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DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 3  
270330

STATE OF WASHINGTON, COURT OF APPEALS  
DIVISION III

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JEFFREY P. JONES, et al.,

Respondent,

vs.

RUSSELL K. JONES,

Appellant.

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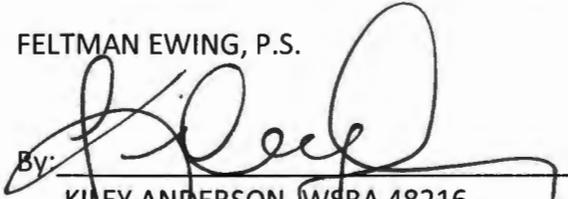
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BRIEF OF RESPONDENT JEFFREY JONES

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FELTMAN EWING, P.S.

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## I. INTRODUCTION

Respondent, Jeffrey P. Jones, respectfully requests this Court affirm the trial court's denial of Appellant's Motion to Reconsider Denial of Relief from Orders of Contempt and Judgment. This motion is also based on RAP 18.9(c) as a frivolous appeal made solely for the purpose of continuing to harass the Respondents. This appeal is clearly frivolous and without merit for the reasons set forth below.

## II. STATEMENT OF THE CASE

This fourth appeal by Russell Jones is the latest in a series of vexatious and frivolous litigation involving the Estate of Marcella Jones that began over 20 years ago. Russell has been sanctioned numerous times by the trial court, Court of Appeals, and the Washington State Supreme Court and was ultimately disbarred from the Washington State Bar due to his conduct in this matter. *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 24, 338 P.3d 842, 846 (2014).

Marcella Jones died testate on September 2, 1995, leaving her estate to be divided in four equal shares to her sons, David, Russell, Jeffrey and Peter. *Jones*, 182 Wn.2d at 25, 338 P.3d 842; CP 46-53. The Will was admitted into probate on September 25, 1995 and Russell Jones was appointed Personal Representative. *Id.* Jeffery and Peter Jones filed a

Complaint to remove Russell as personal representative. *Jones*, 182 Wn.2d at 26, 338 P.3d 842; CP 46-53. After a trial on all issues raised in the case, the trial court removed Russell as personal representative, made other Findings of Fact and Conclusions of Law, and granted judgment in favor of Jeffrey and Peter Jones. *Id.*

Russell appealed the trial court's decision, and the Court of Appeals overturned the trial court, reinstating Russell as personal representative. *In re Estate of Jones*, 116 Wn. App. 353, 67 P.3d 1113 (2003). On appeal to the Washington State Supreme Court, the Court of Appeal's decision was reversed and the decision of the trial court affirmed. *In Re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004).

The Supreme Court remanded the case for a "final accounting" and a calculation of attorney fees. *Id.* The State Supreme Court decision was the culmination of six years of litigation up to that point. Following the issuance of the mandate from the Supreme Court, Russell began a course of egregious and frivolous conduct attempting to relitigate the issues concerning the Estate of Marcella Jones that were decided by both the trial court in 2001 and the Washington State Supreme Court in 2004. *See In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 338 P.3d 842; CP 46-53. Those motions were rightfully denied by the trial court, and the Court

of Appeals upheld the trial court's decision in Russell's second appeal. In an unpublished opinion dated August 30, 2007, the Court of Appeals affirmed the decision of the trial court and awarded attorney fees pursuant to RAP 18.9 to Jeffrey and Peter, finding the appeal was frivolous and amounted to a re-litigation of the issues decided in the 2001 trial and affirmed by the Supreme Court in 2004. *In re Estate of Jones*, 140 Wn. App. 1022, 2007 WL 2452725 (2007).

Russell continued litigation following the second appeal, including filing a third appeal. *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d at 32-33, 338 P.3d 842. In May 2011, Division Three granted Jeffrey and Peter Jones' motion on the merits affirming the superior court's orders, held that Jones' appeal was frivolous, and imposed sanctions. *Id.* "Jones made a motion to modify the ruling, and when it was denied he petitioned for review, which was also denied." *Id.* Russell then filed a new lawsuit naming Peter and Jeffrey as defendants, asking for relief from the 2001 judgment and asserted the same arguments made in previous motions. *Id.* at 33.

Throughout the litigation about Ms. Jones' estate, Jones was sanctioned multiple times, totaling over \$138,000. *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d at 33, 338 P.3d 842. Russell was held

in contempt several times for failing to provide access to and documentation of his assets, including one contempt contained in this appeal. *Id.* Judgments for these sanctions were entered and properly extended as their 10-year expirations approached. CP 1-24.

Russell's attempts to change the results on the first three appeals failed, so he has now taken a new approach and seeks his fourth appeal to avoid payment and collection on the valid judgments entered against him throughout this lengthy court process.

### III. STANDARD OF REVIEW

This case turns on the interpretation of RCW 6.17.020 and RCW 6.32. Courts of appeal review a trial court's application and interpretation of a statute de novo. *Sessom v. Mentor*, 155 Wn. App. 191, 195, 229 P.3d 843, 845 (2010)(citing *State v. Azpitarte*, 140 Wn.2d 138, 140–41, 995 P.2d 31 (2000); *Hadley v. Maxwell*, 120 Wn. App. 137, 145, 84 P.3d 286 (2004)).

### IV. ARGUMENT

#### A. Russell Jones Has Been Afforded More Than Sufficient Process

Russel has received every opportunity and notice to be heard available to a litigant. Not only was there a full trial on the merits of the original case, but Russell exhausted his appeals as both the Court of Appeals and Washington State Supreme Court reviewed the case on

several occasions over the past 22 years, each time determining Russell acted inappropriately and that Jeffrey and Peter Jones were entitled to attorney fees. See *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 338 P.3d 842; CP 46-53. Russell has been involved at every level and had the opportunity to present his case and seek review, as necessary. Valid judgments were entered against Russell throughout the proceedings.

While under RCW 4.56.210 and RCW 6.17.020, the life of a judgment is 10 years, it may be extended another 10 years on motion of the judgment creditor. RCW 6.17.020 allows for a holder of a judgment to apply for “an order granting an additional ten years during which an execution may be issued.” A 2002 amendment to the statute specified that “[t]he application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.” RCW 6.17.020(3).

Here, per RCW 6.17.020, the applications for the extensions of the judgments were properly granted as a matter of right and orders extending the judgments were entered. CP 1-24. Russell does not suggest any factual issues regarding full or partial satisfaction or errors in calculating the judgment amounts and points only to the timeliness. A detailed examination of Russell’s timeliness argument appears below.

Contrary to what Russell claims, following the entry of valid judgments he is not entitled to additional due process, nor do the cases he cites stand for said proposition. Most notably, *Connecticut v. Doebr*, arose out of an appeal regarding a Connecticut statute authorizing a judge to allow for prejudgment attachment of real estate without prior notice or a hearing. 501 U.S. 1, 2, 111 S. Ct. 2105, 2107, 115 L. Ed. 2d 1 (1991). The court laid out the analysis by which a court is to determine what process must be afforded by a statute that enables an individual “to enlist the state’s aid to deprive another of his or her property by means of a *prejudgment attachment.*” *Id.* (emphasis added). In fact, all cases cited by Russell involve due process rights ahead of the entry of final orders or prejudgment attachment on real property. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950)(notice to beneficiaries required ahead of entry of final decree); *Esmieu v. Schrag*, 88 Wn.2d 490, 498, 563 P.2d 203, 207 (1977)(fiduciary duties of trustees and due process rights ahead of entry of final orders); *Tri-State Dev., Ltd. v. Johnston*, 160 F.3d 528 (9th Cir. 1998), as amended (Dec. 3, 1998)(prejudgment attachment on real property); *Van Blaricom v. Kronenberg*, 112 Wn. App. 501, 503, 50 P.3d 266, 267 (2002)(prejudgment attachment on real property).

This case does not involve prejudgment attachment or due process rights ahead of the entry of final orders. Instead, Russell had ample opportunity to present evidence at trial, through post-trial motions and via appeals to the Court of Appeals and Washington State Supreme Court. After all previous attempts were denied, as a last-ditch effort Russell now seeks to avoid the continuing judgments. Russell cannot be allowed to have a fourth opportunity to avoid these obligations based on a disingenuous recitation of law that clearly does not apply to the present situation. These baseless claims have already resulted in additional costs and expenses to Jeffrey and Peter Jones that continue to accrue as the result of this appeal.

B. The Language Of RCW 6.17.020 Is Clear On Its Face And The Judgments At Issue Were Properly Extended

This motion turns on the correct meaning of RCW 6.17.020, which indicates “the party in whose favor a judgment of a court has been or may be filed... may have an execution, garnishment or other legal process issued for the collection or enforcement of the judgment *at any time within ten years from the entry of the judgment*” (emphasis added). Subsection (3) indicates the current holder of the judgment may, “*within ninety days before the expiration of the original ten-year period,*” apply for

an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. RWC 6.17.020(3)(emphasis added). This is an ordinary and uncomplicated matter that can be easily ascertained with documentary proof ex parte. Russell does not argue that the judgments at issue were not extended within the 90 day period before the judgments' expiration, but rather that the word "within" somehow means the opposite.

Russell Jones' argument is inconsistent with the plain language of the statute and judicial precedent. Absent ambiguity, the court is to rely solely on the plain language of the statute. *State v. Azpitarte*, 140 Wn.2d 138, 141, 995 P.2d 31 (2000). The very nature of the word "within" is self-explanatory, however, Russell seems to need clarification. The *Merriam-Webster Dictionary* indicates that "within" as a preposition is "used as a function word to indicate a situation or circumstance in the limits of: such as... not beyond the quantity" and "indicating a specified difference or margin." The *Cambridge English Dictionary* likewise defines "within" as being "inside or not further than an area or period of time." Using these definitions together with the understood plain meaning, the language "within ninety days" contained in the statute, clearly refers to the specific period during which the application for the extension of a judgment should

be brought. The language indicates that both premature applications (made before the 90-day period begins) and late applications (made after the end of the 90-day period) should be denied.

Russell provides no Washington authority to support his contention that the statutory language “within 90 days” requires the filing of the extension of the judgment to occur outside the 90-day period. The Washington cases he cites are easily distinguished as they do not require this interpretation and do not relate to this statute, but rather laws addressing 10-day periods for notices of appeal. In both *Adams* and *Tacoma*, courts addressed time periods that commenced after a judgment was entered and the courts noted in those instances, the use of the word “within” fixed the termination of the named period. *Adams v. Ingalls Packing Co.*, 30 Wn.2d 282, 285, 191 P.2d 699, 701 (1948); *In re Cliff Ave. Improvement*, 122 Wash. 335, 339, 210 P. 676, 677 (1922). These cannot be considered case in point here, as the present question was not involved.

Russell ignores Washington cases addressing both the statute and language at issue. In *State v. Morgan*, while the focus was on another issue, the court affirmed the extension of a judgment entered August 17, 1990, and extended another 10 years on May 31, 2010. 107 Wn. App. 153, 158, 26 P.3d 965 (2001). The judgment was extended 78 days prior to the

expiration of the judgment, clearly *within* 90 days before the expiration of the original 10-year period. Likewise, in *Sessom v. Mentor*, the plaintiff extended a judgment on June 24, 1999, 88 days before the September 20, 1999, expiration date. Nine years later, while the defendant moved to vacate the extension as void on different grounds, the court affirmed the trial court's denial of the motion to void the extension. *Sessom*, 155 Wn. App. at 191.

There are also several Washington statutes that use the identical timing language "within ninety days." RCW 2.08.240 addresses the court's time limit for rendering a decision and states it must be done "within ninety days." The statute defines "within ninety days" to mean the rendering of a decision must be done "within said period of ninety days." RCW 2.08.240. In RCW 4.16.170, the "within ninety days" language is used to address the tolling of a statute of limitations. The statute is clear that for the purpose of tolling, service must be made personally or service by publication must be commenced "within 90 days of filing the complaint." RCW 4.16.170. In *Adkison v. Digby, Inc.*, the Supreme Court found that under RCW 4.16.170, service made after the 90-day period had passed was not timely. 99 Wn.2d 206, 660 P.2d 756 (1983).

The language of the current statute and several comparable statutes with identical language are unambiguous. They are not susceptible to more than one reasonable interpretation, so this Court must consider their plain meaning. If Russell's argument is given merit and the term "within" is deemed to mean outside the prescribed time period, the statutes detailed herein and a vast number of other statutes containing similar time periods would be meaningless. Russell's argument is nothing more than an attempt to confuse the semantics of the statute to avoid his lasting obligations.

C. The Production Of Documents Is Permitted Within A Supplemental Proceeding, And A Finding Of Contempt Against Russell Jones For Failure To Do So Was Appropriate

Washington courts have consistently adhered to the position that "supplemental proceedings are not a new and independent action but are merely a continuation of the original or main action and are auxiliary thereto." *Arnold v. Nat'l Union of Marine Cooks & Stewards Ass'n*, 42 Wn.2d 648, 652, 257 P.2d 629, 632 (1953), aff'd sub nom. *Nat'l Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 75 S. Ct. 92, 99 L. Ed. 46 (1954)(citing *Field v. Greiner*, 11 Wash. 8, 39 P. 259 (1895); *Flood v. Libby*, 38 Wash. 366, 80 P. 533 (1905); *State ex rel. McDowall v. Superior Court*,

52 Wash. 323, 277 P. 850 (1929); *Junkin v. Anderson*, 12 Wn.2d 58, 120 P.2d 548 and 123 P.2d 759 (1942). For this reason, “[s]tatutes providing for supplemental proceedings are remedial in nature. They are intended to aid in the enforcement of judgments previously obtained to make them effective as a practical matter... to make them worth more than the paper on which they are written.” *Id.*

CR 69(b) provides “[i]n aid of the judgment or execution, the judgment creditor or successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by RCW 6.32.” This allows a judgment creditor to employ methods provided in the Washington Court Rules. The Court Rules allow for an examination of the judgment debtor via a deposition, which may include examination of documents per a subpoena duces tecum. CR 30(b)(5). RCW 6.32.015 also allows judgment creditors to apply to the court for an order compelling the judgment debtor to answer interrogatories. CR 34 further permits a party to request another party to produce designated documents from which information can be obtained and which are in the possession, custody or control of the responding party. *See also* CR 26(a).

While case law on CR 69 and RCW 6.32 is limited, the Supreme Court of Washington has addressed the issue of a judgment creditor being compelled to produce documents. In *Arnold*, the Supreme Court of Washington affirmed the trial court's finding of contempt by a judgment debtor who refused to appear and produce documents as part of supplemental proceedings. 42 Wn.2d at 654, 257 P.2d at 633.

Limiting supplemental proceedings to include only an "examination" without the ability to use other discovery devices, as Russell suggests, would defeat the clear purpose of supplemental proceedings which exist to assist judgment creditors in collecting amounts awarded to them. Russell can be compelled to produce documents in a supplemental proceeding, and his failure to do so is a willful violation of the Court's order, punishable by contempt. The trial court's order in this regard should not be disturbed.

D. Russell Jones' Arguments Are Baseless And Designed Only To Harass And Avoid Clearly Valid Judgments. Jeffrey And Peter Jones Should Be Awarded Attorney Fees

A reading of Russell's brief leaves any logical and reasonable person confused and misled as to what points Russell is trying to make and what law truly applies to these issues. The only thing that is clear is Russell is not

willing to accept the results from his mother's estate case and will go to extreme lengths to attempt to avoid the valid judgments entered against him from every level of these judicial proceedings. Russell appears upset by the results in his mother's estate and his being reprimanded for his inappropriate behavior in this case. This latest appeal is designed to continue to harass Jeffrey and Peter Jones and to drag out proceedings that should have been closed 20 years ago. Russell should be foreclosed from beating this rusty drum any further.

Jeffrey Jones and Peter Jones request an award of attorney fees and costs on this appeal. Under RCW 11.96A.150, a party may be awarded attorney fees and costs in probate and trust matters. *Estate of Jones*, 152 Wn.2d at 20-21. RAP 14.2 allows the Court to award attorney fees to the party who substantially prevails on appeal. The Court should award Jeffrey Jones and Peter Jones attorney fees and costs against Russell Jones.

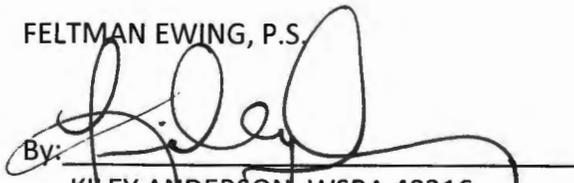
No reasonable attorney would have filed the motions Russell Jones filed in this matter and pursued in this appeal. The appeal is not factually or legally justified. Russell Jones' purpose in filing and pursuing this appeal is to cause Jeffrey Jones and Peter Jones to incur additional costs and expenses. The Court should impose sanctions on Russell Jones under RAP 18.9.

#### IV. CONCLUSION

The trial court did not abuse its discretion when it refused to allow Russell Jones to avoid valid judgments entered against him for his inappropriate behavior through every level of these judicial proceedings. All issues were fully litigated, tried, and decided by the trial court in September 2001. The trial court's Findings of Fact, Conclusions of Law, and Judgment on all issues were affirmed by the Supreme Court. The judgments resulting therefrom were then appropriately extended. Russell Jones received more than sufficient process, yet refuses to abide by valid court orders and continues to do everything he can to avoid collection on the judgments entered against him. The trial court's rulings were grounded in established law and should be affirmed.

DATED this 5<sup>th</sup> day of March 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of March 2020, a true and correct copy of the foregoing document was served on the following in the manner set forth herein:

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