Supreme Court No. 89549-0

Court of Appeals, Division I, No. 68749-2-1

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON FEDERAL SAVINGS,

Petitioner,

v.

MICHAEL P. KLEIN, Personal Representative of the Estate of ROBERT KLEIN, Deceased,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER AND INTRODUCTION

The petitioner is Washington Federal, N.A., a national banking association, formerly known as Washington Federal Savings ("Washington Federal"). Washington Federal asks this Court to accept review of the Court of Appeals' decision affirming the Superior Court's entry of summary judgment against Washington Federal.

This case presents multiple reasons to accept review. Indeed, three of the four considerations identified in RAP 13.4 support review. First, the Court of Appeals' decision here conflicts with the decision in an earlier Court of Appeals case, a conflict that demonstrates that the decision here was erroneous. Second, the questions raised in this case significantly affect due process rights protected by the United States Constitution. Third, this is a case of acknowledged general importance and public interest, with significance in virtually every Washington probate, given the notice rights and requirements present in all of them.

This combination of relevant considerations makes review by this Court particularly necessary here.

II. THE COURT OF APPEALS' DECISION

The Court of Appeals' decision was filed on an unpublished basis on August 12, 2013. The respondent moved for publication of the decision on the grounds that it was of general public importance and

otherwise warranted publication. Certain other non-party Washington attorneys with longtime estate planning and probate practices also filed a motion to publish, based in part on the "general public interest or importance" of the decision. On October 11, 2013, the Court of Appeals granted the respondent's and third parties' motions to publish.

A copy of the Court of Appeals' August 12, 2013 decision is included in the Appendix at pages A1-A11. Copies of the motions to publish are in the Appendix at pages B1-7 and C1-6. The Court of Appeals' order granting the motions to publish is in the Appendix at page D1.

III. ISSUES PRESENTED FOR REVIEW

A. Where "actual notice" of a probate notice to creditors is required by the Due Process Clause of the United States Constitution and RCW 11.40.020 as to known and reasonably ascertainable creditors, does substantial evidence of non-receipt of the notice by such a creditor create a genuine issue of material fact precluding entry of summary judgment against it, at least where the creditor has established procedures to identify notices received and there is other evidence in the record supporting an inference that the notice may not in fact have been mailed?

B. More generally, does substantial evidence of non-receipt of a required notice constitute evidence the notice was not mailed?

IV. STATEMENT OF THE CASE

A. The Borrower's Contracts with Washington Federal

In 2006, Washington Federal loaned Robert Klein, a medical doctor (the "borrower"), $375,000 to buy a Tacoma condominium. CP 9, 98, 194. The borrower signed a promissory note (the "note"), secured by a first position deed of trust. CP 9, 98, 220, 223-240.

The borrower died testate on December 11, 2009. CP 112. At the time of his death, he had not fully paid on the note. CP 10, 98, 104, 406.

On December 29, 2009, Michael P. Klein, a Washington attorney and son of the borrower, opened a probate matter in King County Superior Court for his father's estate (the "probate matter") and was appointed personal representative of the estate ("PR"). CP 97-98, 111. He certified that "[t]he value of the assets of the probate and non-probate assets of decedent's estate is at least $100,000 greater than the total of decedent's debts and the anticipated expenses that have been and will be incurred in the administration of the estate.... The estate is fully solvent." CP 185-86.

B. The PR's Knowledge of the Obligations to Washington Federal

The PR was well aware of the borrower's contractual obligations to Washington Federal. On January 21, 2010, he sent Washington Federal the monthly payment due on the note, and requested that in the

future Washington Federal make an automatic withdrawal "from the Robert Klein Estate bank account" to pay down the loan. CP 98, 111.

In January 2010, the PR published the statutorily required notice to creditors, which included certain claim filing bar dates. CP 98, 106-09. The PR did not include copies, nor any other notice of any claim bar date, in his January 21, 2010 letter to Washington Federal. CP 98, 111-14.[1]

The estate retained possession of the condo and for the next 15 months continued to make timely payments to Washington Federal on the note. CP 98, 104. After April 2011, however, the estate made no payments, and the loan has been in default since then. CP 10, 406. The amount owed greatly exceeds the value of the condo. CP 93-95.

C. Washington Federal's First Receipt of the Claims Bar Notice in Late April 2011 and Prompt Filing of a Creditor's Claim

Washington Federal did not receive any estate probate notice to creditors until April 27, 2011, when the PR served it with a petition for instructions he had just filed in the probate matter. CP 194. The petition for instructions was accompanied by copies of a letter from a former attorney for the estate, George Smith, dated January 28, 2011 (the "Smith

[1] Nor did the PR give such notice to Washington Federal at any other time in 2010. CP 194. Nevertheless, he signed a sworn certification in December 2010 that "all actual and potential creditors who came to my attention were sent actual notice of the decedent's death and instructed to send any final bills or claims to the attention of the undersigned as Personal Representative of the decedent's estate." CP 150-51. The only 2010 PR communication to Washington Federal contained no such instruction. CP 111.

letter"), and a probate notice to creditors, which the PR asserted had been mailed to Washington Federal several months before. CP 192, 246.

On May 10, 2011, less than two weeks after it first received the estate's notice to creditors, Washington Federal filed and served its creditor's claim in the probate matter. CP 10, 34-35, 406.

After receiving the petition for instructions on April 27, 2011, Washington Federal immediately conducted a thorough investigation regarding the purported mailing of the Smith letter and notice to creditors. Washington Federal determined that neither the letter nor the notice had been delivered to it before April 27, 2011. CP 191-94.

The Smith letter identified Barbara Peten as the addressee. Ms. Peten was an experienced Washington Federal employee, whose duties included performing day-to-day operations involving the servicing of outstanding loans, including the receipt and processing of incoming mail, as well as filing that mail in the paper loan file and making entries into the electronic servicing notes for the relevant loan accounts. CP 193, 217-18. In a sworn declaration, Ms. Peten stated that she had never seen either the Smith letter or the notice to creditors before they were shown to her as part of Washington Federal's investigation. CP 218.

Washington Federal had well-established procedures to identify probate notices to creditors on arrival and record their receipt. Betsy

Nelson, Washington Federal's loan servicing manager and an officer of the bank, stated in a sworn declaration that the loan servicing department:

> ...has standard policies and procedures in place for handling incoming mail, and specifically Probate Notices to Creditors. Those procedures include placing the original paper Notices in the bank's paper file concerning the subject loan, and making a notation of receipt of the Notice in the electronic servicing notes for the specific loan account.

CP 193-94.

Ms. Peten described the established process for notices and letters of this type. She stated under oath that if she **had** received the Smith letter and notice to creditors, she would have made an entry to that effect in Washington Federal's electronic loan system for that account. She would also have delivered the documents to Washington Federal's mortgage and consumer loan servicing supervisor, and he would have made an electronic notation in the borrower's loan account confirming the receipt, and then placed the documents in the paper loan file. CP 218.

Ms. Nelson stated in her sworn declaration that:

> There is no original or copy of any Probate Notice to Creditors contained within the file for the decedent's loan maintained by Washington Federal. In addition, there is no notation in the electronic servicing notes maintained by Washington Federal for the decedent's loan account that such a Notice was received.

CP 194.

D. The Estate's Challenge to the Timeliness of Washington Federal's Claim

In the PR's April 2011 petition for instructions, he requested, among other things, that the court bar Washington Federal from recovering any deficiency owed on the borrower's loan, due to the purported failure to timely file a creditor's claim. CP 247. In response, Washington Federal provided unchallenged evidence that it did not receive a claims bar notice until April 27, 2011. CP 250-63. A court commissioner denied the petition for instructions, and the superior court denied the PR's motion for revision. CP 268-76. CP 57. Discretionary review was denied. CP 315-16.

E. Washington Federal Seeks to Enforce its Contract Rights

On October 27, 2011, the PR rejected Washington Federal's filed creditor's claim. CP 60. Washington Federal then sued for breach of the obligations under the note and deed of trust. The court granted the PR's motion for summary judgment and denied Washington Federal's motion for reconsideration. CP 388-90, 403-04. Washington Federal appealed.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. Grounds For Review

RAP 13.4(b) states that a petition for review will be accepted only if one of the four criteria set forth in the rule is met. Washington Federal relies on RAP 13.4(b)(2), (3) and (4), which permit review as follows:

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

B. The Court of Appeals' Decision Conflicts With an Earlier Court of Appeals' Decision

The Court of Appeals' decision in this case conflicts with the Court of Appeals' decision in *Tassoni v. The Department of Retirement Systems*, 108 Wn. App. 77, 29 P.3d 63 (2001). In *Tassoni*, the Court of Appeals treated evidence of non-receipt of a required notice not merely as demonstrating the existence of a genuine issue of material fact as to whether a notice had been mailed, but as sufficient to **successfully rebut** any presumption that the notice had been mailed. *Tassoni* is more consistent with CR 56, the "mailbox" rule, and a party's due process rights than the new Court of Appeals decision. *See* Section V. C., *infra.*

Unfortunately, in this case the Court of Appeals disregarded *Tassoni*, as well as the other cases Washington Federal cited in which courts have reached the same conclusion. *See American Family Ins. Group v. Ford*, 155 Ind. App. 573, 578, 293 N.E.2d 524 (1973) ("[b]ut just as proof of proper mailing of a communication justifies the inference that it was received in due course, proof that it was not received justifies

the inference that it was never mailed"); *Matlock v. Citizens' Nat. Bank of Salmon*, 43 Idaho 214, 219, 250 P. 648 (Idaho S. Ct. 1926) (establishing the failure of a letter to arrive gives rise to presumption that it was never mailed).

In *Tassoni*, a public employee sought judicial review of an administrative decision denying his request to restore certain pension service credits. He argued that he had failed to act to restore the credits by the statutory deadline due to the State's failure to give him proper notice. The trial court upheld the administrative decision.

The Court of Appeals reversed, holding that there was insufficient evidence that the State had mailed the required statutory notice, and therefore that the statutory notice period was tolled by the failure of notice and Mr. Tassoni had acted to restore his rights in a timely manner.

In *Tassoni,* the State asserted that it mailed the notice in question, among other things pointing to its general custom regarding mailing as well as the presence of the disputed notice in Mr. Tassoni's agency file, indicating at least that the notice had been generated. The Court of Appeals concluded that there was a lack of substantial evidence supporting the agency finding that the notice was mailed, and that in any event:

> Tassoni and his employer rebutted any presumption that the notice was mailed. Tassoni testified that he did not receive the notice and the hearing officer accepted this testimony.

> His DSHS personnel file did not contain a copy of the notice signed by Tassoni as the statute required. Finally, the DSHS employee who receives such notices and places them in employees' files testified that she did not remember getting the notice.

Id. at 87.

Thus, unlike in this case, in *Tassoni* the Court of Appeals determined that evidence of non-receipt of the notice in question was sufficient to rebut "any presumption that the notice was mailed." The Court of Appeals explicitly focused in *Tassoni* on both the alleged recipient's testimony that he never received the notice and also the corroborating evidence of non-receipt. Although not a probate case subject to RCW 11.40.020, *Tassoni* involved one of the principal issues presented here: whether substantial evidence of non-receipt of a notice constitutes evidence that the notice was not mailed.

Here, like Mr. Tassoni, Washington Federal submitted persuasive evidence that the purported notice never arrived. Like Mr. Tassoni, the purported recipient in this case, a seven-year bank employee, denied receiving the notice. As in *Tassoni*, an office procedure was in place to identify and deal with such notices if they arrived, and then to make a record of their receipt. Washington Federal submitted ample evidence of its procedures and record-keeping—and its records reflected that it did not receive the purported January 2011 notice.

In *Tassoni*, the Court of Appeals recognized that strong evidence of lack of receipt of a purported notice also constitutes relevant evidence that the notice was never actually sent. The Court of Appeals' decision here is inconsistent with the *Tassoni* decision (and for that matter with the relevant decisions from other states, cited above). The inconsistency is even more glaring given that in this case, unlike *Tassoni*, the decision came on a motion for summary judgment, which under CR 56 must be denied where the record reflects that a genuine issue of material fact exists—and which entitles Washington Federal to the benefit of all reasonable inferences from the factual materials submitted. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300 P.3d 1068 (2002).[2]

C. A Significant Question of Constitutional Law Is Involved

This case involves a significant question of law under the Constitution of the United States—namely, Washington Federal's due process right not to have a valid claim held to be time-barred without actual notice. Review is therefore warranted under RAP 13.4(b)(3). The probate notice issues present here have in the past required U.S. Supreme

[2] As in *Tassoni*, additional factors are present here that should have precluded the Court of Appeals from determining as a matter of law that Washington Federal's protection of its rights was untimely. In *Tassoni*, while establishing its standard custom when it came to mailing notices, the State did not demonstrate that it had complied with the custom in that instance. Here, there were ambiguities in the affidavit of mailing of an employee in the office of the PR's then-attorney, Anne Favretto, as well as a separate sworn PR certification of mailing of certain instructions to creditors that was shown to be inaccurate as to Washington Federal. *See* Section v.c., *infra*; fn. 1, *supra*.

Court action and necessitated extensive revision of the relevant Washington statutes. In the PR's motion to publish, he commented that the Court of Appeals' decision included "a lengthy discussion of due process" and that no prior Washington appellate decision has addressed the due process issues this case raised. App. B-3. Now these issues require review by this Court.

The right to due process enshrined in the Fourteenth Amendment to the U.S. Constitution means that known creditors of an estate, like Washington Federal here, must be given formal actual notice. In *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 491, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988), the U.S. Supreme Court ruled that publication notice statutes are inadequate as to known creditors under the Fourteenth Amendment, concluding as follows: "Thus, if a [party's] identity as a creditor was known or 'reasonably ascertainable,' then the Due Process Clause requires that [the party] be given '[n]otice by mail or other means as certain to ensure actual notice.'" (Citation omitted.)

The Washington legislature has implemented these Due Process Clause principles in its probate creditor claim statute, Chapter 11.40 RCW. To shorten the two-year claim period that would otherwise apply here (and within which Washington Federal undeniably filed its claim),

the personal representative of a decedent's estate must give "actual notice" to the creditor, as provided for in RCW 11.40.020(1)(c).

Thus, the "actual notice" requirement is not merely one established by our legislature—it is driven by U.S. Constitutional requirements and must sufficiently protect parties' established due process rights under the Constitution. The Court of Appeals did recognize that due process requirements underlie the "actual notice" standard at issue here, but failed to provide them with appropriate consideration and protection.

In its decision, the Court of Appeals set a standard regarding notice that undermines and is inconsistent with the due process rights of parties like Washington Federal. The Court of Appeals did acknowledge that Washington Federal submitted employee affidavits stating that the notice was not received and "detailing the careful procedures that have been put in place to ensure that mail does not get lost." Opinion, p. 6. The Court also acknowledged that the Favretto affidavit used the phrase "I have given, or caused to be given...actual notice by mailing...." *Id.*, p. 9. Nevertheless, the Court concluded not only that the Favretto affidavit was prima facie proof of mailing, but that to refute such evidence a creditor "must do more than swear that the mail never arrived." *Id.*, p. 11.

As described above, Washington Federal did far more than merely "swear that the [notice] never arrived." In any event, by rejecting

Washington Federal's evidence of its careful procedures and non-receipt of notice out of hand, dismissing the ambiguity in the Favretto affidavit, and ignoring the evidence that on another occasion the PR had inaccurately represented that certain notice and instructions had been provided to Washington Federal, the Court of Appeals failed to properly apply CR 56 and in doing so failed to honor Washington Federal's Constitutional right to "actual notice." Given the standard that the Court of Appeals has now imposed, it is hard to imagine how a creditor **could** rebut even ambiguous evidence like the Favretto affidavit, or show there is an issue of material fact as to notice. What reasonable prospect does a creditor have of challenging a claimed mailing if it is forced to do so only with evidence from the purported sender? Is Ms. Favretto (or any other affiant) going to admit that her affidavit was untruthful? No. Is any co-worker going to contradict such testimony? Not likely.

As a result, under the Court of Appeals' decision a creditor seeking to protect its Constitutional due process rights and simply collect a valid debt, where there are ample monies to pay the debt, is put in an impossible position. Applying *Tassoni* or the holdings in the decisions from other states cited above, by contrast, would allow someone entitled to actual notice to demonstrate that there is a genuine question about mailing based on non-receipt, in a context where receipt of notices is carefully monitored

and recorded; such a party would not be left to rely on the empty hope that the party claiming it mailed notice later retracts that claim. In effect, the Court of Appeals' decision wrongly and unfairly creates an irrebuttable presumption of actual mailing by making pertinent only evidence that is in the possession and control of the purported sender.

Giving the party responsible for mailing notice what essentially amounts to an irrebuttable presumption of having done so, and thus the ability to defeat a Constitutionally required right to notice, is particularly inappropriate where, as here (and as will often be the case), the personal representative of the estate also is a beneficiary. Such a personal representative will often stand to reap a substantial benefit when a significant creditor who is entitled to notice never actually receives it. Where, as in this case, a known creditor of a solvent estate is deemed to be time-barred, the estate will have avoided an otherwise undisputed debt. The Court of Appeals' new standard invites mischief in Washington probates, and provides an estate with an unfair opportunity not to effectively give actual notice—an estate that will recover a potentially large windfall if a known creditor never gets notice and ends up with its valid claim held to be time-barred.[3]

[3] The Court of Appeals also increased this risk for a broad class of creditors by dismissing the ambiguities in the Favretto affidavit about what "caused to be given" might mean. If that language and the unknowns it reflects—by contrast with

The United States Supreme Court has made it clear that a creditor like Washington Federal has a Constitutional right to actual notice. The Court of Appeals' decision concluding that not even a genuine issue of material fact was raised here is not consistent with, nor sufficiently protective of, that right, and it has serious implications for the many other current and future creditors entitled to the same Constitutional protections. The Court of Appeals' failure to extend well-established summary judgment standards to a situation with broad impact on parties with Constitutional rights at stake is not something this Court should ignore.

D. <u>This Case Involves an Issue of Substantial Public Interest</u>

Washington Federal's petition for review involves an issue of substantial public interest that should be determined by this Court pursuant to RAP 13.4(b)(4). That the Court of Appeals' decision is one of great importance, raising issues of substantial public interest, is evident from the

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unambiguous evidence offered on personal knowledge of **in fact** mailing a required notice—is effectively dispositive, then it leaves the (hardly disinterested) party with responsibility for mailing with the benefit of that ambiguity. And it leaves that party with that much more ability to vouch with impunity for something less than **in fact** having mailed a notice. It also effectively destroys any need ever to employ the other means of actual notice that the legislature specifically provided for in RCW 11.40.020(1)(c), personal service, which cannot have been the legislature's intent. The legislature would not have bothered to include a personal service option if an ambiguous affidavit of mailing was meant to effectively be dispositive of whether actual notice was given. The legislature knows how to create presumptions when an affidavit is filed. *See, e.g.*, RCW 11.40.040(2), (3). It chose not to create such a presumption here—where the Court of Appeals has now chosen to create and impose an effectively irrebuttable one.

PR and third party motions to publish on that same ground, as well as from the Court of Appeals' order granting the motions.

In the PR's motion to publish, he pointed out that "the service of a notice to creditors is a task frequently undertaken in a probate" and stated that publication would "aid the citizens of this state by more clearly defining the respective rights of creditors and debtor estates in the probate context." App. B-4. The PR identified the Court of Appeals' decision as one "of general public importance", as did the third party movants, who noted that "[v]irtually every probate requires notification of creditors" and pointed out that "[t]hose who administer estates need to know the correct application of RCW 11.40.020[(1)](c) which governs such notice." App. B-5; C-3. In granting the motions to publish, the Court of Appeals did not specify its reasons, other than to state that it found the opinion "will be of precedential value," but in RAP 12.3(e)(5) one of the key publication criteria is identified as "whether the decision is of general interest or importance."

This case does raise issues of substantial public interest. There should be clarity about the "actual notice" required under Washington's probate statute, as well as about a creditor's ability to challenge the purported giving of such notice. Actual notice is frequently required in probates, and personal representatives must almost always at least

consider whether and how to provide such notice. Given that in each instance one or more parties are entitled to such notice as a matter of Constitutional right, this is a significant case with sweeping impacts. It is critical that the many, many parties who will be affected in the future have not just clarity but also **correct** guidelines for what is required—and to have that will require Supreme Court review.

The Court of Appeals noted that the "caused" wording of the Favretto affidavit is "not uncommon" in declarations of mailing, and "abounds" in Washington statutes. Opinion, p. 10. That only underscores the wider significance and impact of this case and the determination that the "caused" language gives rise to what is effectively an irrebuttable presumption that a required notice has been given. There are broad consequences to the Court of Appeals' decision that such language is as a practical matter dispositive and that the common sense inference from non-receipt—that at least where careful procedures are in place to identify and track such notices when they are received there is **a genuine issue** about whether mailing really occurred—cannot even be considered.

Thousands of lenders likely have notice tracking procedures similar to the ones Washington Federal had in place. They need to know whether their procedures for tracking loan communications—specifically receipt of probate notices to creditors—are essentially useless in helping to

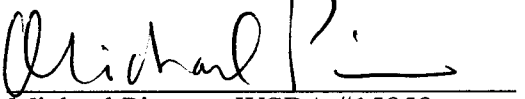
prove nonmailing. If such lenders need to implement new procedures, at least here in Washington, they need to know. There are many other businesses potentially facing the same problem as estate creditors.

VI. CONCLUSION

As set forth above, review by this Court is appropriate for a number of independent reasons, which in combination make review particularly warranted. The Court of Appeals' decision conflicts with a key part of the analysis in *Tassoni*, 108 Wn. App. 77. Moreover, significant questions are involved under the U.S. Constitution. Finally, as reflected in the successful motions to publish brought separately by the PR and two experienced non-party estate planning and probate practitioners, this case is also one of substantial public interest, given that "virtually every probate requires notification of creditors." Washington Federal respectfully requests that the Court accept review.

Dated this 8th day of November, 2013.

RIDDELL WILLIAMS P.S.

By 

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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WASHINGTON FEDERAL SAVINGS, Appellant, v. MICHAEL P. KLEIN, Personal Representative of the Estate of ROBERT KLEIN, Deceased, Respondent.	No. 68749-2-I DIVISION ONE UNPUBLISHED OPINION FILED: August 12, 2013

BECKER, J. — Washington Federal Savings appeals a summary judgment order that dismissed as untimely its creditor claim against a deceased borrower's estate. Washington Federal contends that because it did not receive a copy of the estate's notice to creditors, it was subject to a two-year time bar on creditor claims—which it met—not the far shorter period permitted under RCW 11.40.051(a) to creditors who are given actual notice—which it failed to meet. But the statute requires only proof that the estate's notice was mailed, not proof that it was received. Washington Federal's evidence of nonreceipt does not rebut the estate's proof of mailing. We affirm.

FACTS

In June 2006, appellant Washington Federal Savings, a savings and loan association, loaned $375,000 to Robert Klein, M.D., to buy a condominium unit in

Tacoma, Washington. To secure payment of the promissory note, a deed of trust was recorded against the property.

Three years later, on December 11, 2009, Dr. Klein died at the age of 82. He had not paid off the loan. The balance on the loan was about $350,000. The value of the property had dropped. It is now worth about $200,000.

Dr. Klein's son Michael Klein, respondent herein, became the personal representative of the estate. He opened a probate in King County Superior Court in late December 2009. A notice to creditors was filed with the court and published in two local newspapers in January 2010, in accordance with RCW 11.40.020(1)(a).

Under the probate code, in addition to publishing the notice, an estate may notify known creditors at any time by mailing the notice to the creditor:

> The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first-class mail, postage prepaid . . .

RCW 11.40.020(c). A creditor who is given actual notice as provided in RCW 11.40.020(c) must present the claim within 30 days of the personal representative's service or mailing of the notice, or within 4 months of first publication of the notice, whichever is later. RCW 11.40.051(1)(a). If the creditor was not given actual notice despite being reasonably ascertainable, the creditor has 24 months from the decedent's date of death to present the claim. RCW 11.40.051(1)(b)(ii).

Washington Federal, a known creditor, presented its creditor claim to the estate on May 10, 2011. This was months after the 30-day time bar had elapsed but still within the 2-year time bar that applies if Washington Federal was not given actual notice. The question in this appeal is whether Washington Federal was given actual notice in the manner required by RCW 11.40.020(c)—i.e., by service or mailing of the notice to creditors.

On January 28, 2011, about a year after the opening of probate, the estate's attorney wrote a letter to Washington Federal stating that a copy of the notice to creditors was enclosed and calling the bank's attention to the statutory time bar provisions. On the same day, the estate filed an "Affidavit of Mailing" with the court in the probate matter. The affidavit was sworn by Anne Favretto, a legal assistant of the law office for the estate's attorney, under seal of notary on the same date. The affidavit states, in full:

> Anne Favretto, first being duly sworn on oath, states that this Affidavit is made on behalf of the personal representative.
>
> On January 28, 2011, I have given, or caused to have given, the creditors listed on said Exhibit A, actual notice by mailing to the creditor's last known address, by regular first class mail, postage prepaid, a true and correct copy of the notice to creditors filed herein.
>
> /s/ Anne Favretto
>
> SUBSCRIBED AND SWORN to before me this 28th day of January, 2011.
>
> [signature and stamp of notary]

Exhibit A comprised page two of the affidavit. Washington Federal was one of two creditors listed on Exhibit A.

Under RCW 11.40.051(a), the applicable claims bar was 30 days after the

personal representative served or mailed the notice to creditors. The 30-day deadline passed on February 27, 2011, with no response from Washington Federal.

The estate had been making monthly payments of $2,433 on the loan since Dr. Klein's death, while trying to sell the condo. The estate received, and rejected, an offer of $260,000 for the condo in March 2011.

On April 8, 2011, Klein wrote to Washington Federal and offered to give it the deed to the property in lieu of foreclosure. He wished to "turn over the property to Washington Federal . . . and to walk away from" the condo and its related costs. Washington Federal declined.

On April 27, 2011, Klein filed a "Petition for Instructions" asking the court to order Washington Federal to accept his offer of a deed in lieu of foreclosure, in light of its failure to file a timely creditor's claim to any unsecured deficiency above the value of the deed. Klein attached to his petition the January 2011 letter from the estate's attorney, the attached notice to creditors, and the affidavit of mailing by Favretto. Washington Federal claims this was the first time it had ever seen any of these documents. On May 10, 2011, within 30 days, Washington Federal filed a creditor's claim.

Washington Federal also filed an opposition to the petition for instructions. Bank employees Barbara Peten and Betsy Nelson submitted declarations stating that neither they nor anyone else at Washington Federal received the estate's January 2011 letter, that Washington Federal maintained "standard policies and

procedures" for the proper handling of such notices that arrive by mail, and that the April 2011 petition was their first notice that the estate was attempting to avoid liability for any deficiency between the value of the promissory note and the value of Washington Federal's secured deed.

There followed several months of inconclusive litigation concerning the petition for instructions which need not be detailed here. For purposes of this appeal, the next significant event occurred on October 27, 2011, when Klein filed a formal notice rejecting Washington Federal's creditor claim.

Washington Federal then sued the estate for breach of contract, alleging that the personal representative had breached the estate's obligations under the promissory note and the deed of trust. Washington Federal sought to enforce the promissory note against the estate and to collect the deficiency above the value secured by the deed of trust.

The estate moved for summary judgment. The estate argued, in part, that Favretto's mailing of the notice to creditors in January 2011 constituted an affirmative defense to any unsecured claim against the estate by Washington Federal because the lender had not filed its claim within 30 days after that notice was mailed.

The court granted the estate's motion on April 11, 2012, reasoning that the notice mailed in January 2011 with the letter from the estate's attorney was enough to start the clock ticking. The court awarded the estate its attorney fees and costs, totaling $12,045. This appeal followed.

When reviewing an order granting summary judgment, this court engages in the same inquiry as the trial court, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment is appropriate if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A material fact is one on which the outcome of the litigation depends. Zedrick v. Kosenski, 62 Wn.2d 50, 54, 380 P.2d 870 (1963).

The party opposing a motion for summary judgment may not rely on speculation, argumentative assertions that unresolved factual issues remain, or on having its affidavits considered at face value. Seven Gables Corp. v. MGM/UA Entm't Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986). The party must set forth specific facts rebutting the moving party's contentions and disclose that a genuine issue as to a material fact exists. Seven Gables, 106 Wn.2d at 13.

Washington Federal rests its case on its claim that it never received the documents mailed by the estate's legal team in January 2011. The evidence Washington Federal submits are affidavits by two of its employees stating that the documents were never received and detailing the careful procedures that have been put in place to ensure that mail does not get lost.

If Favretto's affidavit proves mailing of the notice—an issue we will address below—these affidavits do not rebut it. A creditor's claimed nonreceipt

of a probate notice is not material to proving actual notice. Had proof of receipt been of concern to the legislature, it could have so provided. Just such a requirement exists in the mortgage foreclosure context, for example, where the legislature requires creditors to transmit notices of foreclosure sale "*by both* first-class *and* either certified or registered mail, return receipt requested." RCW 61.24.040(1)(b) (emphasis added). Actual notice under RCW 11.40.020(c) is accomplished by mailing, without regard to proof of receipt.

And proof of receipt is not necessary to satisfy due process. Under most circumstances, notice sent by ordinary mail satisfies due process because it is deemed reasonably calculated to inform interested parties of an impending action. Weigner v. New York, 852 F.2d 646, 650 (2d Cir. 1988), cert. denied, 488 U.S. 1005 (1989); Tulsa Prof'l Collection Srvs. v. Pope, 485 U.S. 478, 490, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 800, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983).

The Mississippi and Kansas cases cited by Washington Federal do not establish a rule that due process requires proof of receipt. One would have to lift sentences out of context in order to give them that interpretation. In the Kansas case, there was no issue as to whether an affidavit of mailing was adequate to prove receipt; indeed, the record was "void of any evidence" that the creditor "was ever notified" of the probate, by mailing or otherwise. In re Estate of Reynolds, 266 Kan. 449, 970 P.2d 537, 545 (1998). Nor was there a live dispute as to mailing versus receipt in the Mississippi case. There, the court presumed

that a mailed notice was a received notice; it described the affidavit of mailing as listing "creditors *who received notice by mail.*" In re Estate of Petrick, 635 So. 2d 1389, 1390 (Miss. 1994) (emphasis added).

Washington Federal's essential argument on appeal is that Favretto's affidavit was inadequate to prove that the estate mailed notice. Washington Federal argues Favretto's use of the wording "have given, or caused to have given" creates ambiguity as to who actually placed the document into the mail, and whether such a person ever did, in fact, mail the document.

Klein contends that Washington Federal failed to preserve a challenge to the adequacy of Favretto's affidavit. "On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court." RAP 9.12. "The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a). As a general matter, an argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal. Sourakli v. Kyriakos, Inc., 144 Wn. App. 501, 509, 182 P.3d 985 (2008), review denied, 165 Wn.2d 1017 (2009).

Klein is correct that Washington Federal's position on appeal has evolved from its position in the trial court. Washington Federal's summary judgment opposition brief did not mention Favretto's name, and it made only an oblique reference to her affidavit.

> [E]videntiary issues exist with respect to the P.R.'s ostensible proof of his attorney's assistant's actions. *Indeed, Mr. Klein's Declaration is internally inconsistent, indicating that both his lawyer, and his lawyer's assistant "gave . . . direct notice," and/or "given, or caused to have given," such notice to WaFed.*
>
> It is not up to the Court or WaFed to read between the lines and attempt to ascertain which of the multiple possibilities actually occurred – if any; rather it is the Estate's burden to prove the material facts. Even were the Estate to belatedly attempt establishing a foundation for its P.R.'s knowledge of WaFed's ostensible service, given the existing contradictions in his testimony that evidence should be accorded very little weight.

Clerk's Papers at 170 (some emphasis added) (alteration in original) (footnotes omitted). Washington Federal's motion for reconsideration similarly failed to confront Favretto's affidavit directly.

For the sake of argument, we will assume the challenge to Favretto's affidavit was not waived. The question, then, becomes whether her affidavit established prima facie proof of "mailing the notice" to Washington Federal as required by RCW 11.40.020(c). Favretto declared, "I have given, or caused to have given, the creditors listed on said Exhibit A, actual notice by mailing to the creditor's last known address, by regular first class mail, postage prepaid, a true and correct copy of the notice to creditors filed herein."

Zeroing in on the phrase, "or caused to have given," Washington Federal argues it means that Favretto is unable to claim personal knowledge that the document was mailed:

> Even accepting the affidavit at face value, the letter and notice may well have been given to someone else to mail or handle—but there is no declaration from any such person as to their actions or confirming mailing. That alone establishes the existence of a

> genuine issue of material fact as to whether "actual notice" was given.

Brief of Appellant at 27 (emphasis omitted). According to Washington Federal, Favretto's affidavit raises a reasonable inference that no one accomplished the mailing.

We reject this argument. It is not uncommon for declarations of mailing to use phrases signifying that the declarant has "caused" an important document to be mailed. Use of this passive voice construction abounds in statutes that describe a party's obligation to give notice. See, e.g., RCW 61.24.040(1)(b) ("At least ninety days before the sale, . . . the trustee shall . . . *cause* a copy of the notice of sale . . . *to be transmitted*") (emphasis added); RCW 23B.15.100(3) ("the secretary of state shall immediately *cause* a copy thereof *to be forwarded* by certified mail") (emphasis added).

What these usages recognize is that "mailing" a notice is not a single, complete act. Mailing a notice refers to a series of linked actions, any one of which, hypothetically, is fallible. To prove mailing in accordance with RCW 11.40.020(c), if it is not enough for a legal assistant to say that she "caused" actual notice to be given by mailing, then what is enough? Must she say that she personally took the document to the mail room? Or that she personally put it on the mail truck or in an official postbox? No. The familiar standard of "reasonably calculated to apprise" encompasses the remote possibility that any one of these links may break down in a given case. The office messenger may drop the envelope into the dustbin on the way to the mail room; the wind may blow it off

the truck into the street; or a careless postal employee may direct it to the dead letter office. The fact that mailed notice satisfies due process reflects a judgment that such mistakes are very rare.

So, when a legal assistant declares that she has "given, or caused to have given" a creditor actual notice by mailing, it is reasonable to accept her statement as prima facie proof of mailing. To refute such a declaration, a creditor must do more than swear that the mail never arrived.

We conclude Washington Federal has not raised a genuine issue of material fact as to the mailing of the notice to creditors on January 28, 2011. The trial court did not err in concluding that the creditor claim is time barred.

The promissory note contains an attorney fee provision. The trial court awarded the estate attorney fees and costs under this provision totaling $12,045. The estate is similarly entitled to an award of attorney fees as the prevailing party on appeal, subject to compliance with RAP 18.1.

Affirmed.

Becker, J.

WE CONCUR:

Cox, J.

No. 68749-2-I

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

WASHINGTON FEDERAL SAVINGS,
Appellant,

v.

MICHAEL P. KLEIN, Personal Representative
of the Estate of ROBERT KLEIN,
Respondent.

MOTION TO PUBLISH OPINION

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Attorneys for Respondent Michael P. Klein

Pursuant to Rule of Appellate Procedure (RAP) 12.3(e), Respondent Michael P. Klein, Personal Representative of the Estate of Robert Klein, moves this Court to publish the Opinion filed in the above-captioned matter on August 12, 2013, *Washington Federal Savings v. Michael P. Klein*, No. 68749-2-I.

RAP 12.3(e) outlines several criteria for the Court's consideration of a motion to publish an opinion. The pertinent factors support publication in this case.

1. Applicant's Interest

Respondent Michael P. Klein is a party to this appeal. Respondent is interested in publication on behalf of the estate of Robert Klein (for which Respondent serves as Personal Representative) and for creditors and debtor estates throughout Washington. The Personal Representative faced litigation with two creditors in this case. This litigation could have likely been unnecessary had such an opinion been published previously.

2. Publication is Necessary to Provide Guidance to Creditors and Debtor Estates in Washington

No Washington case before this one has addressed the question of whether the probate statute's provision for providing "actual notice" to creditors requires only proof that the estate's notice was mailed, not proof that it was received. Opinion, at 1. The Court's Opinion in this case

clarified that under the probate statute, a creditor's evidence of non-receipt does not rebut the estate's proof of mailing. *Id.*

For precisely this reason, the Court's Opinion included a lengthy discussion of due process. Opinion, at 7-11. The Court held that proof of receipt is not necessary to satisfy due process, noting that under most circumstances, notice sent by ordinary mail satisfies due process because it is deemed reasonably calculated to inform interested parties of an impending action. Opinion, at 7. No prior Washington appellate decision has directly addressed whether proof of receipt is necessary to satisfy due process in the context of providing "actual notice" to creditors under RCW 11.40.020(1)(c) and RCW 11.40.051(1)(a).

Furthermore, no prior Washington appellate decision has addressed whether an affidavit of mailing notice to creditors is sufficient to provide "actual notice" under the probate statute where the affidavit states that the affiant "ha[d] given, or caused to have given" notice to creditors. Opinion, at 9-10. This Court's Opinion rejected the creditor's argument that the "caused to have given" language raises a reasonable inference that the mailing of the notice was not accomplished. *Id.*, at 10. The Court found, instead, that "[i]t is not uncommon" for affidavits of mailing "to use phrases signifying that the declarant 'has caused' an important document to be mailed." *Id.* Accordingly, the Opinion provides guidance

to creditors that seek to file claims against a decedent in Washington, both with respect to what satisfies "actual notice" and with respect to what establishes prima facie proof of providing such notice to creditors.

3. The Opinion Settles a Novel Legal Question

As discussed above, the Court in this case addressed a legal question never before decided by a Washington court. That no published case law exists is not, however, an indicator that these circumstances are rare or unlikely to be repeated. To the contrary, the service of a notice to creditors is a task frequently undertaken in a probate. Publication of this Opinion will aid citizens of this state by more clearly defining the respective rights of creditors and debtor estates in the probate context.

4. The Opinion Clarifies Established Legal Principles

The Court's Opinion is wholly consistent with the probate statute and the existing case law interpreting the statute's provisions. The decision clarifies that "actual notice" under RCW 11.40.020(1)(c) and RCW 11.40.051(1)(a) is satisfied by proof of mailing the probate notice to creditors. Opinion, at 7. The Opinion also clarifies that the language "caused to have given notice" in an affidavit of mailing notice to creditors is sufficient to establish prima facie proof of mailing. Opinion, at 10-11. The Appellant in this case apparently did not think this proposition was clear. Nor did a commissioner in the court below who found otherwise.

Accordingly, publication of the Opinion would clarify established legal principles.

5. The Opinion is of General Public Importance

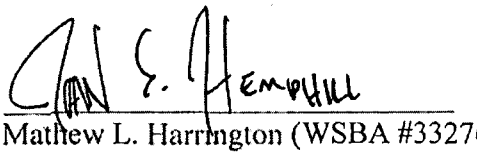
As discussed above, this Opinion provides certainty about what constitutes "actual notice" under the probate statute and what language is sufficient to establish prima facie proof of mailing in an affidavit of mailing notice to creditors. The general public will benefit from the increased certainty that this Opinion brings to creditors and debtor estates in Washington.

6. The Decision, If Published, Will Not Conflict With Prior Appellate Decisions

As discussed above, there is no existing Washington case law that squarely addresses what constitutes "actual notice" under the probate statute and what language is necessary to include in the affidavit of mailing to provide prima facie proof of mailing the notice to creditors. Publication of the Opinion will lend, not undermine, certainty to creditors and debtor estates in Washington.

Because the Court's Opinion in this matter decides a novel question of law in Washington, clarifies established legal principles, is of general public importance, and will provide useful guidance to creditors and debtor estates in Washington, Respondent respectfully requests that the Court publish its Opinion.

SUBMITTED this 3rd day of September, 2013.

By: 

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 3rd day of September, 2013, I caused a true and correct copy of the foregoing document, "Motion to Publish Opinion," to be delivered by messenger to the following counsel of record:

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Dated this 3rd day of September, 2013, at Seattle, Washington.

Joan E. Hemphill

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WASHINGTON COURT OF APPEALS, DIVISION ONE

WASHINGTON FEDERAL SAVINGS, Appellant, v. MICHAEL P. KLEIN, Personal Representative of the Estate of ROBERT KLEIN, Deceased, Respondent.	No. 68749-2-I MOTION TO PUBLISH OPINION

1. Identity of Applicants & Relief Requested.

Applicants Dean V. Butler, WSBA No. 9649, and Sandra L. Perkins, WSBA No. 15993, are members of the Washington State Bar Association who practice in the areas of estate planning, probate and trusts. They are not parties to this litigation. Pursuant to RAP 12.3(e), Mr. Butler and Ms. Perkins ask this Court to publish its opinion of August 12, 2013, because it clarifies and develops the law related to settlement of estates, particularly as to the application of RCW 11.40.020(c) for when the 30-day notice period begins to run for a creditor to file a creditor's claim against the estate.

2. Facts Relevant to Motion.

Applicants have long devoted their practices to probate and estate

work. They are familiar with the cases and issues that are commonly addressed in estate proceedings and regularly advise clients in this area.

They believe the decision is an important case of first impression in Washington involving our probate creditor claims statute. Applicants were surprised it was issued as a decision not to be published and decided to draw the Court's attention to the fact that guidance is needed in this area and request that it be published.

Although many unpublished decisions are somewhat perfunctory, this decision is sufficiently detailed and has a thorough, well-developed legal analysis and reliance on authority without being unduly conclusory. As a result, the panel should not be reluctant about the prospect of this decision being included in the Washington Appellate Reports.

3. Grounds for Relief and Argument.

RAP 12.3(e) permits non-parties to request that an unpublished decision be published based on meeting at least one of several criteria. The criteria include if the decision is a case of first impression or is of general public interest or importance. Both criteria are met here.

Applicants Mr. Butler and Ms. Perkins, as long-term members of the Bar who practice in the areas of estate planning, probate and trusts, believe the decision in this case, *Washington Federal Savings v. Estate of Robert Klein*, No. 68749-2-1 (Div. One, August 12, 2013), is an important

case of first impression interpreting RCW 11.40.020(c). The decision clarifies the statute so that if the personal representative of a decedent's estate gives actual notice to creditors by mailing the notice to creditors by regular first class mail as provided in RCW 11.40.0209(c), the 30-day period for the creditor to file a creditor's claim against the estate commences to run. The decision clarifies that the estate need only prove the notice to creditors was mailed, not that the creditor actually received the notice.

Publication of this decision will eliminate or reduce future litigation between decedents' estates and their creditors if the estate can show by affidavit of mailing that the notice was mailed. Whether the creditor actually receives the notice will no longer be an issue.

4. Conclusion.

Virtually every probate requires notification of creditors. Those who administer estates need to know the correct application of RCW 11.40.020(c) which governs such notice. Applicants therefore respectfully request that the Court publish this opinion for the benefit of the Bench, the Bar, and the public for future cases, and to insure the orderly application of the law in this important area. Pursuant to RAP 12.3(e) and the public

interest, Applicants request that the Opinion be published.

Respectfully submitted this 3rd day of September, 2013.

CARNEY BADLEY SPELLMAN, P.S.

By _____
Gregory M. Miller, WSBA No. 14459
Attorney for Mr. Butler and Ms. Perkins

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

WASHINGTON FEDERAL SAVINGS, Appellant, v. MICHAEL P. KLEIN, Personal Representative of the Estate of ROBERT KLEIN, Deceased, Respondent.	NO. 68749-2-I CERTIFICATE OF SERVICE

I, Deborah A. Groth, certify that at all times mentioned herein I was and now am a citizen of the United States of America and a resident of the state of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Carney Badley Spellman, 701 Fifth avenue, Suite 3600, Seattle, Washington 98104-7010.

On September 3, 2013, 1 caused a true and correct copy of the following document to be served upon the following individuals in the manner indicated: **Motion to Publish and Certificate of Service.**

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On the same date, I caused an original to be filed by facsimile with:

Clerk of the Court
Washington State Court of Appeals
Division I
600 University Street
Seattle, WA 98101

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed on September 3, 2013, at Seattle, Washington.

Deborah A. Groth
Legal Assistant to Gregory M. Miller

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

WASHINGTON FEDERAL SAVINGS, Appellant, v. MICHAEL P. KLEIN, Personal Representative of the Estate of ROBERT KLEIN, Deceased, Respondent.	No. 68749-2-I ORDER GRANTING MOTIONS TO PUBLISH OPINION

Non-parties Dean V. Butler and Sandra L. Perkins, and Respondent Michael P. Klein have filed motions to publish the opinion filed August 12, 2013. Appellant Washington Federal Savings has filed responses to both motions to publish. The hearing panel has considered its prior determination and finds that the opinion will be of precedential value; Now, therefore, it is hereby

ORDERED that the written opinion shall be published and printed in the Washington Appellate Reports.

DONE this 11th day of October, 2013.

FOR THE COURT:

Becker, J.

Judge

RCW 11.40.020
Notice to creditors — Manner — Filings — Publication.

(1) Subject to subsection (2) of this section, a personal representative may give notice to the creditors of the decedent, in substantially the form set forth in RCW 11.40.030, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent's probate and nonprobate assets. If notice is given:

(a) The personal representative shall file the notice with the court;

(b) The personal representative shall cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered;

(c) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first-class mail, postage prepaid; and

(d) The personal representative shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services office of financial recovery.

The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

(2) If the decedent was a resident of the state of Washington at the time of death and probate proceedings are commenced in a county other than the county of the decedent's residence, then instead of the requirements under subsection (1)(a) and (b) of this section, the personal representative shall cause the notice to creditors in substantially the form set forth in RCW 11.40.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent's residence and shall file the notice with the superior court of the county in which the probate proceedings were commenced.

[2005 c 97 § 4; 1999 c 42 § 601; 1997 c 252 § 8; 1974 ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 103; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

RCW 11.40.040
"Reasonably ascertainable" creditor — Definition — Reasonable diligence — Presumptions — Petition for order.

(1) For purposes of RCW 11.40.051, a "reasonably ascertainable" creditor of the decedent is one that the personal representative would discover upon exercise of reasonable diligence. The personal representative is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

(2) If the personal representative conducts the review, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.40.051. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The personal representative may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The personal representative may petition the court for an order declaring that the personal representative has made a review and that any creditors not known to the personal representative are not reasonably ascertainable. The petition must be filed under RCW 11.96A.080 and the notice specified under RCW 11.96A.110 must also be given by publication.

[1999 c 42 § 607; 1997 c 252 § 10; 1994 c 221 § 28; 1974 ex.s. c 117 § 36; 1965 c 145 § 11.40.040. Prior: 1917 c 156 § 110; RRS § 1480; prior: Code 1881 § 1470; 1854 p 281 § 83.]

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

➞➞ AMENDMENTXIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

....

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 8th day of November, 2013, I caused the foregoing PETITION FOR REVIEW, WASHINGTON FEDERAL SAVINGS to be served via the methods listed below on the following:

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Attorneys for Respondent
Michael P. Klein

Executed this 8th day of November, 2013, at Seattle, Washington.

Melinda R. Sullivan

Melinda R. Sullivan

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