



## TABLE OF CONTENTS

Issue 1: A. STANDARD of REVIEW .....	1
Respondent cites no authority for his proposition that the standard of review of the appeal of a Ct. Commissioner's ruling is on a 'manifest abuse of discretion' standard .....	1
Respondent is not correct in asserting that RCW 11.18.200 is unambiguous as applied to these facts. Respondent is not correct in arguing that this Tesche appeals only the reasonableness of counsel's attorney's fees.....	6
Respondent confuses the non-probate asset's liability to bear decedent' liabilities and claims of creditors with the question of the expenses of Estate Administration.....	8
Issue 2: Respondent's Claims for Fees .....	10
Wegner errs suggesting that after Estate used all probate assets for expenses, claims and fees, all remaining unpaid expenses and fees should be charged to the non-probate asset.....	10
Respondent did almost nothing to "Administer Upon" or "Transfer" the non-probate asset.....	14
Respondent is not correct in asserting that the non-probate real estate was an asset of Corrine Wegner's Estate.....	15
Respondent's dismissal of all substantive portions of his litigation and Counsel's concessions at oral argument below reveal that Mr. Wegner's claims below were not well grounded in fact or law and were interposed for an improper purpose.....	16

Respondent is not correct about the Standard of Review of the Fee and Cost Awards Below..... 19

The Personal Representative is not entitled to any costs or fees..... 21

The absence of a Note of Issue or reference in the Order regarding Ms. Tesche's Motions for Removal and Sanctions is not dispositive or fatal to Appellant's appeal..... 22

PCLR 7(g) (3) is not applicable here..... 24

CONCLUSION ..... 25

## TABLE OF AUTHORITIES

### A. TABLE OF CASES

<u>Barth v. Allstate</u> , 95 Wash. App. 552, 977 P.2d 6 (1999).....	11
<u>Estate of Burke v. Kidd</u> , 124 Wash. App. 327, 100 P.3d 328 (2004).....	16
<u>Harbor Enterprises v. Gudjonsson</u> , 116 Wn.2d 283, 803 P.2d 798 (1991) .....	25
<u>In Re Estate of Larson</u> , 36 Wn. App. 196, 674 P.2d 669 1993) .....	19,20
<u>In Re Estate of Peterson</u> , 12 Wn.2d 686, 728, 123 P.2d 733 (1942) .....	19
<u>In Re Marriage of Balcom and Fritchle</u> , 101 Wash. App. 56, 1 P.3d 1174 (2000) .....	3,5,22
<u>In Re Marriage of Lemon</u> , 118 Wn.2d 422, 823 P.2d (1992) .....	25
<u>In Re Marriage of Moody</u> , 137 Wn. 2d 976 P.2d 1240 (1999).....	2,2,4,20,21,22
<u>In Re Parentage of Hillborn</u> , 114 Wash. App. 275, 58 P.3d 905 (2002) .....	1,21
<u>In Re Welfare of Smith</u> , 8 Wn. App. 285, 505 P.2d 1295(1973) .....	2
<u>King County v. Williamson</u> , 66 Wash. App. 10, 930 P.2d 392 (1992) .....	25
<u>State ex rel. Biddinger v. Griffiths</u> , 137 Wash 448, 242 P. 969 (1926).....	2,4,5,22
<u>State ex rel. Freedom Foundation v. Wash</u> 111 Wash. App. 586, 49 P.3d 894 (2002) ....	5
<u>State v. McCarty</u> , 111 Wash. App. 1051 ____ P.2d ____ (2002).....	11

**B. CONSTITUTION and STATUTES**

Wash. Const, Article IV, Section 23 . . . . .	3
RCW 2.24.050 . . . . .	3, 4, 21, 25
RCW 11.18.200 . . . . .	5, 6, 7, 9, 13, 14
RCW 11.42.085 . . . . .	9
RCW 11.11.003 . . . . .	12, 13
RCW 64.28.010 . . . . .	12, 13
RCW 11.96A.150(1) . . . . .	12, 13, 25

**C. COURT RULES**

RAP 10.3[c] . . . . .	1
RAP 18.1 . . . . .	25
CR 7(b)(1) . . . . .	23
CR 11 . . . . .	25
PCLR 7(g)(3) . . . . .	25

## **I. REPLY ARGUMENTS**

Pursuant to RAP 10.3 [c] this reply brief is limited to the issues in Mr. Wegner's brief to which this brief is directed. Next to each caption section below are noted the pages of Mr. Wegner's brief to which this brief is directed.

### **Issue 1: A. Standard of Review [Pages 12-13]**

**Respondent cites no authority for his proposition that the standard of review of the appeal of a Ct. Commissioner's ruling is on a 'manifest abuse of discretion' standard.**

Mr. Wegner's brief first asserts that the Appellant is not correct about the standard of this court's review. But Respondent cites no controlling authority for that proposition. Rather Wegner simply states: 'The proper standard on review is manifest abuse of discretion.'

Appellant's opening brief cited three cases as authority that the proper standard of review by this court is de novo. More research reveals that In re Parentage of Hillborn, 114 Wash. App. 275, 58 P.3d 905 (2002) is additional authority that de novo is the standard of review of such rulings,

particularly when the Commissioner heard no live testimony. Citing In re Marriage of Moody, 137 Wn. 2d 979, 976 P.2d 1240 (1999) the court in Hillborn ruled that 'The superior court's decision to accept or revise the commissioner's decision then becomes the decision of the court. (citation omitted) We review the commissioner's findings for substantial evidence *only if the commissioner heard testimony.*

The Court of Appeals, in Hillborn, relied on the Supreme Court's decision in Moody case, supra. The Court in Moody (at pages 992-93, ruled:

In State ex rel. Biddinger v. Griffiths, 137 Wash. 448, 451, 242 P. 969 (1926), this court interpreted the language "revision shall be on the records of the case," in an essentially identical statute, to mean that an elected superior court judge should review the entire proceeding that was before the commissioner and has a right to order a transcript of the evidence taken. The Biddinger court also interpreted "revision" to be the equivalent of "review." Biddinger, 137 Wash. at 451. In so holding, this court required the trial court judge to "undertake an appellate court review of the certified record.

....  
....

We recognize that the Court of Appeals' opinion in In Re Welfare of Smith, 8 Wn. App. 285, 505 P.2d 1295 (1973), is somewhat unclear in that it could be interpreted to allow a superior court judge to conduct whatever additional proceeding the judge

believed necessary to resolve the case on review. {Citations Omitted}. We do not read Smith so broadly. The statute limits review to the record of the case and the findings of fact & conclusions of law entered by the Court Commissioner. RCW 2.24.050. In appropriate cases, the superior court judge may remand to the commissioner for further proceedings if necessary. Generally a superior court judge's review of a Commissioner's ruling pursuant to motions for revision is limited to evidence and issues presented to the commissioner. In cases such as this one, where the evidence before the commissioner did not include live testimony, then the superior court judge's review of the record is de novo. [Emphasis Added]

In the present case, the superior court judge correctly refused to consider the new issues and new evidence offered on the motion for revision."

The Court of Appeals in In re Marriage of Balcom and Fritchle, 101 Wash. App. 56, 1 P.3d 1174 (2000) relied extensively on In Re Marriage of Moody, supra, carefully analyzing the correct standard of review for the rulings of Court Commissioners. At page 57 of Balcom, the court reasoned as follows:

"Mr. Fritchle contends the court erred in conducting de novo review of the commissioner's ruling. Relying on a law review article by Richard D. Hicks, "The Power, Removal and Revision of Superior Court Commissioners, 32 Gonz.L.Rev. 1 (1997) Mr. Fritchle asserts that superior courts have been mistakenly applying a de novo standard of review when the correct standard is the "substantial evidence" test.

Revision of a commissioner's ruling is governed by **Washington Constitution, Article IV, Section 23** and RCW 2.24.050. **Art. IV, §23** reads as follows:

'There may be appointed in each county, by the judges of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with .. the administration of justice as may be prescribed by law.'

**RCW 2.24.050** provides:

All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment ... of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, an appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

The extent of a trial court's review of a commissioner's ruling was addressed in State ex rel Biddinger v. Griffiths, 137 Wash. 448, 242 P. 969 (1926). The Biddinger court "required the trial court judge to 'undertake an appellate court review of the certified record.'" In re Marriage of Moody, (quoting the *Hicks* law review article supra, at 23. This means that the superior court's review of the record is de novo where the evidence before the commissioner does not include live testimony. Moody, 137 Wn.2d at 993, 796 P.2d 1240. It follows then that the superior court here did not err by conducting a de novo review."

In re Marriage of Moody, and In re Marriage of Balcom & Fritchle, supra, both support Appellant's position on this appeal that the correct standard of review of this matter is "de novo" and not on an 'abuse of discretion' standard, because the proceedings below were based entirely upon documents submitted by the parties, **and** because no live testimony was heard by the Commissioner.

Mr. Wegner concedes at Page 29 of his brief that he did not testify at the hearing before Commissioner Quaintance. The Commissioner's decision below was based entirely on the documentary evidence submitted by the parties. Therefore, this court's should review the record below *de novo*.

Further, because Commissioner Quaintance applied the provisions of RCW 11.18.200 to the facts contained in the materials submitted by the parties; his ruling involved a mixed question of fact & law. This Court ruled in State ex rel. Evergreen Freedom Foundation v. Washington, 111 Wash. App. 586, 49 P.3d 894 (2002) that mixed questions of law and fact are reviewed under an error of law standard, giving

deference to the findings of the court below, but reviewing their application to the law *de novo*.

Mr. Wegner is simply not correct in suggesting that this court should review this case on the basis of whether or not the Commissioner's ruling was a manifest abuse of discretion.

**Respondent is not correct in asserting that RCW 11.18.200 is unambiguous as applied to these facts. Respondent is not correct in that Tesche appeals only the reasonableness of his counsel's attorney's fees. [Pages 13-14]**

Mr. Wegner's brief suggests that Maxine Tesche is simply contesting the 'reasonableness of the fees incurred' in administrating the Wegner Estate. He posits that it is 'irrelevant that some of the fees incurred were for pursuit of the TEDRA claims' Mr. Wegner filed and later dismissed.

Ms. Tesche's appeal concerns the application of RCW 11.18.200 to the facts of this case. That statute provides, in relevant part, as follows:

**'(1) . . . a beneficiary of a non-probate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities, claims estate taxes, & the fair share of expenses**

**of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset.'**

While Mr. Wegner might hope this appeal be limited to the issue of whether or not his attorney's fees were 'reasonable,' the real issue in this appeal is the extent to which Mr. Wegner or his counsel can avail themselves of the provisions of RCW 11.18.200 in support of their large fee requests.

RCW 11.18.200 does not require that expenses of administration (including attorney's fees) simply be 'reasonable.' Rather, the operative words and phrases in the statute are the following: '**fair share**' of '**expenses of administration reasonably incurred**' ... '**in the transfer of or administration upon** the asset.' Mr. Wegner urges this court to rule is that any and all attorneys fees and costs incurred which have any connection to the administration of the Wegner Estate may be charged against the non-probate asset, so long as the fee was 'reasonable'. That is not what the statute provides.

After attempting to change this court's focus to whether or not the attorney's fees were 'reasonable'

based' on a Manifest Abuse of Discretion standard; Respondent's brief cites the cases of Rettowski v Dept. of Ecology and Estate of Black. Neither case is applicable to the facts underlying Tesche's appeal. Neither case applies the review standard in the cases cited Appellant cited in her opening brief and above.

**Respondent confuses the non-probate asset's liability to bear decedent's liabilities and claims of creditors with the expenses of Estate Administration.** [Pgs. 14-15]

In subpart B of his brief (at page 14) Wegner states that Maxine Tesche has conceded that the Court below was correct in charging her realty with expenses of administration. No such concession was made. The statute is clear on its face in making the non-probate asset 'subject to liabilities, claims and estate taxes...' The statute contains no precondition or qualification concerning a non-probate asset's liability to satisfy those types of general debts.

Respondent cites the remarks Attorney Kombol made to Judge McCarthy at the revision hearing [**RP** Page 13, lines 21-25 and Page 14 lines 1-8] in support of his argument that Mr. Kombol's comments 'estopped'

Tesche from claiming contrary on appeal. Mr. Kombol's remarks referred only to the general liabilities of Corrine Wegner's Estate; amounting to less than \$9,000.00. RCW 11.18.200 does impose on the non-probate asset liability for the decedent's general debts. The statute does not obligate the non-probate asset to bear expenses of administration beyond its 'fair share' of those expenses which were 'reasonably incurred' in the 'transfer of or administration upon' the non-probate asset. Ms. Tesche has never altered her position regarding the differences between [a] the claims presented against the Wegner estate and [b] the attorney fees and P.R. fees Wegner seeks to impose on the non-probate property.

Mr. Wegner next argues at page 15 of his brief that Appellant's first assignment of error [relating to RCW 11.42.085] is 'disingenuous and not supported by the record'. Appellant's opening brief addressed RCW 11.42.085 because Mr. Wegner's counsel cited that statute in Wegner's 'Petition for Adjudication of Title to the JTWROS Realty' filed in the court below on May 25, 2006 [see **CP 13, lines 7-9**]. Had that

pleading not been filed, or had Mr. Wegner's Petition made reference to different statute, Appellant would not have raised that issue. As the record stands, the Petition upon which Mr. Wegner seeks to impose liability on Maxine Tesche's 'non-probate asset' for P.R. and attorney fees relied on improper authority.

To the extent that Commissioner Quaintance relied upon that statute in basing his order, he committed reversible error of law.

**Issue 2: Wegner errs suggesting that after the Estate used all probate assets for expenses, claims and fees, all remaining expenses, claims and fees should be charged against the non-probate asset.** [Pgs 16-20]

Mr. Wegner introduces two hypothetical examples in support of his argument that his attorney should be awarded all of the legal fees and costs incurred during the entire probate proceeding *and* that a P.R. is similarly entitled to recover fees and costs from the non-probate asset. Wegner's hypotheticals fail to provide any authority supporting the examples. In fact, there exists no Washington authority supporting Mr. Wegner's interpretation of RCW 11.18.200.

Hypothetical examples which attempt to explain the possible application of statutory language having little or no practical application are given little weight on appeal. Barth v. Allstate, 95 Wn. App. 552, 977 P.2d 6 (1999). The use of broad hypotheticals which posit how a statute may theoretically be applied to facts not before the court is not persuasive. State v. McCarty, 111 Wn. App. 1051 (2002).

By using hypothetical examples in his brief, Mr. Wegner may be attempting to argue that public policy would be *enhanced* if a P.R. was able to require a non-probate asset to bear all fees and costs incurred during litigation against the beneficiary of a non-probate asset or to avoid provisions in deeds executed by decedents which create Joint Tenancies or which beneficially give a decedent's life insurance proceeds or Pay on Death [POD] bank accounts.

Several Washington statutes are contrary to the "public policy" argument Respondent asserts.

For example, the "**Testamentary Disposition of Nonprobate Assets Act**" provides:

RCW 11.11.003

- "The purposes of this chapter are to
- (1) Enhance and facilitate the power of testators to control disposition of assets that pass outside of their wills;
  - (2) Provide simple procedures for resolution of disputes regarding entitlement to such assets; [**emphasis added**] and
  - (3) Protect any ... other third party having possession or control over such an asset and transferring it to a beneficiary duly designated by the testator."

Wegner's position would frustrate one's ability to direct and control the disposition of assets which the individual desires to pass outside their estate. It would encourage complicated & expensive litigation over the intent of a person who creates assets to pass outside of their estate. Wegner's theory is contrary to the 'simple procedures' RCW.11.003 calls for.

Another statute nixing the P.R.'s public policy argument is the **Joint Tenancies Act, RCW 64.28.010.**

**"Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. . . . "**

The example of the Wegner Estate, and its two and a half year odyssey of litigation against Ms. Tesche, would cause any citizen of our state reason

for pause were it possible for a P.R. to question the validity of a surviving beneficiary's title; prevent the surviving tenant from obtaining possession of the non-probate [Joint Tenancy] asset until long after a decedent's death and then attempt to charge the asset with the costs and fees incurred in that litigation.

When Respondent asserts in Issue No. 2 (at Page 16 of his brief): "all of the remaining unpaid expenses, claims and fees are properly charged to the non-probate property under RCW 11.18.200" he clearly raises the specter that any Joint Tenant or P.O.D. beneficiary would have to bear not only his or her own costs and fees but also those of the Estate as well as the Estate's counsel even should the P.R. dismiss (or lose) the case.

Surely that is not what the drafters of RCW 11.18.200, RCW 64.28.010 or RCW 11.11.003 intended. Had the legislature desired to create such an outcome, then the phrases 'fair share' - 'reasonably incurred' and 'in the transfer of' or 'administration upon' would have been omitted from RCW 11.18.200. Had those phrases been omitted, RCW 11.18.200 would

have allowed the Wegner and Barnett to require the non-probate asset bear all of the litigation fees and costs without standard or limitation. That outcome, however, is not supported by the statute.

**Respondent did almost nothing to "Administer Upon" or "Transfer" the non-probate asset.**

[Pages 20-21]

Mr. Wegner argues that he and his counsel engaged in activities and efforts relating to 'Administration Upon' and the 'Transfer Of' the Enumclaw rental properties. Nothing in the record supports that assertion.

A review of Mr. Barnett's fee and cost records **CP 321-24]** reveals only six entries that could even plausibly relate to qualifying endeavors.

3/14/2006	0.25	\$ 62.50	Review Deed to decedent including Joint Tenancy
3/17/2006	0.35	\$ 87.50	Correspondence with Ms. Tesche regarding loan and repayment
4/6/2006	1.00	\$250.00	Conf. with Maxine and discussion Re: Her position of legal title to the home
4/6/2006	0.17	\$ 42.50	Tel. Conf. with Renter Knert
4/11/2006	2.00	\$250.00	Research Joint Tenancy and Issues overturning rights of survivorship
3/21/2007	0.25	\$ 62.50	Conf. with Attorney Kombol regarding fo4reclosure and status of property

Two or three of those six fee entries are more likely connected with the Estate litigation against Maxine Tesche than with administration upon the non-probate asset. Those six fee entries, even assuming

they relate to 'Administration upon' or 'Transfer of' the Enumclaw real estate, represent only \$775.00 of the \$22,185.75 in fees and costs Mr. Wegner seeks to recover from the Joint Tenancy real estate.

The bulk of Attorney Barnett's fees and costs relate to the substantial legal work expended in litigating title to the Joint Tenancy property. It is striking and troublesome that Wegner asserted below (and is now asserting to this Court) that all of the legal fees & costs incurred in litigation against the a surviving Tenant can be equated to 'administration upon' or 'transfer of' that realty!

**Respondent is not correct in asserting that the non-probate real estate was an asset of Corrine Wegner's Estate.**

[Page 21]

Respondent next suggests it is "undisputed" that the property in Enumclaw is an asset of the Estate. Presumably this argument is made in an effort to claim that fees and costs incurred in the entire estate proceeding involved 'assets of the estate' thereby allowing Personal Representative Wegner to charge them to the Joint Tenancy property realty.

Yet once again Mr. Wegner is not correct in asserting that this issue is "undisputed." This Court, in Estate of Burks v. Kidd, 124 Wash. App. 327, 100 P. 3d 328 (2004), overturned Superior Court Judge Cuthbertson's ruling that two payable-on-death accounts were probate assets to be distributed under the terms of a Decedent's Will rather than to beneficiaries named on the accounts. That ruling is precedent for the proposition that Joint Tenancy assets and P.O.D. accounts are not automatically considered to be assets of an estate.

**Respondent's dismissal of all substantive portions of his litigation and Counsel's concessions at oral argument below reveal that Mr. Wegner's claims below were not well grounded in fact or law and were interposed for an improper purpose.**

[Pages 21-24]

Mr. Wegner commenced litigation against Maxine Tesche based on the decedent's Aunt Turi's testimony that in 2006, shortly before her death, Ms. Wegner hoped to receive a commission and intended to use that money to 'repay the person she borrowed money from' to redress 'a dirty trick regarding her deed' all so that she could 'straiten [sic] it out.'

Over two years of futile litigation ensued in Mr. Wegner's effort to overturn a conveyance that twelve years earlier put the decedent in title to the Joint Tenancy realty with Appellant Tesche "as Joint Tenants with Right of Survivorship".

Mr. Wegner dismissed all substantive claims he filed against Maxine Tesche in August of 2008. Once those claims were dismissed, the only claim left open and pending was Mr. Wegner's claim that the Joint Tenancy realty should bear all of the Estate's litigation costs and attorney's fees as well as all of Wegner's Personal Representative Fees.

When asked by Judge McCarthy at the Superior Court Revision Hearing on January 9, 2009, to furnish *precedential* authority for the propositions the Estate was making in asserting the Estate could collect all attorney's fees and costs 'in essence . . . from the person you lost [to]', [RP 25, Lines 18-20]; counsel for the Wegner Estate was unable to cite a single case, and then concluded with the following explanation which apparently motivated Mr. Wegner in conducting the Estate's litigation against Ms. Tesche:

**"Her heirs at law are her brother and sisters. She has got a brother here, her sisters. She disliked Tesche. They did not get along. So we have a person - the entire estate is going to a person - the deceased disliked."** RP 27 lines 1-4

This court has the power, in its de novo review of the proceedings below, to question the motivation of a Personal Representative who seized possession of the Joint Tenancy property immediately after Corrine Wegner's death and then, presumably upset that his sister's interest in the Enumclaw property was going to pass to a person she disliked; and likely motivated either by substituted anger at the Joint Tenant, or personal greed [or both] engaged in a lengthy and costly effort to return that real estate to his family, apparently assured that the costs and fees incurred in that litigation would be borne by others than himself.

Even if such were not motivating factors, the position Respondent takes on this appeal would have the same effect and consequence to Appellant as well as to others in her unfortunate position in future.

**Respondent is not correct about the  
standard of Review of the Fee and Cost  
Awards Below. [Page 25]**

On Page 25 of Respondent's brief, Mr. Wegner once again misstates the Review Standard this Court should apply in determining whether the legal fees and administrative costs awarded below were correct.

Wegner asks the court to decide if 'substantial evidence' exists in the record below to justify the fee and costs awards. Mr. Wegner cites In re Estate of Larson, 36 Wn. App. 196, 674 P.2d 669 (1993) and In re Estate of Peterson, 12 Wn.2d 686, 728, 123 P.2d 733 (1942) in support of his standard of review argument.

The facts in Larson are substantially different that the facts in the case now before the court. In Larson, the Estate's attorneys [and other witnesses] gave extensive live testimony before the Court Commissioner. For example, "Michael and Patrick Manza testified extensively about the nature and extent of the work they did in probating this estate" (*Larson* at 198). "Marshall Adams testified on behalf of the Personal Representative." [*Larson* at pg. 199] "The objectors called Mr. L.R. Ghilarducci, Jr. ..." "John

Stair, a probate attorney from King County testified for the objectors." [Larson at pg. 199)

Considering the extensive amount of live testimony in *Larson*, and given the fact that *Larson* case was decided 15 years before the Supreme Court ruled in Moody, supra, that in cases where the Commissioner hears no live testimony, the appropriate standard of review is *de novo*.

Maxine Tesche's arguments about whether the non-probate asset can be taxed with all shares [rather than a "fair share" of fees & expenses] regardless of whether those charges were "reasonably incurred" in the "transfer of or administration upon" the joint tenancy real estate wert set forth in her opening brief as well as between pages 6-15, above. They will not be further repeated here.

Suffice to say, Appellant urges this Court to adopt her reasoning and deny any award of attorney fees or costs to Mr. Wegner's counsel. Mr. Wegner's own request for fees and costs as Personal Representative will next be addressed.

**The Personal Representative is  
not entitled to costs or fees.**

[Pages 28-30]

The principal reason P.R. Wegner is not entitled to any P.R. costs or fees is the same as was analyzed above in Appellant's discussion of Mr. Barnett's attorney fee request. In short, the record below contains virtually nothing to support the existence of any meaningful actions taken by Mr. Wegner in the 'administration upon' or the 'transfer of' the Joint Tenancy real property.

Furthermore, it this court would err were it to consider Mr. Wegner's 'Declaration Re: P.R. Duties' [CP 418-20]. This Declaration was filed with the Court on December 30, 2008, eight days after the hearing conducted by Commissioner Pro Tem Quaintance.

As the Supreme Court noted in Moody at page 993, *de novo* review of a commissioner's ruling is limited to the evidence and issues before the Commissioner

RCW 2.24.050 provides the same rule, to wit.

**" . . . such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner."**

The rules which prevent the introduction of evidence after the commissioner's ruling from which revision is sought are based on the Revision enabling statute as well as upon Biddinger v. Griffiths, In re Marriage of Moody as well as In re Marriage of Balcom and Fritchle, supra.

Unless this court considers evidence not before the Commissioner, nothing in the record supports Mr. Wegner's requests for fees and costs.

**The absence of a Note of Issue or reference in the Order regarding Ms. Tesche's Motions for Removal and Sanctions is not dispositive or fatal to Appellant's appeal. [Pages 31-33]**

Copies of the two motions filed by Ms. Tesche five days in advance of the December 18, 2008 hearing before Commissioner Quaintance were furnished to P.R. Wegner's counsel and to the Commissioner as 'working papers']. While it is correct that Ms. Tesche did not file a 'Note for Motion,' P.R. Wegner's counsel had previously 'Noted' the estate's requests that were going to be considered by Commissioner on December 18.

P.R. Wegner's argument that Ms. Tesche served her motions five days prior to the hearing but failed to file a timely 'Note of Issue' should prevent her from seeking

relief is (like other assertions by Respondents) not supported by cites to authority in Cases or Court Rules

While civil motions and hearings in probate matters are commonly noted for hearings by way of "Notes of Issue;" there exists no case or court rule preventing a party from filing responsive motions and pleadings in connection with pending or ongoing trials and hearings.

In fact, C.R. 7(b) implies that oral motions may be made during a hearing or trial. C.R. 7(b)(1) reads:

**(b) Motions and Other Papers.**

(1) *How Made.* An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing . . .

[Emphasis Added]

Because Commissioner Quaintance was conducting a hearing on December 18, 2008, and because Ms. Tesche filed her written motions before the hearing, and gave copies of same to the Commissioner and opposing counsel; C.R. 7(b) implies that she would have been within her right even to have made an oral motion without violating the civil rules.

The fact that Commissioner Quaintance failed to make reference to Appellant's motions in his Order does not mean that the motions were not properly before him.

The Commissioner had authority grant the motions, deny the motions, continue the motions for further reply or to require live testimony be given. The Commissioner erred in failing to do anything which addressed Ms. Tesche's motions for equitable damages and the removal of the Mr. Wegner as Personal Representative of the Wegner estate.

**PCLR 7(g) (3) is not applicable here**

[Pages 35-36]

Mr. Wegner argues that Pierce County Local Rule 7(g) (3) is controlling as regards Ms. Tesche's appeal. This argument is disingenuous. Judge McCarthy's ruling on revision did not grant any of the parties' motions [including oral motions]. Rather, he left Commissioner Quaintance's order intact.

There exists no authority for the proposition that provisions of a local court rule not made part of rulings either by Judge McCarthy or Commissioner Quaintance, would bind this Court or have any effect upon the issues on appeal in this matter.

There exists no RAP which obligates an appellant to identify with specificity the rulings or orders being appealed from in the court below. Therefore, Mr. Wegner cannot argue that Ms. Tesche or this court are bound by

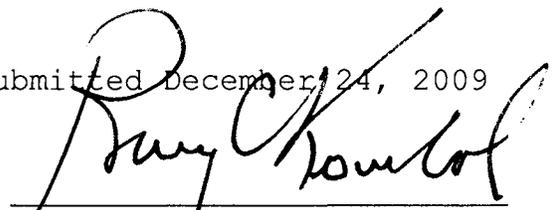
the Commissioner's ruling as if no revision had been requested by Appellant Tesche.

In fact, the provisions of Pierce County Local Rule 7(g) may run afoul of the Statute governing revision of Commissioner's rulings. RCW 2.24.050 provides only that **'Such revision shall be upon the records of the case . '**

A local court rule conflicting with statutory authority is invalid. In re Marriage of Lemon, 118 Wn.2d 422, 823 P.2d (1992), Harbor Enterprises v. Gudjonsson, 116 Wn2d 283, 803 P.2d 798 (1991) and King County v. Williamson, 66 Wash. App. 10, 930 P.2d 392 (1992).

Having fully answered Respondent's reply brief on all points, Appellant Tesche asks for the same relief she requested in her opening brief, reasonable attorney's fees pursuant to RCW 11.96A.150(1) (as authorized under RAP 18.1) and a remand to the superior court for consideration as to whether CR 11 sanctions should be imposed against the P.R. and his counsel for violations of CR 11.

**RESPECTFULLY** submitted December 24, 2009



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6  
7 **DATED** this 24<sup>th</sup> day of December, 2009 at Black Diamond,  
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