultimate decision to award fees and costs to Calhoun; or alternatively was this issue rendered moot by virtue of the Court of Appeals ruling filed May 14, 2019, under case No. 36607-3-III?

10. Did the Trial Court abuse its discretion in entering Finding of Fact 14 in the January 10, 2019, order when evidence in the record, including numerous statements made by Helm in briefing throughout the proceeding, supported the issuance of that finding; or alternatively, was it harmless error because that finding had no bearing on the Trial Court's ultimate decision to award fees and costs to Calhoun; or alternatively was this issue

rendered moot by virtue of the Court of Appeals ruling filed May 14, 2019, under case No. 36607-3-III?

11. Did the Trial Court abuse its discretion in entering Finding of Fact 15 in the January 10, 2019, order when evidence in the record, including the simple fact that imposition of a guardianship would in fact impact Helm's rights to sue or be sued, supported the issuance of that finding; or alternatively, was it harmless error because that finding had no bearing on the Trial Court's ultimate decision to award fees and costs to Calhoun; or alternatively was this issue rendered moot by virtue of the Court of Appeals ruling filed May 14, 2019, under case No. 36607-3-III?

12. Did the Trial Court abuse its discretion in entering Finding of Fact 16 in the January 10, 2019, order when evidence in the record supported the issuance of that finding; or alternatively, was it harmless error because that finding had no bearing on the Trial Court's ultimate decision to award fees and costs to Calhoun; or alternatively was this issue rendered moot by virtue of the Court of Appeals ruling filed May 14, 2019, under case No. 36607-3-III?

13. Did the Trial Court err in entering Conclusions of Law 19-23, 25 and 26 of the January 10, 2019, order when the

conclusions are supported by the findings and are accurate applications of the law; or alternatively, was it harmless error because those conclusions of law had no bearing on the Trial Court's ultimate decision to award fees and costs to Calhoun; or alternatively was this issue rendered moot by virtue of the Court of Appeals ruling filed May 14, 2019, under case No. 36607-3-III?

14. Did the Trial Court err in entering Conclusion of Law 7 of the May 24, 2019, order where the Conclusion of Law is supported by the findings in the same order, and Helm failed to assign error to any of the findings of fact issued by the Trial Court in the May 24, 2019 Order?

### **III. RESTATEMENT OF ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1. Has Appellant Helm waived her objection to the Trial Court's finding of good faith because she has failed to assign error to the entry of the following order issued by the Trial Court on April 19, 2019: "Petition was brought in good faith and Petitioner may seek entry of an order with appropriate findings of fact and conclusions of law"? CP 925.

2. Has Appellant Helm waived objection to the Trial Court's determination of the reasonableness of the fees and costs

for Calhoun because Helm failed to object to any specific fee entries submitted by Calhoun in her request for payment of fees, and failed to present evidence to contradict the reasonableness of those fees?

#### **IV. STATEMENT OF THE CASE**

##### **A. Calhoun's Background**

Calhoun is the owner and founder of Senior Avenues, LLC, a Geriatric Care Management Firm. She began the firm in 2004 after having obtained her Bachelors in Social Science with an emphasis in psychology and social science from Washington State University, and then completing a Master level gerontology course at the University of Sothern California in 2004. Prior to obtaining the above reference degrees, Calhoun was a police officer in Sacramento California working on special enforcement projects for six years in the 1990's, then working at the Department of Social and Health Services in the Juvenile Rehabilitation and Child Protective services from 1997 through 2001. She has been a certified Title 11 Guardian ad Litem since 2008, and a Certified Professional Guardian since 2010. Since starting Senior Avenues, LLC, Calhoun has completed over 1200 individual cases acting in a either a fiduciary capacity or as a guardian ad litem for

individuals with varying levels of disabilities and challenges. She is currently in the process of completing a double Master's degree in Healthcare Chaplaincy and Pastoral Counseling through Liberty University.

**B. Calhoun's Involvement with Helm**

In November of 2016, Calhoun was contacted by Jennifer Anderson ("Anderson"), a social worker at Human Services Center in Yankton South Dakota. CP 229. Anderson inquired regarding Calhoun's willingness to assist Helm in the role of attorney-in-fact under a yet to be created DPOA. *Id.* Calhoun was informed that Helm was a patient at the facility and that a precondition to her release was the requirement for an attorney-in-fact to be put in place to assist Helm with her affairs. *Id.*

Calhoun was provided with some information about Helm's condition at that time. The records that Calhoun received showed that Helm was suffering from a schizoaffective disorder as well as a neurocognitive disorder. CP 229. Calhoun received a copy of a Montreal Cognitive Assessment (MOCA) completed on September 28, 2016. CP 238-40. Helm scored an 11/30 on the MOCA, which demonstrated that she was suffering from a neurocognitive disorder. *Id.* It was Calhoun's experience that neurocognitive

disorders include dementia and other injuries to the brain that cause decline in cognitive ability. CP 229. Calhoun had also received copies of prior MOCA performed on Helm in which she scored a 12 and a 14. *Id.* Based on this information provided to Calhoun by Anderson, it was Calhoun's clear understanding that Helm had significant cognitive impairment.

In addition to information regarding Helm's medical and psychological condition, Anderson provided information to Calhoun regarding Helm's finances. CP 230. The information provided described Helm's ownership interest in two parcels of property in Kitsap County, Washington. *Id.* Calhoun was initially reluctant to accept appointment as attorney-in-fact given that Helm was currently residing in South Dakota, and that her assets were in Kitsap County. *Id.* Calhoun suggested to Anderson that a professional in the Kitsap County area, or at least Western Washington, may be a better choice of fiduciary. *Id.* However, Anderson indicated that it was Helm's desire to move back to Yakima, and that a Yakima fiduciary would therefore be preferable. *Id.*

Given the medical records that Calhoun had received, she questioned Helms capacity and was initially reluctant to accept an

appointment as attorney-in-fact. Calhoun informed Anderson that as a prerequisite to her accepting appointment, Helm would need to meet with an attorney to prepare the DPOA and assess her capacity to execute it. *Id.* Calhoun had not met with Helm, was not an attorney, and it was not her place to make the legal determination of capacity necessary to execute such a document.

Ultimately, Calhoun was presented with a fully executed DPOA on December 16, 2016. *Id.* The DPOA indicated in the upper left-hand corner of the first page that it had been “PREPARED BY: LACROIX LAW OFFICE” (CP 242) and was signed by Helm and notarized by Heather Sudbeck, Notary Public of South Dakota (CP 247). It appeared to Calhoun that her requirement that the DPOA be prepared by an attorney had been met, and she accepted the appointment as attorney-in-fact.

As part of her appointment, Calhoun asked Helm to execute a care management agreement that would clearly outline her duties as attorney-in-fact for Helm. CP. 230. This care management agreement specifically provided as follows with regard to what services and actions Calhoun would perform on behalf of Helm:

Kristyan Calhoun will act as the power of attorney for Ms. Helm O'Dell. Kristyan will coordinate with transfer of Ms. Helm O'Dell's vehicle being moved to

Yakima Washington, Kristyan and her staff at Senior Avenues will coordinate a move from South Dakota to Yakima. Kristyan will address the properties being liquidated to fund Ms. Helm-O'Dell's care costs at the least restrictive alternative possible. Kristyan will coordinate with staff to meet Ms. O'Dell in S. Dakota and to facilitate the move. CP 250.

Upon receipt of the signed care management agreement, Calhoun proceeded to act in accordance with Helm's direction.

**C. Sale of Properties Pursuant to Care Management Agreement.**

Contrary to Helm's claims, there was nothing nefarious or unusual about the sale of her properties, which was specifically contemplated in the care management agreement. The two parcels of property owned by Helm were located at 4710 Feigley Road W, Port Orchard, Washington ("Feigley Property") and 3752 Rhapsody Drive SE, Port Orchard, Washington ("Rhapsody Property"). CP 230. When Calhoun took over management, the value of the Rhapsody property had declined by almost 30% in the prior seven years (CP 254) and the value of the Feigley property had declined nearly 50% in that same time period (CP 258). The residences on both properties were in significant levels of disrepair, and represented substantial liability concerns. CP 232-32.

Calhoun hired Beth Allen ("Allen"), a real estate agent with John L. Scott in Kitsap County, to represent her in the sale of the

properties. CP 230. Allen provided a comparative market analysis for the Rhapsody property. CP 231. Allen indicated that in order to be sold the mobile home and all other items on the property would need to be completely removed from the property, and that the land would then be worth between \$40,000 and \$50,000, but that even at that price it would likely take time to sell. *Id.*

Calhoun visited the Rhapsody property in person and discovered that in addition to the mobile home on the property, there was a significant amount of garbage, broken down vehicles, car parts and other trash that would need to be removed. *Id.* It also smelled of sewage. *Id.* The tenant indicated that the septic system was not working, and that the electric furnace didn't work leaving only a makeshift wood stove to provide heat. CP 232. The "tenants" on the property, who did not have a lease agreement with Helm, refused to allow Calhoun or others into all areas of the residence to inspect it, but Calhoun could see drug paraphernalia through the open front door. CP 231. Calhoun was able to discover that the tenant was not paying rent, and the tenant indicated that was because the conditions in the home did not meet fair housing legal requirements. *Id.* The tenant also indicated an intent to sue the Helm over the poor conditions on the property. CP 232.

Calhoun did not believe there to be insurance on the properties. The only funds being received for either of the properties were from the Bremerton Housing Authority in the amount of \$674/month but varied in amount over the years. CP 231.

The Feigly property was not in any better condition. CP 232. The septic system for this property also was not working, and had a dug-up drain field that smelled of sewage. *Id.* The tenant indicated that the water was not working, and he was also not paying rent on this property, though ultimately the tenant did vacate the property. *Id.*

Calhoun's investigation of the properties made it clear that they would be extraordinarily difficult to sell, and that Helm would first have to put money into the Rhapsody property just to make it marketable. Calhoun looked for alternatives to going through the process of evicting the tenants, removing the buildings and detritus, and cleaning up the septic fields, bearing the costs of a HUD lawsuit, and found an investor willing to purchase the Rhapsody property "as is." Thomas Parker was not a "friend" or business partner of Calhoun, and there is no evidence in the record to support this repeatedly asserted allegation by Helm. Parker was an investor willing to purchase the Rhapsody property "as is" and

without the usual costs of marketing and sale through a broker. Calhoun was in the process of trying to assist Helm to move into a new residence in Yakima, and Helm required liquid resources to complete the move. CP 232. Calhoun agreed to sell the Rhapsody property to Parker for \$27,000, and later sold the Feigley property for an additional net total of \$103,730.36.

Helm now complains that Calhoun did not get full value for the properties. Helm has filed suit in Kitsap County Superior Court under cause #18-2-03124-18 against Calhoun alleging that the sales represented a breach of Calhoun's fiduciary duty, and that matter remains pending.

There was also a complaint filed with Adult Protective Services regarding the various claims asserted by Helm, which was investigated by APS and determined to be unfounded. CP 782

**D. Helm's Move Back to Yakima**

When Calhoun accepted the position of attorney-in-fact, Helm was residing in the South Dakota Psychiatric hospital. CP 11. Helm had indicated to Calhoun that her primary concern was to get moved back to Yakima and that was reflected in the care management agreement as one of the tasks with which Calhoun was supposed to assist. CP 250. The goal was to obtain suitable

housing in the least restrictive alternative possible. CP 232. Calhoun spoke with the AIP and Anderson (Social Worker in South Dakota) and recommended two options for placement, Orchard Park Retirement Community and Peachtree Retirement Community. CP 232. Despite Helm's claims that Calhoun placed her in an unsafe environment, Helm made the final decision, and selected Orchard Park. *Id.* Her signature is on the application and the social worker wanted the level of support provided at the facility, which included offering meals, housekeeping, and transportation to medical appointments and shopping. The residential application was initially rejected by Orchard Park due to unpaid bills showing up on Helm's credit report. CP 233. Calhoun discovered the unpaid bills and used funds from the sale of the Rhapsody property to make payment. *Id.* Orchard Park then approved the application, and Helm was moved on August 8, 2017, with funds from the Rhapsody sale used to fund the move. CP 104.

**E. Helm's Concerns About her Brothers; Her Involuntary Commitment; and the Filing of the Guardianship Action.**

Shortly after Helm returned to Yakima, she wrote a letter to Calhoun (CP 321-22) which was undated but which was received by Calhoun on September 7, 2017 (CP 233). The letter expressed

extreme fear and concern on the part of Helm towards her brothers.

The following are excerpts from the letter (CP 321-22):

- Now I will tell you the truth which you need to hear. I was having trouble with my brothers, they didn't have jobs. So they went after me. Breaking into my house over and over. My life was in danger. I went to court telling them what they were doing also stealing my money...
- Both are evil but they seem so good. They used drugs to use me.

While Calhoun recognized that Helm had medical conditions which precluded verification of all of the claims, it did indicate to Calhoun that Helm was fearful of her brothers involvement in her life. Calhoun was on notice that the brothers were, at the least, circumspect.

Approximately a month after Calhoun received the letter, on October 10, 2017, Helm was admitted to Virginia Mason Memorial Hospital on an Involuntary Treatment Act ("ITA") hold. CP 233. Helm had stopped taking her medication, eloped from her residence, and was located by Police. CP 11-12. She was then

placed on a 180 day hold, moved from Virginia Mason Memorial, and admitted to Eastern State Hospital. *Id.*

On or about December 13, 2017 (CP 12), while Helm was at Eastern State, Calhoun received a letter signed by Helm dated November 4, 2017. CP 762. The letter was sent to Calhoun by Sheri Hendon (“Hendon”), employee at the Washington State Department of Social and Health Services, Behavioral Health Administration. CP 759. Hendon told Calhoun that Helm showed her the typed letter dated November 4, 2017, and that the letter appeared to be from Glenn, Helm’s brother. CP 759. The letter states, “Dorothy write this letter in your own hand writing so the letter came from you not me.” CP 762. It provided Helm with Glenn’s new phone number. *Id.* The portion of the letter that Glenn was directing Helm to copy states, “I was shocked that you sold my property without my consent my life savings, I want you to deliver the money to my brother Glenn Helm for safe Keeping and invest as he sees fit. I also want a copy of the power of attorney that you received from me...” CP 762. The letter was signed by Helm multiple times in various different locations, all nearly illegible. *Id.*

Hendon expressed significant concern to Calhoun over the contents of the letter. Hendon indicated that to her the letter

“appeared to me to be an attempt to obtain control over [Helm’s] assets by [Glenn] when I knew that Calhoun was [Helm’s] attorney in fact.” CP 759. Hendon discussed the letter with other colleagues and the consensus was that Calhoun needed to be aware of the letter and Hendon’s opinion that it was an attempt at financial exploitation. *Id.* Hendon sent the letter to Calhoun and informed her of her concerns. CP 760.

On January 23, 2018, Calhoun filed a Petition for Full Guardianship of Person and Estate over Helm. CP 1-5. Calhoun’s reasons for filing the guardianship were the vulnerability of Helm due to her mental condition, the apparent attempt at financial exploitation by Glenn, the concerns of Hendon and her colleagues, the prior letter from Helm expressing fear of the brother who appeared to be attempting to financially exploit her, and the concern that Helm was not able to adequately provide for her own care and support.

Contrary to Helm’s current allegations, the guardianship petition was neither self-serving nor inaccurate. Calhoun did not seek her own appointment as guardian, but instead requested “that a certified professional guardian be appointed.” CP 2. Calhoun indicated in the petition that Helm suffered generally from

“impairment of intellectual abilities such as attention, orientation, memory, judgment, and language.” CP 2. Calhoun noted that she suffered from dementia, which is consistent with Helm’s MOCA score of 11/30 as discussed *supra*. Calhoun specifically noted her concern that she believed there to be significant potential for financial exploitation by Glenn O’Dell. CP 3. She explained that while there was a less restrictive alternative in place, it did not appear to properly protect Helm from financial exploitation. CP 3.

Calhoun’s request for the appointment of Amelia Clark (“Clark”) as guardian ad litem was not unusual for Yakima County, where there are a very limited number of Guardians ad Litem available to serve. CP 817-18. In response to such claims by Helm, at the April 19, 2019, hearing, Clark, who had also served as the ITA Guardian ad Litem for Helm, made the following statement to the Court:

*Mr. Young has consistently told the court that I’m basically in the pocket of Ms. Calhoun and that somehow I was magically appointed because of the reality that Ms. Calhoun knew that somehow I was going to be in her pocket and do what she wanted. The reality is there really wasn’t anyone else on the list.*

*The guardian ad litem list has been very limited in this county. Now it's finally expanding, which is good for everyone. CP 973.*

It is clear from the above that there were significant and justifiable concerns which prompted Calhoun to file the guardianship petition. Once filed, Helm retained counsel and proceeded with scorched earth litigation that focused on attacking Calhoun over addressing the real questions of incapacity and the need for a guardianship. Despite the purported hostility coming from Helm's counsel, Helm herself continued to work with Calhoun and her staff, seeking assistance with various issues throughout the guardianship action.

**F. The Trial Court's Finding of Good Faith and Voluntary Dismissal of the Guardianship Action.**

Over the course of the guardianship action, a few things became clear. First, Helm was vulnerable to undue influence and needed assistance, either from a guardian or a workable less restrictive alternative. Second, Helm, through counsel, proceeded with a defense strategy that focused almost entirely on personal attacks against Calhoun, and avoided the underlying issues of the case. Finally, the guardianship action was brought in good faith,

but ultimately Calhoun could not reasonably afford to pursue this costly guardianship action despite her concern for Helm's wellbeing.

After her appointment as Guardian ad Litem, Clark did her best to conduct her investigation but was unable to secure a medical report, and after several months issued an interim report. CP 1146-52. However, despite the fact that she did not receive the medical report, Clark's interim report demonstrates that she was able to conduct a nearly complete investigation. *Id.* She conducted interviews with a number of individuals including two social workers, a psychiatrist, Helm's brother Glenn and her sister Anne Helm, Calhoun, and two other individuals from Senior Avenues. CP 1147. Clark reviewed substantial documents including pleadings, medical records, bank records, communications between various parties and third parties, and information about Helm's properties. *Id.* Clark summarizes all of the information in her interim report. Ultimately Clark concludes that, "From the above, it is clear that D.O. suffers an incapacity, in her care of her person and her attending to her financial and estate needs..." CP 1152. Clark goes on to make the interim recommendation that, "A guardianship of both the person and the estate is merited for Ms.

Helm Odell. However, the exact nature of the rights retained and whether the guardianship should be limited in some nature is still a question that the rest of the investigation will answer.” *Id.*

Despite Clark’s interim recommendations, the parties, including Helm, Calhoun, and Clark, were never able to reach an agreement on a guardianship or a less restrictive alternative. Instead, either Helm or her counsel appear to have pursued a campaign of disparagement against Calhoun in an attempt to convince her to give up pursuit of the petition. They appear to have made contact with individuals that then left negative reviews on social media regarding Calhoun and Senior Avenues. CP 765. Those individuals contacted by Helm or her counsel even appeared in Court at the January 10, 2019, hearing. *Id.* It is significant to note that the individual who attended the hearing had been proven to be physically abusive and financially exploitive of his mother, who was a former client of Calhoun’s in another matter. *Id.* Further individuals began posting information online about Helm’s guardianship action, which postings misconstrued events and the proceedings. *Id.* They made clear fabrications regarding Helm’s execution of her DPOA, the sale of her properties, attempts at revocation of the DPOA, and use of Helm’s funds. CP 765-66.

Through the course of the litigation, Helm's attorney raised irrelevant issues about past cases and alleged actions of Calhoun. He described in his own words, a past case involving Ms. Calhoun in which he was opposing counsel and inferred that she inappropriately rejected his client's settlement offer in that case. CP 202. He then testified through affidavit that he had done "research" on Calhoun and discovered that she filed a bankruptcy in 2004, and relates what he surmised to be the facts of that case without any actual information. CP 202. He testified through affidavit that Calhoun recently listed her house for sale, without any indication of how that was relevant to the proceeding. *Id.*

Calhoun responded to all of Mr. Young's statements in her own later declaration. She noted that she did file bankruptcy, and did disclose it to the Certified Professional Guardianship Board before they granted her certification. CP 234. She even felt compelled to explain to the court that she had planned to sell her home, but when her son was injured in Afghanistan serving in the U.S. Army and asked to return home, she changed her mind. CP 234.

Even Clark, the GAL, when addressing the Court on the question of good faith, found the actions of Helm's counsel

troubling, stating as follows to the Court with regard to her appointment and Calhoun's decision to file:

*There certainly was not any concerted effort from me to be appointed so I would basically okay everything that Ms. Calhoun has done. She acted in good faith because of the information that was before her. She had information from South Dakota as well as Eastern State.*

*Your Honor, I totally believe, based upon her filings and Mr. Young's filing, also on the information that I received in my investigation that this was good faith. Nothing about it smacks of any kind of attempt to suck dry the estate of Ms. Helm, nothing like that...*

*I am concerned about the continued—it seems like a personal vendetta that Mr. Young has against Ms. Calhoun. I've never seen anything like it ever. It's very concerning to me. Impugning of motivations to her as well as to me in this circumstances has been very offensive and not professional. CP 973-74.*

Ultimately, Calhoun expended substantial effort maintaining the action in the best interests of Ms. Helm. Helm's

attorneys significantly outspent Calhoun's attorneys, yet Calhoun was forced to incur \$83,000 in fees. Contrary to what Helm suggests, Calhoun had no guarantee that any of those fees would ever get paid given Helm's limited resources. Despite Calhoun's concern for Helm, she was not in a position to carry on the litigation, and sought a dismissal of the guardianship action.

**G. Emergency Powers and Pre-Assignment of Judge.**

Helm assigns malice of intent to Calhoun's filing of a Motion for Emergency Powers and a Motion for Order to Pre-Assign Judge. Neither of these motions demonstrated malice on the part of Calhoun. During the course of the guardianship action, Calhoun remained the attorney in fact for Helm, as noted above, Helm did contact her for some things, but Helm was unwilling to accept consistent assistance with certain things such as finances and medication, and was at risk of eloping. CP 68. Calhoun understood that Helm did not want her assistance, which is why Calhoun petitioned for the appointment of either the guardian ad litem or an experienced certified professional guardian practicing in Eastern Washington identified by the GAL to be granted authority to assist in the management of Helm's financial affairs. CP 69. Calhoun did not propose herself, but was instead selected by the judge because

she was familiar with the case and it would have been challenging under the circumstances to find another appropriate person. There is no evidence to support Helm's contention that this was some sort of malicious money grab by Calhoun.

Likewise, the Motion to Pre-Assign judge was a simple one-page motion on a procedural issue intended to facilitate efficiency. CP 60-61. The matter had failed to settle and it appeared that there would be a number of motions to be brought before the court in the near future. CP 60. Calhoun felt that it made sense to have one judge retain jurisdiction over the case in order to maintain familiarity with the matter. It was common practice, and not evidence of a vast conspiracy by Calhoun, the GAL, and the Yakima County Superior Court to milk Helm of her limited resources. As things turned out, this was a good decision given the extent to which Helm litigated this case.

**H. The Final Fight Over Fees and Helm's Refusal to Let the Case End.**

On March 29, 2019, more than a year after filing the initial guardianship petition, Calhoun filed a motion for voluntary dismissal of the guardianship action. On that same day, and apparently in response to the motion to dismiss, Helm served a

Notice of Deposition seeking to depose Calhoun, who was then forced to file a motion for protective order. In her briefing to this Court Helm states that Calhoun refused to appear for a deposition, but this is not the case. Helm didn't even note the deposition until the Motion to Dismiss had already been filed.

Helm filed pleadings with the Court essentially objecting to dismissal of the action without some additional hearings on the issue of good faith following a forced deposition of Calhoun. CP 852-869. Helm offered no new evidence to support her claim that the petition was filed in bad faith. The GAL, Clark, filed a response to the petition for dismissal indicating that it was her opinion that Calhoun brought the action in good faith and that her fees and costs should be paid by Helm. CP 837-38. Clark agreed with Calhoun's having cited her GAL report as evidence of good faith. CP 838.

Ultimately, after a hearing on the Motion to Dismiss, Judge McCarthy agreed that the action was brought in good faith, and that there was no need for a deposition. Judge McCarthy made the following oral ruling:

*I'll make the observation that despite the argument, Mr. Young's argument, as a practical matter there is no evidence that Ms. Calhoun acted in bad*

*faith. The only evidence that's before the court convinces me that she acted in good faith in regard to pursuing this guardianship proceeding. Her filing of the petition was reasonable and it wasn't frivolous.*

*I'm going to decline the request that we let this situation further—well, I don't think we need to let this situation continue or continue this litigation certainly in regard to exploration of the issue of good faith/bad faith and an evidentiary hearing, etcetera. I think that will be a waste of time. I don't think that there's any evidence that Ms. Calhoun acted except in good faith...*

*In regard to the request for the deposition, I guess I'll circle back on that. I think I've already addressed it. The case has now been dismissed. There's no lawsuit that can be used as a basis for a deposition of Ms. Calhoun. I also think that having a deposition of Ms. Calhoun is a waste of time and money. **I don't think there's any evidence that her actions in this matter were anything other than done in good faith.** CP 978-979 (Emphasis Added).*

Judge McCarthy then issued a written finding that the action was brought in good faith. CP 925.

## V. ARGUMENT

### A. **The Standard of Review For the Award of Fees is Abuse of Discretion.**

Questions of law are reviewed de novo. City of Aberdeen v. Regan, 170 Wn.2d 103, 107, 239 P.3d 1102 (2010). When a superior court applies guardianship law to a particular case and orders a fee allowance, the Court of Appeals reviews the superior court's order for an abuse of discretion. In re Guardianship of Lamb, 173 Wn.2d 173, 184, 265 P.3d 876 (2011) (citing In re Guardianship of Spiecker, 69 Wn.2d 32, 34-35, 416 P.2d 465 (1966)). The Court of Appeals also reviews an award of attorney fees under RCW 11.96A.150 for abuse of discretion. In re Guardianship of Lam, 173 Wn.2d at 184. (citing In re Estate of Black, 153 Wn.2d 152, 173, 102 P.3d 796 (2004)).

### B. **The Trial Court Did Not Commit an Abuse of Discretion in Finding that Calhoun Brought and Prosecuted the Action in Good Faith, and She is Entitled to Her Fees.**

Washington law favors the filing of meritorious guardianship petitions for the protection of incapacitated persons; therefore, persons who bring petitions for guardianship in good

faith are awarded their reasonable costs and attorney fees from the incapacitated person's assets. RCW 11.88.030(1) provides that "[no] liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis." Because guardianship proceedings are "to benefit and protect the life and liberty of the alleged incompetent," In re Guardianship of Atkins, 57 Wn. App. 771, 777, 790 P.2d 210 (1990), "the fees of counsel involved on both sides have been held recoverable from the incompetent's estate on the principle that an incompetent is liable for necessaries furnished him." Allowance of Attorney's Fee Out of Estate Of Alleged Incompetent For Services In Connection With Inquisition Into Sanity, 22 A.L.R. 2d 1438 (2011). Even "[a]n unsuccessful proceeding has been regarded as in the interests of the alleged incompetent when brought in good faith." *Id.*

RCW 11.96A.150 is the statutory vehicle for authorizing attorney fees in guardianship actions to be paid from the incapacitated person's estate. The statute provides broad discretion to the trial court to award fees from any party to any party in any way that the trial court deems equitable. It does not limit the trial

court's authority to order fees at any point in the proceedings, including pre-emptively. The statute provides

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. **In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.**

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, **and guardianship matters**. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. **This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10).**

(Emphasis Added)

A trial judge is given broad discretion in determining the reasonableness of a fee award. An award will be affirmed unless

the trial court manifestly abuses its discretion. Ethridge v. Hwang, 105 Wn. App, 477, 459-460, 20 P.3d 958 (2001). “A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds, or when untenable reasons support the decision.” In re Guardianship of Matthews, 156 Wn. App. 201, 214, 232 P.3d 1140 (2010).

In guardianship matters, litigation is deemed to be for the benefit of the estate or ward if it is undertaken in good faith and with reasonable care. In re Guardianship of Brown, 6 Wn.2d 215, 225, 101 P.2d 1003 (1940), rejected the contention that a guardian could not be reimbursed for attorney’s fees incurred in unsuccessful litigation relating to a guardianship because “when an administrator in good faith and in the exercise of ordinary prudence employs legal counsel to defend such an action, and the attorneys in good faith and with reasonable care, skill, and judgment perform such duty, then in law the whole matter is for the benefit of the estate. **Good faith and reasonable care and not the result of the litigation is the test.**” (Emphasis added). *See also* RCW 11.96A.150 (“In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and

appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.”).

The primary purpose of the fee-shifting that occurs in a guardianship case is not to reward the prevailing party or sanction the losing party, but to reimburse parties and their attorneys for work that was undertaken for the purpose of protecting incapacitated persons. Consequently, even work on unsuccessful claims and defenses is compensable if undertaken in good faith. *See* 22 A.L.R.2d 1438 (2011). For example, In re Guardianship of McKean, 136 Wn. App. 906, 919 (2007) held that a guardian “did not have to prove that it prevailed in every legal battle... to show a benefit to the guardianship.” *Id.* (citations omitted). Also, under the 2007 amendment to RCW 11.96A.150(1), it is not necessary to show a specific benefit to the ward or the ward’s estate.

While there do not appear to be examples in Washington State of published opinions dealing with the issue of “good faith” in the context of starting a guardianship action, the issue has arisen in will contest matters which can be considered by analogy. RCW 11.24.050 applies similar language to RCW 11.88.030(1) in allowing the court to assess fees “unless it appears that the contestant acted with probable cause and in good faith.” The

Washington State Supreme Court has held that in a will contest, “where a person in good faith brings an action to contest a will and makes a prima facie case, attorney’s fees should not be awarded against him in the event his action fails.” In re Chapman’s Estate, 133 Wash. 318, 322, 233 P. 657 (1925). Where a petition for will contest involves a “close question of fact” it should not fall within the award of fees authorized under RCW 11.24.050. In re Hastings’ Estate, 4, Wn.App. 649, 653, 484 P.2d 442 (1971).

These rules regarding questions of good cause in filing will contest, should be applied to the filing of a guardianship by analogy. As such, where the guardianship action involves a close question of fact, and the petitioner has made out a prima facia case for the guardianship, the Trial Court’s finding of good faith should be upheld.

1. Evidence supports a finding of good faith.

The facts in the record make it clear that Calhoun brought this action in good faith, and the Trial Court did not abuse its discretion in awarding fees. The following pertinent facts, none of which are legitimately in dispute, formed the basis upon which Calhoun filed the guardianship petition:

- 1) Helm had a long history of mental health concerns including psychosis and compromised cognitive functioning.
- 2) Helm had put Calhoun on notice that she had significant concerns about her brothers, including specific concerns about them stealing from her
- 3) Helm was admitted to Eastern State Hospital on a 180 day ICA hold from October 2017 through March 2018.
- 4) In December 2017, Calhoun was contacted by the social worker at Eastern State about concerns they were having over potential exploitation of Helm by her brother. Eastern State forwarded a document signed by Helm to Calhoun.
- 5) The document, dated November 4, 2017, was essentially instructions by Helm's brother directing Helm to write the letter in her own handwriting so that people would think that it was from her. The document showed that he wanted her to direct Calhoun to turn over control of all of her assets to him. Helm signed the document in numerous places, which in and of itself indicated that she likely lacked an understanding of what it was.

Given the above facts, which are not legitimately in dispute, Calhoun filed a petition for the appointment of a guardian. Contrary to Helm's contentions, this was not a self-serving action, as Calhoun did not nominate herself for the position, but instead recommended appointment of any certified professional guardian. Calhoun had no conflict of interest in filing the guardianship action because it could not benefit her in any way. In fact, it was ultimately against her own interests as it cost her significant time and money, which she may never recover, to pursue the action.

Helm conflates the concept of conflict of interest in her opening brief. She essentially argues that because this action cost Helm money to defend, it could not have been in her best interest, and therefore it raised a conflict of interest on the part of Calhoun for pursuing it. Had Helm worked with the GAL, the action would have been either dismissed or a new guardian (that would not have been Calhoun) appointed within 45-60 days. She relies on a convoluted theory that Calhoun, the GAL, and the Superior Court itself, were conspiring to steal or otherwise dispose of all of Helms resources. But Helm fails to advance any proof of this theory, much less a motive as to why these parties would conspire in this way.

The only evidence is that this action has cost Calhoun money and time that she will likely never recover.

Helm then attempts to conflate this conspiracy theory into an alleged conflict of interest which, Helm argues, demonstrates bad faith in the filing of the guardianship. But the argument is circular and nonsensical, and completely ignores the indisputable circumstances surrounding the filing of the guardianship action. The question before the court when making its determination on the issue of good faith was whether facts in existence at the time of filing were sufficient to justify Calhoun's concerns that led to the filing of the guardianship action; clearly they were.

Helm goes on to argue that Calhoun acted in bad faith because she did not immediately dismiss the action when Helm objected to guardianship. That is not the legal standard, and the allegation is not supported by the record. The interim report of the Guardian ad Litem was clear that a guardianship appeared to be necessary. Had that report recommended a dismissal of the action perhaps the court would have reached a different result on the question of good faith (or perhaps Calhoun would have agreed to dismissal sooner), but it didn't. There was nothing in the Court record or the Report of the Guardian ad Litem which would suggest

to Calhoun that her concerns were not justified. It would have been surprising, and certainly contrary to her concerns as a fiduciary, if she had simply dismissed the action given the facts in the record.

One of the problems with Helm's claims is that she never focused her objections on the underlying claims upon which the guardianship action was based. Rather than work through the process with the Guardian ad Litem, allow requested medical evaluations, and generally cooperate, she chose to defend herself through attacks on the process instead of the question of capacity. She relied on conspiracy theories and personal attacks on Calhoun. While these ultimately worked in that Calhoun was sufficiently worn down to give up the fight, they did nothing to demonstrate that the action itself was not justified.

As described above, guardianship proceedings are brought for the benefit of the alleged incapacitated person. There is a public policy concern to ensure that people are encouraged to bring meritorious guardianship actions. As such, so long as there is a prima facie demonstration that the filing of the action had some basis in fact, it is the obligation of the alleged incapacitated person to pay for the proceedings. Helm has failed to demonstrate that

there was not a prima facie case for guardianship, and her estate should be obligated to pay for the expenses of the proceeding.

2. Calhoun's pre-filing conduct is not at issue in this case.

Helm makes much about the alleged actions of Calhoun which occurred prior to the filing of the guardianship. Specifically, she expresses concern over the sale of the Kitsap County real estate. Her argument is essentially that Calhoun breached her fiduciary duty while acting as attorney in fact and filed the guardianship action in an effort to cover it up. This argument is not only completely devoid of factual support, it lacks common sense. A fiduciary who committed the type of self-dealing that Helm alleges would not likely be the one to file a guardianship action that submits such fiduciary's actions to the scrutiny of the court. Generally, a guardianship action would be brought by a third party attempting to bring to light alleged violations of fiduciary duty by an attorney in fact. Had it been Calhoun's goal to make money, she would have made a lot more had she allowed lawsuits over the properties to proceed, sought evictions, arranged for cleanup, and continued managing the properties. It is much more expensive for a fiduciary to maintain real properties, especially when they are in

disrepair, than it is for a fiduciary to simply manage money in a savings or investment account.

Regardless, the actual reasons for filing the guardianship action are clear. To the extent that Helm feels that Calhoun breached her fiduciary duty as attorney in fact with regard to the sale of the Kitsap County properties, she can file an action against Calhoun. She has, in fact, done just that and her complain is pending in Kitsap County superior court under cause #18-2-03124-18. As such, her allegations of breach of fiduciary duty in the current matter are not relevant to the issue before the court.

3. Calhoun fulfilled any duty she had to ensure the validity of the DPOA.

Helm argues that Calhoun breached her fiduciary duty by failing to ensure that Helm was represented by counsel and competent when she signed the DPOA. Helm fails to support this allegation with evidence. The evidence in the record shows that the DPOA was prepared by an attorney and witnessed by a notary public. The document speaks for itself, and Calhoun had no duty to question the drafting attorney about his or her methods in executing the document, or to make her own independent evaluation of whether or not Helm had the capacity to understand

and sign the document prepared by Helm's own attorney. To the extent that the attorney is alleged to have failed to properly meet with Helm and assess her capacity, that is an issue to be taken up with the attorney, not Calhoun.

Again, however, this issue is unrelated to the filing of the guardianship action, and has no bearing on whether or not the action was brought in good faith. Certainly, if there were not a DPOA in place, that would have actually increased the need for a guardian because no less restrictive alternative would have been in place. But the execution itself had no bearing on the eventual filing of the action.

4. The service agreement did not create a conflict of interest.

Again Helm alleges a conflict of interest without any actual support as to why it was a conflict of interest. Calhoun wanted clarity from Helm on what Helm's expectations were of Calhoun. Calhoun put it in writing and gave Helm the opportunity to review it and make any adjustments that needed to be made. It is a common practice, and did not create a conflict of interest because it was simply further clarification of the actions that Helm was

directing Calhoun to take pursuant to the previously executed DPOA.

5. The sale of the properties was not made over objections of Helm, and is irrelevant to the issues before the Court.

There is no evidence to support that claim that Helm made any objections to the sale of the properties. She signed an agreement instructing Calhoun to sell them. Helm knew about the plan to sell them and had opportunity to object to their sale. If Calhoun had attempted to go forward with sale over Helm's objections, Helm could have prevented the sale by revoking the DPOA. Furthermore, as discussed above, if Helm has an issue with the sale of the properties and alleged breaches of fiduciary duty, she has a right to bring those claims in a different proceeding, which she has done. They are not relevant to the question of whether this action was brought in good faith.

6. Calhoun did not sell properties to make quick cash to pay her own fees without a plan, and the allegation is not relevant.

Helm's allegations that Calhoun sold the properties to make quick cash to pay her own fees are not supported by the record. The evidence shows that the funds were needed, and used, to assist

Helm in her move back to Yakima after leaving South Dakota. Again, the allegations are not related to the issues before this court.

7. Calhoun did not charge excessive fees as attorney-in-fact, and it is not relevant to the issue before the court.

There is no support in the record for the proposition that Calhoun charged excessive fees as attorney-in-fact. Helm alleges that certain charges were inappropriate, but fails to provide any support, such as expert opinion testimony, for her proposition. Calhoun did provide an accounting to the Court, GAL, and parties as part of the proceeding, which provided as review of her fees and actions as attorney in fact. Helm goes on to allege, again without authority, that Calhoun's fees are indicative of a lack of good faith, but fails to explain why. Regardless, Calhoun's fees are not related to why the action was filed, and are therefore not relevant.

8. The issue of the emergency TRO is not before this Court, and is not indicative of bad faith.

This Court already ruled that the decision on the TRO over Helm's Kitsap County lawsuit is moot. Even if it were not, it is not a demonstration of bad faith on the part of Calhoun. The motion was brought because with the guardianship action pending, there was an actual question of whether or not Helm had legal capacity

to pursue a lawsuit. The Court felt that the potential expense of such a suit would be harmful to Helm should she later be determined to be incapacitated. There was no prejudice to Helm who is now pursuing that very same lawsuit.

9. The Motion for Emergency Powers to Administer Helm's Estate was not made in bad faith, and is not relevant to the issue before the Court.

Calhoun filed the motion for emergency order to protect Helm' estate out of concern that funds would otherwise be wasted. Calhoun did not seek her own appointment, instead recommending appointment of the GAL or another suitable certified professional guardian. In either event, the goal was to protect Helm's resources, not to spend them. Also, this has nothing to do with why Calhoun filed the guardianship action and is not related to the issues before this Court.

10. The Trial Court did not err with regard to application of the presumption of competence.

Helm is correct that individuals are presumed competent until proven otherwise, but this played no factor in the Trial Court's finding of good faith and award of fees. There is no evidence that the Trial Court in any way ignored the presumption of competence. Helm complains of this alleged error of the Trial Court with respect

to the issue involving the TRO on the Kitsap County Litigation. As previously discussed, that issue is now moot. It also has nothing to do with later rulings on good faith and the award of attorney fees and costs.

11. Further unsupported allegations of bad faith are without merit.

Calhoun did mediate in good faith. Helm has breached ER 408 to present settlement discussions as evidence in this case, but she has done so without effect. She argues that because Calhoun did not agree to her proposal, her actions were in bad faith. This is a nonsensical argument, and is contradicted by the fact that the GAL would have been required to also be involved in the settlement discussions, and the GAL felt that Calhoun was acting at all times in good faith. Certainly, if the GAL had felt that Calhoun was negotiating in bad faith she would have notified the Court.

**C. The Amount of Attorney Fees and Costs Awarded to Calhoun was Not an Abuse of Discretion.**

While Helm has listed the amounts of the fees for various tasks, she has not demonstrated with any evidence that those amounts are unreasonable. An award of fees is reviewed for an abuse of discretion, and simply stating what was approved without

citing evidence of how the amount was an abuse of discretion is insufficient to overturn the ruling of the Trial Court.

In this particular case there is no evidence which would support a finding of abuse of discretion by the Trial Court. As has been noted supra, and also in Helm's Opening Brief, Helm's attorneys outspent Calhoun's attorneys by approximately \$33,000 (about 40% more). Helm complains greatly that the award of fees to Calhoun will leave less for her counsel, but that does not demonstrate an abuse of discretion by the Trial Court. Ultimately, given Helm's limited resources, there is a significant question as to whether Calhoun's attorney fees will ever get paid.

Helm argues that the court did not make any equitable adjustments based on her inability to pay, but this is not the case. The court specifically award a portion of fees to be paid now, but reserved payment of additional fees to up to only 50% of a future inheritance if one is received by Helm. Calhoun didn't even hear about the potential inheritance until long after the guardianship action was filed.

Finally, in significant respects the fees are a problem of Helm's own making. By focusing her litigation strategy on personal attacks against Calhoun and the judicial process, she expended

unnecessary and ultimately unfruitful resources in her campaign of litigation. Her attorney expended fees of \$116,000 without really addressing the underlying questions of incapacity and vulnerability to undue influence and exploitation. Had she focused her efforts there, and not fought tooth and nail against the process itself, it is likely that all parties' fees would have been significantly less.

Overall, however, there was sufficient evidence before the court to support the reasonableness of the fees and costs incurred by counsel for Calhoun. The Trial Court made a discretionary ruling approving the amount of the fees, and Helm has presented insufficient evidence to overturn that ruling as an abuse of discretion.

**D. Calhoun Should be Awarded her Additional Attorney's Fees and Costs on Appeal.**

Under RAP 14.2, "A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review." Under RAP 18.1, the Court may award fees and costs as provided by applicable law. Under RCW 11.96A.150, the Court in its discretion may award attorneys' fees and costs.

Here, the Court should affirm the trial court's ruling, and thus, Calhoun is the substantially prevailing party, not the Appellant. Calhoun has also incurred attorneys' fees and costs in responding to Appellant's claims, and thus, it would be equitable to award such fees and costs to her under RAP 14.2, RAP 18.1, and RCW 11.96A.150. Therefore, the Court should decline to award attorneys' fees and costs to Appellant and should instead award fees and costs to Calhoun.

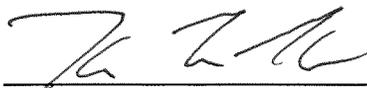
**VI. CONCLUSION**

Helm fails to demonstrate that the Trial Court committed an abuse of discretion in awarding attorneys fees and costs to Calhoun. Calhoun asks that this Court uphold the ruling of the Trial Court, and award additional attorneys fees and costs on appeal.

DATED this 16 day of January, 2020.

Respectfully submitted,

HELSELL FETTERMAN, LLP



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Attorneys for Respondent Calhoun

**HELSELL FETTERMAN LLP**

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Respondent's Brief

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