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NO 69175-9

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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In Re: The Probate Estate of  
Ernest A. Howisey, Deceased

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BRIEF OF APPELLANT

AMENDED

Original

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2013 JAN 15 PM 1:21

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Dean v McFarland, 81 Wash 2d 215, 221, 500 2d (1244) (1972)

Dowd v Conway Court of Appeal Division One (39938-5)

Lindgren v. Lindgren 58 Wn. App. 588, 794 P2d 16 (1965)

Mahler v Szues Wash P.2d 305 (1998)

Miller v City of Tacoma 138 Wn 2d 318

State v J.P. 149 Wn 2d 444, 69P 3d 318 (2003)

State v Thomas 150 Wash 2d and 82 (2004)

Other cases:

None.

Constitutional Provisions

None.

Statutes

RCW 28.250

RCW 11.48.030

RCW 4.22.060

11.56.090

RCW 11.76.160

RCW 11.76.110

RCW 11.76.160

RCW 11.96A 220

## 1. INTRODUCTION

Like Jarndyce and Jarndyce in Dickens' novel, Bleak House, this interminable probate came to an end when fees took its last asset. For ease in following this case, a much abbreviated history is presented.

### The Six Year Probate of the Estate of Ernest Howisey

Ernest Howisey died in July 2007, the month the housing market reached its peak. The trial judge, then a commissioner, entered a fatally flawed will three days later. The will was used by my sister Marilyn Jensen and her daughter Anne Sinnett (J/S) in a will contest against the latest will. The delay kept the house off the market for ten months before I became Successor Personal Representative (PR) in a TEDRA settlement agreement. The first PR spent about \$77,000 unproductively.

The mediator, the Honorable Terrence Carroll, and I decided I should refinance the house rather than sell it under foreclosure. It was in default but it had equity. J/S preferred to sign a Deed of Trust without a subordination clause in another document, rather than the one I had a real estate attorney prepare with a standard subordination clause. The loan I arranged was then cancelled. Otherwise J/S would have gotten their money and the probate would have closed in the spring of 2008.

The house was now enmeshed in the housing market collapse. I sold it at the market price five weeks before a foreclosure auction in November, 2008, but the market price was \$42,000 lower than a year

earlier when it was appraised The net proceeds paid \$75,000 of the \$100,000 owed to J/S to complete their \$200,000 inheritance.

I petitioned the Court for Instructions: J/S sued me.

The trial Court adopted a plan by J/S to sell Ernest's cabin in an extended- family summer retreat dating from 1939. But the property was legally protected against any sale. There were also title, property, zoning and other constraints and the cabin was not on his property

I was removed as Successor PR because I was "unwilling or unable" to sell the cabin to pay estate debt to J/S. Two years after the trial, the plan failed spectacularly. The last asset of the estate was wasted. The probate then closed, having failed to solve any problem and leaving me with a large judgment and no inheritance. I petitioned the court to clear my good name but my my petition was denied.

This case was presented at a national probate conference this fall. I learned that that the moderator was sympathetic and observed that the PR likely would not have had a problem without the housing market crash.

## 11. ASSIGNMENTS OF ERROR

### Assignments of Error

No. 1. The court erred in its implementation and management of a plan to sell the decedent's cabin to pay debt.

No. 2. The court erred in removing Carol Carnahan as Successor PR and in issuing a judgment against her.

No. 3 The court erred in violating Canons of Judicial Ethics and admitting findings of facts without substantial evidence: Finding of Fact no. 13; no.30; no. 31; no.34; no.35; no. 26; no. 27

No.4 The court erred in treating the parties inequitably and in its assignments of fault.

No. 5 The court erred in denying a petition to clear the former Successor PR's name as well as orders on March 12, 2010, Dec. 4, 2010 and March 9, 2012

#### Issues Pertaining to Assignments of Error

No. 1 Is it an abuse of discretion to offer an estate property for sale at a price based on estate debt, not value, and then, waive RCW 11.56.090 which requires an appraisal for a court-ordered private sale. Should innocent family members of the decedent have been forced into litigation to keep their summer colony intact, when constraints to a successful sale were known in advance and the majority of findings of fact were not supported by substantial evidence? Assignment of Error One

No 2 May the Court remove a personal representative without due process. Is it fair to punish the former PR, when the sale brings no benefit to the Estate, by greatly enlarging a judgment against her?



The evidence is going to show that Ms. Carnan has made a number of conflicting statements at different at different times about what money she had, what she did with the car,,whether or not the Beaver Lake property was was an asset of the estate, whether it had any value, etc. etc. All part of, I think, a deep seated—and I think this will come across in her testimony, psychological issues related to things that have really little or nothing to do with the matters in front of you. I think we're going to get off into a wonderland of minutia that's going to have the court shaking its head.

Mr. Olver has expertly primed the pump. Let's see if it works with this Court.

*"If your readers dislike you, they will dislike what you say. Indeed, such is human nature that unless they like you, they will mostly deny you even justice."*

F.L. Lucas, Style (1955); in Garner, Bryan, The Winning Brief (2004)

In rebuttal I have just one thing to say about Mr. Olver (though I could say more).

Mr. Olver and I are both published writers. The difference between us is that Mr. Olver writes fiction; I write nothing but nonfiction.

**A. The Parties:** William Jaback, director of the agency Partners in Care, the first Personal Representative (PR) was appointed on August 3, 2007

under a June 30, 2003 will. CP 13-15 William Jaback was withdrawn in a TEDRA Settlement Agreement and replaced by Carol Carnahan on March 21, 2008. Ex 8. 4:1-4 The latest will, dated August 12, 2005, was installed. Ex8.4:1-4 Carnahan was removed by Judge Prochnau on March 9, 2010 and replaced by Craig C. Coombs. CP 1035 The Howisey Respondants are three members of the decedent's extended family. Marianne Hansen is a specific beneficiary, "Beaver Lake" is an eleven cabin Howisey extended family summer colony managed by the Howisey Family Beaver Lake Community Club.

#### **B. The First and Last Rulings.**

This is a second appeal. The first appeal, which we lost in July 2011, was about a release clause and TEDRA as a final court order. The probate continued on with three more hearings subsequent to our appeal.

Original Trial Ruling: March 12, 2010 CP 1023-1035

The original trial ruling on March 12, 2010 replaced me as Successor PR with Craig Coombs, awarded me \$25,000 of reimbursement for out of pocket funds spent to keep the probate solvent, and issued a judgment against the estate and Carnahan as Successor PR to cover the shortfall on J/S note and attorney fees. Unpaid specific beneficiary, Marianne Hansen, was awarded a judgment against the estate.

To bring in funds, the new PR was instructed to "specifically" sell Ernest's cabin in a Howisey extended family summer colony. The Court

set the minimum bid for the private sale to a family member at an estimate of estate debt, or \$105,000. J/S, Carnahan, and Marianne were allowed to bid on the cabin with their judgments or awards plus cash.

Final Ruling: June 29, 2012 CP 1321-1322

This final ruling was just a wrap-up ruling about fees and taxes. The ruling that was functionally the final ruling occurred on March 9, 2012.

Final Ruling of March 9, 2012 CP 1302-1303

The ruling of March 9, 2012 approved a sale to Howisey family Respondents, based on appraisals and their costs, at \$20, 040. My \$25,000 administrative fees/reimbursement were switched to J/S. Marianne was ignored altogether. The only remnant of the initial ruling remaining was the judgment against me. and it was now for the entire debt.

On June 29, we learned that the net proceeds covered barely more than half of the fees of Mr. Coombs and his attorney in this difficult sale.

There were no proceeds for the estate to contribute to its joint judgment with me, so the entire burden is mine. I submitted a motion to modify to finding of fact and and a conclusion of law in an effort to clear

my name (since the cabin couldn't be sold to any benefit of the estate by the replacement PR either) but the court denied my motion. CP 124-126

As we can see, the final ruling didn't finalize the original ruling; it superceded it in every respect. Therefore, findings of fact that were verities from the first appeal come out of retirement for the second appeal, except those findings that were considered in the first appeal and are now res judicata,, as is the ruling that was appealed. More light was spread on findings of fact during the events of the second half of the probate.

**.C. The Sale of Beaver Lake- The Black Heart of the Case**

Carnahan and her attorney suggest ways to solve the problem

My attorney and I suggested that an offset of administrative fees for Carnahan (none of which were ever paid) and the shortfall on the note could wrap up the probate.

J/S present their plan to get their money from the Howisey Family.

J/S's attorney stated that the reason they were in court was to ask the court to sell Ernest's cabin to family members to get the money for Jensen and Sinnett. .RP (3/2/2010) 115: 1

Jensen then testified at length about the history of the cabin, its furnishings, why the Howiseys liked it etc. She proclaimed that if she

were awarded a judgment she would be willing to use it to buy the cabin even though the first PR, Mr. Jaback, testified that there was a title problem. Her grandchildren love to swim and she knew of no reason the cabin couldn't be sold to pay the estate's debt to J/S.

RP(3/2/2010)141:1-144:24

The Property is Protected by Legal Agreements Against Sale

Our cousin, my witness James Howisey, an officer of Howisey Family Beaver Lake Community Club, a non profit corporation, explained to the court why the property could not be sold. He testified about the buy- sell agreement that required all the owners on lot 3 and lot 4 to sell their parcels as one tract, and only if everyone agreed.

.RP(3/3/2010)166.12-167:108

He also explained Articles of Incorporation and Bylaws that mandate that Beaver Lake property be passed on to successive generations and never sold. Passing the land to future generations is the central mission of the corporation. RP(3/3/2010)168:17-169:5

J/S subpoenaed these documents before the trial.

Carnahan, also an officer, further explained these constraints

RP(3/3/2010)112:5-15 and RP3/3/2010-168 She also reminded J/S that in the TEDRA Agreement they'd signed, they waived all ownership interest to any estate asset.. Ex8.3:16-17. This was to give Carnahan the cabin as an inheritance in return for their \$200,000 inheritance and let her take title to the Seattle residence in order to refinance it without it appearing to be her inheritance.

Findings of Fact Supporting the Sale of the Beaver Lake Property are not supported by substantial evidence.

Ten of Findings of Fact were written to support the J/S plan to sell the cabin at Sammamish, Washington. Only no. 29, and no. 33 are backed by substantial evidence.

Finding of Fact No. 30 is not supported by substantial evidence because the deeded property is not close to the waterfront, as Jensen explained RP(3/3/2010.140:24-25 It does not contain a cabin. Ernest Howisey's undated letter to me explains that he owns an undivided ¼ of lot four **and** a cabin site. Ex 93. The parcel deeded to Ernest Howisey is located on the quarter farthest from the lake. RP(3/3/2010:140 We can roughly locate it on a plat map. Ex 92.

Finding of Fact No. 31 is not supported by substantial evidence because Partners in Care was excused by the court from a final accounting. CP133;11-12 PIC director and first PR Jaback testified that PIC didn't know the value of the property RP(3/2/2010)34:2-11 and that the title was clouded. RP(3/2/2010)49:7-18.

Finding of Fact No. 32 is not supported by substantial evidence because Jensen's husband testified that he had only come to Beaver Lake six to or 12 times. RP(3/3/2010)8 0They have never been members of the Howisey Family Beaver Lake Community Club. I haven't used the cabin because it has become uninhabitable and uninsurable. Ex. 84

Finding of Fact no. 34 is not supported by substantial evidence because Ernest paid to the treasurer of the HFBLCC an equal share of the taxes each year, along with his brother and sisters, not a segregated portion. RP(3/3/2010)165:2-9. The lot is undivided.

Finding of Fact no. 35 is not backed by substantial evidence because transfers have only been made on lot six, other than by inheritance. Lot six is not a similar parcel because it's not constrained by a buy-sell agreement. RP(3/3/2010)146:21024 and RP(3/3/2010)146: 13-14

Finding of Fact no. 36 is not supported by substantial evidence because it's not what I said. It's a flat-out lie. I said, "My emotions wouldn't enter into it, would they?" RP(3/2/2010)203:22

J/S Plan Implemented by the Court

The ruling is described on page 6

Jensen Reneges on Her Promise to Buy the Cabin

After she obtained the ruling, Jensen reneged on her commitment to purchase the Beaver Lake cabin with her judgment and aggressively pursued implementation of the sale of the property on the outside market. CP1232.1-2, J/S also requested that Carnahan's administrative fees award be given to them instead. CP1232.20-21

Appeal Undertaken

I appealed unsuccessfully at this point in the probate.

The Requirement for an Appraisal for Court-Ordered Sales of Property is Waived.

In a December 4, 2010 ruling, the Court waived RCW 11.56.090 which requires an appraisal within the year before any court-ordered sale of property .CP1231..17-20.

The Howisey Respondents submitted a detailed analysis of constraints to the sale. CP1286 , CP1286-1295. My attorney submitted a brief. Both briefs predicted that the fees would use up the proceeds, which turned out to be correct. The fact that the cabin Mr. Coombs was “specifically” ordered to sell was not on the Ernest Howisey’s property was explained to the Court, but the Judge was nevertheless surprised to hear this at the March 9, 2012 final hearing. RP(3/9/2012)27:7-13

The Auction generated one bid for \$20,040 under the Buy-Sell Agreement

The second Successor PR, Mr. Coombs, held the auction in August 2011 and received one bid under the terms of an emergency clause in the Buy-Sell agreement, since the Estate was now insolvent and taxes were owing. Based on two appraisals and minus costs, the bid totaled \$20,040. Mr. Coombs indicated that he was aware that J/S would like him to list the property for sale on the open market, as opposed to returning to court for instructions. CP203:15-19. But he, Mr. Coombs, was returning to court for further instructions regarding a public sale as he was instructed to do.

The property is sold for \$20,040 (not \$105,000): Estates share of debt falls to Carnahan now.

At a hearing on March 9, 2012, the Howisey Respondents explained their appraisal, RP(3/9/2012)26:12-25, 27:1-8 They commented that the original analysis of “we need \$105,000 so that will be the sale price of the property” was inappropriate and the parcel was too narrow to build on. RP(3/9/2012)27:4-24. The Court accepted the offer of \$30,000 minus the cost of appraisal, or \$20,040. She then transferred my award for \$25,000 reimbursement/administrative fees to J/S RP(3.9.212)38:10-12 as they had repeatedly requested.. CP1226:1-13.

After the final “housekeeping” hearing without oral argument, on June 29, 2012, we learned that the proceeds were little more than half the fees involved. The last asset of the estate- the one that was supposed to be my inheritance- was wasted . Specific beneficiary Marianne’s earlier award was entirely ignored.

Carnahan motion to restore her good name is denied.

Carnahan moved to modify Conclusion of Law 8,( which states she was unwilling or unable to sell the cabin,) in light of the fact that the Successor PR and his attorney couldn’t sell it either – because it was impossible, and Finding of Fact 27, which accuses her of harmful delay. The motion was denied on June 29,2012.

Everyone was financially harmed: two Personal representatives, The seventy members of the decedent's family. One specific beneficiary., Five attorneys. Jensen and Sinnett, and Carnahan, most of all.

My inheritance, as a result of the Court's actions, is not the loosely defined Settlement Agreement prospect of the Cabin, or any inheritance comparable to that received by JS. or any inheritance at all. Instead I "inherited" the entire debt, now around \$100,000, that the sale of the property was supposed to retire. Because J/S and the Court acted on an untenable plan, I am the one punished for their abuse of discretion. When the plan failed, as it was predestined to do, I'm the one holding the bag.

The court wouldn't let me finish my presentation at the hearing and told me to see a lawyer if I wanted to do anything further.

RP(3/9/2012.21:10-25, 22:1-4.

The Court apologized to J/S for not agreeing to sell the property on the open market so they could get the money they were expecting. RP (3/9/2012)35-1, 36:1-3. She didn't apologize to me for the fact that I now had a drastically higher judgment than was intended in the original ruling.

### Fifty-Fourth Thanksgiving At Beaver Lake

The two still-living siblings of Ernest Howisey and 49 Howisey family descendents gathered again this year for our 54th annual Thanksgiving at our summer compound on Beaver Lake. We hold this celebration in a primitive cabin near the lake, among cedars . It has wood heat but no water, a little like the first Thanksgiving. The children have decorated with fall leaves and cut-out turkeys. One of the sons in –law leads the blessing and then the feast begins.

Six of our aunts and uncles died during the six year probate of Ernest Howisey, two of them without knowing how the dispute would turn out. This first threat to our family summer place since its acquisition in 1939 was dismaying, stressful and expensive. One of the Howisey Respondents lost her 96 year old husband as the litigation proceeded.

The Howisey Family Respondents' attorney wasn't at the Thanksgiving dinner, but he expressed his take on things at the hearing of March 9, 2012:

The only parties seeking to break up the Buy-Sell agreement or Howisey family club are two members of the family whose sense of alienation, or whatever it is that has allowed them to get to this state, shouldn't be able to go in and, as outsiders, destroy those property interests when everybody who actually owns these interests wants to maintain them .(RP(3/8/2012)30:17-25

**D. Violations of the Canons of Judicial Ethics**

Selected Canons from the Code of Judicial Conduct – Effective 1/1/2011

Canon 1: Rule 1.1: Compliance with the law. A judge shall comply with the law, including the Canons of Judicial Conduct. .

Canon 2: A judge should perform the duties of judicial office impartially, competently and diligently

Canon 2: Rule2.3: Bias, Prejudice, and Harassment

A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice or engage in harassment.

Comments: (1) A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

Did the Trial Court Violate Judicial Ethics ?

We are not looking at these findings of fact for their context so much as for evidence of bias. The Oral Rulings are especially telling. Oral rulings are not operative, but they are valuable for the insight they provide as to state of mind- and that's what we're looking for here.

In this section we'll notice bias against Carnahan as a previous pro se litigant even though my attorney, Mr. Bartlett, was fully retained for the trial and all the difficult work in the probate, including a revision. In this section we'll see both Findings of Fact and Oral Rulings. Oral rulings are in italics. They are not operative, of course, but they give insight into mindset.

Did Ms. Carnahan Flit Between Five Attorneys?

Finding of Fact No. 26: Rather than retaining a probate attorney to guide her through the probate process Ms. Carnahan chose to consult with no fewer than five attorneys through this process. She either failed to understand their advice or choose to disregard it." CP1028:4-9

Oral Ruling by Judge Prochnau: *There are a lot of people who cannot afford attorneys and they do the best they can and they make mistakes and we understand that. But Ms. Carnahan obviously had money in the estate to pay for an attorney and she spent quite a bit of money on attorney fees actually. But she flitted from attorney to attorney apparently because she thought she knew better and wanted to be in control of the situation and basically I think wanted to decide what advice she would pick and choose from. RP(3/12/2010)13:21-25, 22-2-4*

Carnahan Response: Did Carnahan flit between five attorneys? :

After a will was installed, I went to my long-time attorney, dating from 1986, (attorney one) who consulted with me, although he could not take the case because he was awaiting confirmation of his appointment to the Court of Appeals, Division I. The Honorable Robert J Leach advised me that it was my duty as nominated Personal Representative to defend the latest will; this was not a will contest. He recommended getting the estate attorney involved to attest to the capacity of the 95 year old decedent. But if litigation was called for I needed to find an attorney who was specifically a probate litigator.

I chose the decedent's estate attorney (attorney two) for the initial petition and for declarations about capacity. CP40-42. I saw Judge Leach again for advice about removing the drafting attorney of the first will installed, who signed up as counsel for the decedent in the scheduled trial. She was removed on my motion. CP85. There is no precedent for counsel for a deceased person.

Since the decedent's residence was facing foreclosure I also hired a real estate attorney (attorney three) Ex67 as any responsible PR would do. These three attorneys were consulted for their specialized expertise when they were needed and not seen again.

I sought out probate litigator Robert M. Bartlett (attorney four) following Judge Leach's advice to hire a specialist for litigation CP9323-930. His fee statement CP923-930 shows us working together : I wrote the ordinary briefs under Mr. Bartlett's supervision and he consulted, argued at the bench for each hearing and did the difficult legal work like the revision and the trial. CP923-930 We prevailed in every instance, including three attempts by J/S to remove me. as PR-- until we encountered Judge Prochnau. There was no fifth attorney.

This was not "flitting between attorneys," as the Court characterized it. This was acting on the advice of one of the most respected litigators in the state of Washington. CP186: Bates no. 000035, 1

Finding of Fact 26 continues;

For example, she held up the sale of the Corliss residence by insisting that the promissory note would have to be compromised in order for the sale to go through even though Petitioners' attorney explained how the sale could go through and she had the services of a real estate attorney. CP1028-6-9

Let's stop here a moment and look at the more even-handed description of these same events, using the same evidence, by the Court of Appeals in its July 5, 2011 ruling, p. 4.5

Court of Appeals: She (Carnahan) expended substantial time and effort in preparing the house for sale and tried to sell it for the original asking price,

which would have accommodated the amount owed on the promissory note. After experiencing difficulty selling it at that price, Carnahan requested Jensen/Sinnett to agree to reduce the amount owed to them on the note, explaining that because of the poor housing market and imminent foreclosure she wanted to reduce the asking price of the house by the amount they agreed to forego. They declined.

Finding of Fact 26 continues: She based some of her actions based on her misunderstanding of the law and her belief that she was capable of educating herself and that she did not need to seek the advice of an attorney. CP1028:9-11

Here the court comments correctly that I thought Gudrun's bequest lapsed at her death. The court is incorrect in saying I commingled.

She had the services available to her of highly competent counsel but chose, either not to avail herself of their guidance or counsel, or disregarded their counsel except when it suited her purpose. CP1028-15-16

I'm not granting her any additional bequests of attorney fees, not because Mr. Bartlett hasn't earned them. My goodness, he has and I wish he had been her attorney throughout this case. We would never have had this problem. My goodness, he has and I wish he had been her attorney throughout this case. We never would have had this problem. Because she has wasted the estate and driven up everybody else's attorney's fees. RP(3/12/2010)16:4-9

In the face page of the March 12, 2010 ruling itself the Judge wrote:

"The court notes that her attorney at trial was highly competent but she wasted the benefit of his counsel by not utilizing him in an effective manner prior to the trial." CP1023

All this verbiage about my use of attorneys is telling. Clearly its an issue with her and we can even tell it's a pro se issue. It's also libel in

any other venue. I wrote all the pleadings for eleven hearings between the time I became Successor PR and the trial. With Mr. Bartlett consulting and arguing at the bench, we prevailed in every one of them. See p. 37.

The first time (of three times) that I tried to get my Petition for Instruction heard, a revision resulted, which Mr. Bartlett handled. The Estate's remaining funds were wiped out by all this j/S initiated litigation.

The Car That Lost 100,000 miles.

Finding of Facts No. 18 is about a 1968 Thunderbird which I had to sell under the Settlement Agreement. CP1026:23-1027.8 Jensen's husband, testified that the speedometer read 37,763 miles and. his "internet research" showed the car's value at as much as \$23,000. But after my letter dated June 8, 2008 he realized that the speedometer had rolled. over once. Ex 81- 6/8/08. In that letter I notified their attorney that I would sell the car at the high bid of \$1,000.00 after ten showings, since the sale deadline was overdue (and legal action was threatened.).

Hearing nothing further, after four days, I notified the bidder and sold the car on June 11, 2009. On June 12, 2009 I received a letter from Mr. Olver again threatening a judgment against the estate and stating thatthe clients would like to make a bid at the "fire sale price, presumably

one thousand dollars. Ex 80, 6/10/08. But it was too late; the car was gone. Once again the Court “mis-recalls” the facts when she prepares her Oral Ruling. The Court stated:

*The value of the car was not terribly significant. It was a \$5000 item in an estate of \$422,000.” ...but the dispute was “illustrative to the court in terms of Ms. Carnahan’s problem with memory and understanding of facts.” She (Carnahan) had a fiduciary duty to administer the sale of the Thunderbird in a reasonable manner. And when she had an offer on the table from the personal representative (sic Jensen/Sinnett) that was, frankly, an overinflated offer, at that point she had a duty to find out how much they were actually willing to put up for it. But it appears they were willing to put up a substantial amount, in fact, over what it was actually worth.”*

As the evidence shows, Jensen never had a higher offer on the table. Their post-sale offer was for the “fire sale” price of one thousand dollars, not a \$15,000 or \$23,000 overinflated offer. Are we seeing a pattern here?

#### Guilt By Granola Bar

Findings of Fact No. 21, 22, 24, 25T all have to do with an “accounting. I wasn’t required to provide a full accounting - by order of Revision judge Barbara Mack. CP710.

The only evidence provided of any wrongdoing was my purchase of a Granola Bar for lunch while doing \$30.00 worth of estate copying at Kinkos. RP(3/2/2010)89:11-25.

I did provide a 166 page financial document with a receipt for every penny of the funds I received, bank statements etc.. CP713-879.

No loss was found. CP1023-1035 (findings of fact generally).

The court is supposed to substantiate fiduciary breaches, if there are any. Mahler v Szucs Wash 20 p 2d 305 (1998).

In the interest of room in this brief I'll save the financial "minutia" for the reply, if indicated, but I want to point out that the court's oral ruling, in particular, is the worst court-approved slander in this case.

*Ms. Carnahan tried to upset the sequence of priority claims, by, frankly, paying herself first. If a Personal Representative is simply allowed to take their money off the top in the guise of administration expenses with no right to review of course, it would make his right meaningless.*

*The Court has found that much of the money that Ms. Carnahan distributed to herself was not related to reasonable administration expenses either because she hadn't earned it or because she wasted the estate by basically not handling it in a proper and efficient manner and most notably by failing to either consult with counsel or abide by their advice. RP(3/12/2010) 12:9-12, 13:13-19*

This is a flat out lie, unbecoming of an officer of the court.

Strangely, In her conclusion of law #6, the Court has crossed off the line that formerly read, "or where she has wasted estate assets" thereby negating her premise above. CP1031:12

Did Carol Carnahan Just Dither Away Two Years?

Finding of Fact No. 27 reads “she caused financial harm to the estate by not wrapping up the estate in a timely and efficient manner.”

This one is laughable if it weren't such a serious charge. The Court fails to acknowledge that an historic housing market drop occurred in 2008 when I was desperately selling the house and yet I sold it. This is a serious charge, though, because it is grounds for a finding of fiduciary breach. The comparative figures are listed below. Again,,no evidence is provided.

First PR Jaback held the estate for eight months, spent about \$77,000 and moved the probate forward by two creditor claims and an Inventory.

Successor PER Carnahan held the estate for two years, and was the only PR to bring in funds. -the \$75,000 that went to J/S on their Promissory note. I testified about my other work for the estate, which was considerable. RP(3/3/2010)70:18-71:23: Also CP214-257 up to May 2009. I didn't pay myself any fees because of the poverty of the estate.

Second Successor PR Craig Coombs held the estate for two years and sold its last asset for less than his fees- neither of which were his fault.

Has a King Co. Superior Court Judge ever sold a house under foreclosure

Finding of Fact No. 38: CP1030:6-10 Here the Court gives me credit for putting in substantial effort in preparing the Seattle home and accomplishing a sale at market value. She has that need to make me wrong, though, and believes J/S, who provide no evidence, that I got the house on the market in mid July when exhibits and testimony and a discussion with Commissioner Watness, (RP(11/14/08)17-18, with J/S's attorney present, show that I got the house on the market on May 15, 2008, after getting the keys on March 21, 2008. The Court also believes I didn't advertise, though I testified that the invoice from the Seattle Times was in my financial document. CP783. She criticizes me for posting my brochure at a hospital! Northwest hospital gave me premium space in the cafeteria because my cousin, (who became a Howisey Respondent in the sale of the house) was formerly Chief of Surgery at Northwest.

*“And, of course, there was the Corliss property, and she did get fair market value for that property. She didn't immediately list it with a realtor; although it appeared she listed it with a realtor in July, so it wasn't terribly untimely in terms of her listing. And I have no doubt that she put a lot of labor and effort into preparing that property for sale.*

*Unfortunately, as seems to be a common issue with Ms. Carnahan, she had a problem seeing the forest for the trees, and rather than getting it on the market quickly to avoid foreclosure, which she knew was impending, and to get it sold during the optimal months, which would be spring and summer, she took considerable period of time getting it ready*

*for sale and then tried to list it on her own through word of mouth and fliers. And that was kind of something that was characteristic of her.*

*She spent a lot of time going around to places like the hospitals to advertise it, but no evidence that she advertised it in papers or internet sources. So she did put substantial time and effort into preparing the home for sale.*

Whew!. This is too personal to be judicial. How does she know all this after meeting me for only three days, we must ask.

The test for improprieties include violations of law, court rules or provisions of this code. The appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the Judge's honesty, impartiality, temperament or fitness to serve as judge.

Code of Judicial Ethics, rev January 1, 2011

How would the reasonable observer of Judicial Ethics regard these findings and oral rulings? I haven't even mentioned acts, as opposed to words, such as selling my loosely defined inheritance without finding me another one; removing me as PR, ;the judgment and the greatly expanded judgment. Also withholding fees for all my work as PR,including selling a house- like Mr. Coombs who got some of his fees for selling a parcel;

Courts Lack of Diligence Contributes to Failure of Probate:

We already know about the sale of Beaver Lake. Now let's take a look at the trial judge as Ccommissioner.

August 1, 2007: While I was at the funeral home making arrangements the day after death, another aspiring PR, Mr. Jaback of the agency Partners in Care, was in court with two wills. Commissioner Vclatagui rejected the wills. CP-9

August 3, 2007: They were back with yet another J/S will, but this time they encountered Commissioner Prochnau, later our trial judge. PIC disclosed there might be a later will than their June 30, 2003 will.

Strangely, PIC had a June 6, 2003 will in its document storage Ex58, but no June 30, 2003 will. :Why did Ernest Howisey feel the need to make two wills in three weeks? Or did he?

Instead of calling in the other will immediately, Judge Prochnau scheduled a hearing six weeks hence and installed the June 30, 2003 will presented to her, giving letters. CP16-19 She missed the fact that the Order had witnesses attesting to the validity of the will who were different people than the witnesses in the will. CP86-87 She changed and initialed the date of the will on the Order, off the record. She missed entirely that the date on the Notary stamp expired in 2011 which meant it didn't exist in 2003 when the will was allegedly notarized,. A notary stamp is good for four years. So the will couldn't have been notarized until 2007- the year Ernest Howisey died.

This coup accomplished, the drafting attorney of the will now in place- Jensen's former attorney according to a Guardian Ad Litem- was emboldened to file a declaration that the year on the will was a scrivener's error. CP59-67. The actual date was 2005, she wrote. Since this still didn't solve the notary stamp problem and the fact that Ernest would then be leaving his entire estate to his dead wife, she didn't pursue her declaration in court. Instead, following Ernest Howisey to the grave and beyond, she signed up as counsel for him in the upcoming will contest trial. Ex 60 I had her removed .CP85

Meanwhile the PR installed by Commissioner Prochnau began spending \$77,000 which, since he was excused from an accounting, CP 133:11-12 we can only calculate by the cash shown in the inventory and the funds I ultimately received from him.

Wrapping up, Findings of Fact no. 4, 5, 6, 10,11 and 12 all contain errors but are not important enough to deal with here.

Finding of Fact 13 states that Notice of filing a Memorandum of Agreement and also a notice of Memorandum of Agreement was served on all beneficiaries. And that "none filed opposition or objection to the **Settlement Agreement.**" Note the tricky language. The beneficiaries received a one page notice s that states that settlement was reached and a

notice that the memorandum had been filed. **They didn't see the Settlement Agreement itself.** This misleading statement was used in Conclusion of Law No. 8 to infer that the Settlement Agreement was fine and dandy with the specific beneficiaries. Marianne Hansen, who runs a vaccine trial at The Hutch and is not naïve, would have objected to being disinherited if she had seen the Settlement Agreement. This type of misleading statement is common in this probate.

#### SUMMARY OF ARGUMENT

The sale of the Beaver Lake property appears to be an abuse of discretion. It was untenable from the start, but the Court would have realized that, and had the opportunity to change course nine months after the trial, had it not waived RCW 11.56.090. It requires an appraisal for any court ordered private sale of property- a protection for both buyer and seller.

The Court had set the minimum bid of \$105,000 by estate debt rather than actual value of the property. Property value was only a third of the minimum bid.. The Howisey Respondents submitted extensive documentation of all kinds about why the sale couldn't work. Instead the probate continued on for another year and a half until the property, the last asset of the estate, was sold for \$20,040, about half the earned fees of the PR and his attorney

We see evidence of bias- apparently bias against pro se litigants- in the Court's own written and spoken words which I have reproduced in this brief. We can assume that bias and other violations of judicial ethics intervened in her decisions and caused unfair results.

The punishment: I received no administrative fees for two years intensive work. The reimbursement I was awarded for the \$25,000 I spent out of pocket to keep the estate going was switched to J/S in the March 9, 2012 ruling- although it wasn't funded. The Court issued an unfair judgment against me and removed me as Successor PR, The Beaver Lake property was projected to be my inheritance under the TEDRA agreement. When the Court ordered it sold, she didn't find me a substitute inheritance.

The crime? I gave Ernest Howisey's two loyal caregivers their bequests a year after his death rather than saving the money to pay the as yet unknown shortfall on J/S promissory note. Superior Court judge Barbara Mack affirmed this priority in her ruling of July 2, 2009. CP710

My motion to recapture my good name, based on the outcome of the probate, was denied. These were not reasoned decisions based on evidence, caselaw and statutes.. The test for judicial improprieties is

whether a reasonable person would perceive the judge's actions as violating the Code of Judicial Ethics.

The Court removed me as Successor PR without due process.

The initial judgment against me was unfair. The sale of the property was designed to pay this debt. When the Court's plan to sell the property failed, I was left with the entire amount.

Inequitable treatment extended also to specific beneficiary Marianne, who received nothing from the estate.

All these matters are documented elsewhere in this brief.

#### **IV ARGUMENT AND AUTHORITY**

**A. Standard of Review.** An appellate court reviews conclusions of law and questions of statutory interpretation de novo, as these are questions of law. *Bishop v. Miche*, 137 Wn.2d, 518, 523, 973, P 2d. 465 (1999); *State v. J.P.*, Wn.2d 444, 449, 69zp 3d 318 (2003).

On review, challenged findings of fact must be supported by substantial evidence. *Miller v. City of Tacoma*, 138 Wn.2 318, 323, 979 P2d. 429 (1999) Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding. *Id*

Intent of the Testator or TEDRA?

Ernest Howisey tried hard to see that his testamentary directives were met. He included a note right in the body of his will thanking his two caregivers of four years and his elderly sister-in-law and favorite niece for their love and support. CP23-35

The will contest language in the will stated that if anyone contests the will, "he or she will be deemed to have predeceased me." In addition, Ernest drafted a specific memo with his estate attorney warning against a will contest.

His efforts were defeated by TEDRA; the trial judge-who as a commissioner installed an invalid will; his daughter and granddaughter (J/S) who used that will in a contest against his similar latest will;; and a PR he'd never heard of who spent about one third of the cash - \$77,000- while moving the probate forward by only two creditor claims and an Inventory.

And, oh yes, an historic housing market collapse.

Of Ernest Howisey's wishes, only the bequest to his Caregivers was fulfilled as he directed. I didn't take the administrative fees I was entitled to in order to have funds for the bequests. Of a \$422,000 Estate, only half went to heirs. J/S got \$175,000; the caregivers got a total of

25,000 I.Sita used her bequest to form a medical clinic in her native Nepal,  
Freywork used hers to accomplish the citizenship she now proudly  
holds. Like the Beaver Lake property, the rest was wasted.

What is the hapless probate-law abiding PR to do when the  
correctness of her distribution of the bequests is affirmed in a ruling by a  
Judge in a Revision hearing in July 2009 CP710 and overruled in a trial in  
March 2010 under contract law, despite the absence of statutes or case  
law? CP1034

Ernest Howisey's will was installed, not superceded by the  
TEDRA settlement agreement. Where is it written that contract law  
trumps the whole long-used body of probate law? Court of Appeals case  
Division 17, No 37015-8 ,reads as follows:

The trial court's authority under TEDRA does not allow it to ignore  
established and relevant Washington law when ruling on issues brought  
before the court under TEDRA.

But the decision was affirmed and is res judicata now.

#### Fault and Loss

RCW 4.22.015:: A comparison of fault for any purpose under under RCW  
4.22.005 through 4.22.060 shall involve consideration of both the nature  
of the conduct of the parties to the action and the extent of the causal  
relation between such conduct and the damages.

The question for the Court of Appeals is: Was the causal relation between the conduct and the damages considered ? I hired . Mr. Bartlett in February 2009 to help with the shortfall on the note and the fact that one specific bequest was still unpaid. We worked for several months on our Petition for Instruction. My Petition for Instruction was never heard. J/S thwarted it' for over a year. I asked for a trial to try to get the probate closed. The Court listed me as plaintiff even though I asked for the trial.

We first noted my Petition for Instruction for a hearing on May15, 2009. Through chicanery it wasn't heard on that day but a Petition of Judgment against me was. It was not even noted until two days before the hearing. We then won a Revision...

Revision Judge Barbara Mack's Order: I'll include some of her comments

"This is a dense fact situation, and I will set out a few that pertain to this ruling..... She (PR) also noted that Jensen and Sinnott (J-S) had received 88% of the funds owned them under the promissory note, and that had they not contested the will, the house could have been sold when the market was still up, in which case they would have all their money She PR) also pointed out that the decedent's will contains a no contest provision, which says that should Jensen, or anyone else contest the will, that person's right to any interest in his estate will cease, and s/he "shall be deemed to have predeceased" him.

..... This Court grants the motion for revision and vacates the judgment against the PR for the following reasons:

1. The Commissioner's order shortening time was granted without good cause and infringed on the PR's due process rights.

2. The Commissioner failed to address the petition for instructions on its scheduled date, ruling instead on S-J's Tedra motion.

3. The Commssioner failed to rule on administrative expenses, which take first priority under RCW 11.76.110.

4. In granting judgment to S-J, the Commissioner advanced their priority of payment over other beneficiaries.

5. This Court notes that the specific beneficiaries were neither parties to the settlement agreement nor were they given notice of J-J's TEDRA petition for Judgment on the promissory note, which could affect their share of the estate.

6. The commissioner should set a new date for a full accounting.

7. All of the above issues are remanded to the commissioner for reconsideration.

For all these reasons, the Court grants the PR's Motion for Revision and vacates the judgment of the Commissioner.

Note that under probate law, Judge Mack affirms my payment to the specific beneficiaries in priority to J/S. and that I later am personally responsible for debt to J/S because I paid them! Something is wrong here. J/S were able to keep my Petition for Instruction from being heard, by various stratagems for another six months, when I requested a trial.

After all this - what was the trial Court's response???

**Although Ms. Carnahan attempted to come to the Court for instructions it was obvious that it was difficult for her to accept instructions from anyone. RP(3/12/2010)11:19-22**

Meanwhile, JS went on a litigation toot. Recall that the reason I'm responsible for their attorney fees is that my actions caused their need for attorney time. Their need?

let's look at the litigation J/S initiated and lost between November 2008 and November 2009.

Petition to Remove Personal Representative: 11/14/08: Estate won.

Motion for an Order to Facilitate Sale of Estate Property: Estate won 11

Shorten Time Motion 5/13/09: J/S won but revised.

Petition for Instruction 5/15.09: Estate-Noted but not heard

Tedra Summons, Judgment 5/15/09 J/S won but revised

Revision 7/2/09 Estate

Petition for Attorney Fees: 5/16/09 Ruling revised -moot

Petition for Attorney Fees: 11/18/09 Estate: continued –never heard

Petition for Instruction/Distribution 11/18/09 Estate: 2<sup>nd</sup> try: continued.

Motion for Continuance 11/18/2009 J/S :continued

Petition for Judgment: 12/04/09 J/S certified for trial

Petition for Instruction 12/04/09 Estate certified for trial

Petition to Remove PR 12/04/09 j/S 3<sup>rd</sup> try certified for trial

Here we have thirteen hearings of which seven are by J/S, who signed a contract to have no involvement in the administration of the estate. Note that they lost them all. Of my five hearings, all but one were attempts-one way or another- to get my petition for instruction heard.

By this time the Petition for Instruction, filed May 1, 2009, was moot because the funds available for either J/S or the bequest were lost to attorney fees. (specify 188?) Carnahan was supporting the probate with her own money by August 2009.

Would the "reasonable person" concur with the trial court that Carnahan caused J/S to spend extra attorney fees and so deserved to have an attorney fees judgment against her? Or was it the reverse? If my Petition for Instruction- which was on the docket three times- had been heard a commissioner would have solved the problem.

#### 4. Alternate Beaver Lake Dispute Resoluton

RCW 83.100.120; 11.76.230 warns that the PR will be personally liable for such debts if he or she distributes assets prior to the payment of debts without retaining assets sufficient for payment. (Emphasis added)

I had in fact retained assets. Under the Order of March 21, 2008, CP132:22-25, I was authorized to transfer all property of the estate without bond and without further Order of Court." I could then have

transferred the Beaver Lake property to myself as intended in the Settlement Agreement .

I held off writing myself a quit claim deed to the Beaver Lake property because I thought it might be needed to make up the shortfall on the note in some way. RP(2/3/2010)111:14-23. I requested arbitration in the November 14, 2008 hearing order where the shortfall was at issue..

J/S had already received \$175,000 of their \$200,000 inheritance. Ernest's Beaver Lake property couldn't be sold but Jensen and Sinnett were heirs to which it could have been conveyed or partially conveyed under the Articles and By Laws. J/S themselves held the view that the Beaver Lake property could compensate. In a petition to remove me when the Seattle residence was in escrow, they stated that they had refused to reduce their note to facilitate the sale of the house CP1573-5

State v. Thomas 150 Wash 2 s 821 (2004)

The trial court's decision will be reversed only if no reasonable person would have decided the matter as the trial court did.

Would the reasonable person have decided to sell a parcel too small to build on - used in the past only to house the outhouse,- at the amount of estate debt four times the actual value?. Would the person have waived an appraisal under RCW , allowing for a change of course, instead of holding on to the plan for another two years and fees.?

The sale of the property is moot now. All that is left is the judgment against me, rising out of the ashes of the burned out plan to sell Beaver Lake like a damaged chimney.

Judgment against Carol Carnahan

A. The Court and J/S were the architects of the Beaver Lake plan but I was the person punished when, -as predestined- the sale failed to pay any part of the judgment. Since the original ruling for the sale placed the minimum bid at the estimated debt of the estate and the judgment was against the estate and the PR jointly, the Court intended for the sale to pay most or all of the judgment.

That the entire amount now falls on me was an inadvertent result. The Court obviously believed the sale would succeed.

Under rule 60 this would have to be considered a new judgment since it's amount and origins are so different from the ruling of March 12, 2010.

A. Judgment may be vacated if it resulted from "mistakes, inadvertence, excusable neglect or newly discovered evidence." Rule 60 and Lindgren v Lindgren 794 P 2d 528 58 Wash. App 588 (2990)

All of these reasons may apply.

B. What was the real, if unacknowledged, reason that J/S Promissory note fell short? It was not because I paid the specific bequests – let's get

real- the cause was the historic housing market crash. An appeal was heard by Division One last year- No. 65813-1-1 (In the matter of the marriage of Ali Ganjaie and Katherine Ganjaie) where the housing market drop reduced the value of their residence by over \$100,000 during a delay. The Court, upon a motion, reduced the price to facilitate the sale. The person who caused the delay in the sale was punished by receiving no distribution.

C Judge Mack noted in her Revision Order::

*Had (J/S) not contesed the will, the house could have been sold when the market was still up, in which case they would have all their money."*

D. I have also documented how J/S were able to thwart the hearing of our Petition for Instruction for close to the year, meanwhile interceding with seven losing actions, which used the estate funds that the Court may have told me to dispense either to J/S or to the last specific beneficiary

We don't know what a commissioner might have ruled in our case if the Petition for Instruction had been heard.. A Commissioner like the Honorable Eric Watness would have persisted until the problem was solved .He called us back twice to check on progress, when I needed the court's assistance to obtain J/S's signature in to get the sale of the house through escrow.

E. I have also explained that that I reserved the Beaver Lake asset as a possible way to deal with the shortfall on the note rather than quit-claiming it to myself as I was entitled to do.

F. 1. I have documented the Court's bias, prejudice and lack of impartiality as well as numerous findings of fact without substantial evidence. These intervened to cause unfair results including a judgment against Carnahan, her removal as PR and the loss of her inheritance and her earned fees.

G For all of these reasons, the Judgment against me should be struck.

#### Removal of the Successor PR

My removal as Successor PR was not dealt with in our first appeal, therefore it is not res judicata. It is almost moot, except that I have never been discharged.

Rem. Rev. Stat§ 1444 "It (Court) shall have power and authority, after citation and hearing to revoke such letters.

My removal came as a complete surprise.: there was no trace of a citation and hearing. .

In re Estate of Beard: The superior Court must have valid grounds for removal and these grounds must be supported in the record. Without such grounds, removal would constitute an abuse of discretion.

Estate of Beard 60 Wn. 2d 1227 (1980)

A personal representative may be removed for any of the circumstances listed in RCW.28.250

Waste, embezzlement or mismanagement of the estate, or any suggestion that any of that is about to occur, Fraud upon the estate: Incompetency, :Permanent Removal from Washington, :Neglect of the estate: or for any other just cause:

Therefore, the court may remove a personal representative under the "for any cause" provision only if the conduct is similar to grounds listed in the statute.

Dean v. McFarland 81 Wash. 2d 215, 221 500 p. 2d 1244 (1972)

Finding of Fact no. 36 states:

" Ms. Carnahan was unwilling to say that she would be emotionally capable of transferring this property to the petitioners or some third party if required to do so as part of her responsibilities as Personal Representative."

It's certainly nice to have a trial transcript . I actually said "My emotions would not be involved, would they?" Note that in the finding I am **saying** this. Conclusion of Law 15 states that "Ms. Carnahan **has been unable or unwilling to** sell the Beaver Lake Property to satisfy the balance of amounts owing by this estate." Now that I'd now become

unwilling – by slight of hand- to **act**, rather than just **say** something, this was the basis under Conclusion of Law 15 for my removal as Successor PR.

The reason is not remotely like the acceptable reasons and the misquotes used here again are reprehensible.

I was vindicated by the outcome of the probate when highly experienced second Successor PR, Mr. Coombs, and his attorney, were not able to sell Beaver Lake at any benefit to the estate either - because of the constraints.

J/S tried unsuccessfully to remove Carnahan in ex parte three times: Two commissioners and a Superior Court judge were having none of it. J/S finally got their ruling with Judge Prochnau.

My removal was an abuse of discretion and should be reversed so I can then be honorably discharged.

#### Motion to Modify a Finding of Fact and A Conclusion of Law

This leads us to the motion I submitted to a hearing without oral argument on June 29, 2012, the “wrap up” hearing to clear my good name.

Many of the findings of fact about me would be libel in the world outside the courtroom. I've been an acting school Principal, a retired teacher and a nationally published writer. When people google me now, they get Westlaw.

My motion simply requested that the Conclusion of Law just discussed, No. 15, be deleted as well as Finding of Fact #27 which reads, "She caused financial harm to the estate by not wrapping up the estate in a timely and efficient manner." I've documented that I was as much or more effective than the other two PRs. I sold a house and brought \$75,000 into the estate, for J/S whereas they spent money.

The Court denied my motion. I request that the Court of Appeals reconsider.

### FAIRNESS

Lack of impartiality is an important concept of Judicial Ethics. This probate provides many examples. Despite the fact that J/S caused losses to the estate in a will contest where the wills differed only in regard to the specific beneficiaries. J/S will contest caused a great loss to the estate in the delay of the sale of the house. In addition to losses in net proceeds, there were property taxes, interest and other expenses. A Division II

Appeal (39938-5), an attorney fees case, the comments of the Court of Appeals seems pertinent.

Here, as Dowd correctly contends, Conway's ultimately unsuccessful will contest and opposition to the motion to dismiss has delayed distribution of the estate's assets to Hallmayer's beneficiaries. Further the costs of litigating the motion for discretionary review and this appeal, if deducted from the estate, would have an adverse financial impact on the beneficiaries.

Point by point, this resembles our case. The delay for J/S will contest also caused losses to the heirs since the house had to be sold in a down market five weeks from a foreclosure auction. Only because an Estate- not a private party- was the seller, was it not publicized as a foreclosure property.

J/S unsuccessful but expensive litigation has already been documented. These actions prevented payment of the bequest to Marianne, which was, ultimately just ignored in the March 9, 2012 hearing.

My financial losses have been large, not to mention five years time and stress.

It is highly inequitable for J/S to obtain the entire estate except for the bequests to Ernest's beloved caregivers.

## V CONCLUSION

Carol Carnahan should be "honorably discharged" as Successor PR

The judgment against me should be struck: because of Ethics Violations by the Court and their impact upon the proceedings as well as the other reasons I have listed. My constitutional rights may have been impacted.

### Return and RedistributionN of Estate Funds:

In the interest of fairness ,the Court should require J/S to return their \$175,000 for equitable distribution.

Marianne, the unpaid specific beneficiary, is a special case. Despite the misleading statements that she received a **notice and memorandum** of settlement, she was never served with, and did not see, the actual Settlement Agreement document and would have no way of knowing that it disinherited her. It's not true as F of F 13 states that "she did not file opposition or objection to the Settlement Agreement.. How could she, when she didn't see it?

Since she didn't sign the TEDRA agreement, administration of her share of the estate has to be done under the will. She should be dealt with under probate law, not the contract law that comprises the Settlement Agreement. She is entitled to her bequest ahead of J/S just as Judge Mack ruled. This was also the case for the caregivers whose

bequests I paid, (with Marianne's kind permission), as well. I know this is res judicata but I can still express my opinion.

Next in priority would be some administrative fees for me, especially for selling the house, since the second successor PR got fees for selling the parcel.

The Howisey Respondants should receive some of their legal fees and the 3<sup>rd</sup> PR Mr. Coombs and his attorney, Mr. Moen, should receive more of their unpaid fees for the difficult sale.

After that, J/S and Carnahan should equitably share what's left as their inheritances.

I Perhaps arbitration would work. I don't think the parties can take a remand to another trial. We grow old!

Or, alternatively, whatever remedy the Court of Appeals considers just.

Dated this 11<sup>th</sup> day of January, 2012

Respectfully submitted,

A handwritten signature in black ink that reads "Carol A. Canahan". The signature is written in a cursive, slightly slanted style.

Carol A. Canahan pro se

Appellant

I appreciate the forbearance of any reader and ask your pardon for my lack of sophistication and legal expertise. Economics dictated my choice to act pro se.

DECLARATION OF SERVICE

I declare under penalty of perjury according to the laws of Washington State  
That on January 14, 2013, I mailed a correct copy by USPS mail of

APPELLANT'S Brief- Amended  
In re the Estate of Ernest Howisey

#69175-9

TO

The Court of Appeals Division One  
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Signed this 14<sup>th</sup> day of January, 2013

  
Carol A. Carnahan, pro se

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