IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SUPREME COURT NO. 93665-0

(Court of Appeals, Div. I, No. 72758-3-I)

(Whatcom County Court Case No. 09-4-00039-9)

In Re the Estate of:

RANDALL J. LANGELAND,

Deceased.

JANELL BOONE, as Personal Representative,

vs.

SHARON DROWN, Respondent.

RESPONDENT DROWN'S ANSWER TO BOONE'S PETITION FOR REVIEW

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November 10, 2016

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I – INTRODUCTION

In 1998, Randall Langeland (Langeland) began suffering from untreatable medical conditions. Sharon Drown (Drown), Langeland's committed intimate partner, functioned as his primary caregiver from 2003 until his death in 2009. She assisted him with all his business and personal affairs, cared for his personal hygiene needs and administered his daily medications. She continued to work full time to provide insurance to cover his substantial medical bills. CP 1697; FF 42. *In re Estate of Langeland,* 177 Wn.App. 315, 312 P.3d 657 (Div. 1, 2013) *rev. denied* 180 Wn.2d 1009 (2014) (*Langeland I*). While working full time and providing years of care, Drown continued to manage the committed partners' software business and maintain their home and sailboat. CP 1696; FF 36, 37, and 38. *Matter of Estate of Langeland v. Drown*, 195 Wn.App 74, 360 P.3d 573 (Div. 1, 2016) (*Langeland II*).

On remand from *Langeland I*, Judge Uhrig awarded estate joint property to Drown, and consistent with the appellate court's decision, entered an order vacating the $70,000 attorney fees award against her. CP 1677; CP 217. On October 2, 2014, Drown discovered that on August 24, 2011, $101,498.82 was paid by the

Clerk of Whatcom County Superior Court to Helsell Fetterman. CP 97-8, 106. Upon receipt of these funds, neither Helsell Fetterman nor Boone satisfied any portion of the $70,000.00 judgment entered on Boone's attorney fees. CP 1580.

Judge Uhrig, however, declined to order either Boone or Helsell Fetterman to repay the funds Helsell Fetterman had wrongfully withdrawn from the court registry. CP 119; CP 131; CP 134; CP 141. In *Langeland II,* Drown asked the Court of Appeals to remand again with instructions to enter judgment against Boone and Helsell Fetterman. In *Langeland II,* the Court of Appeals determined it was unfair to allow Boone and her counsel to keep Drown's funds or assets, and that restitution was the proper remedy. *Matter of Estate of Langeland,* 195 Wn.App. 74, 81-82, 93-94.

Under RAP 13.4(b)(4), Boone and Helsell Fetterman seek review of the restitution remedy ordered in *Langeland II.*[1] Boone seeks review without reference to relevant parts of the records or

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[1] "If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court **shall** enter order and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution. . ." RAP 12.8. (Emphasis added.)

citations to any legal authority. RAP 10.3(a)(6). Furthermore, she makes no attempt to explain the substantial public interest involved.

The Court should deny Boone's Petition for Review.

II – IDENTITY OF RESPONDENT

Drown is the respondent to this Petition for Review. Drown was the respondent/cross Appellant in *Langeland* II.

III – RESTATEMENT OF THE ISSUES

1. Whether the Court of Appeals' ruling in *Langeland II* is consistent with Supreme Court precedent regarding the equitable distribution of joint property acquired during a committed intimate relationship (CIR). [Yes.]

2. Whether the Court of Appeals' ruling in *Langeland II* is consistent with its decision in *Langeland I*, which is the law of the case. [Yes.]

3. Whether all issues raised in *Langeland II*, except restitution, were decided in *Langeland I*. [Yes.]

4. Whether equity prohibits the restitution remedy ordered by the Court of Appeals in *Langeland II*. [No.]

5. Whether there is any statutory or common law in Washington which would allow Boone or Helsell Fetterman to wrongfully keep money belonging to Drown. [No.]

IV – RESTATEMENT OF THE CASE

The 2011 trial involved competing claims to assets of the Estate of Randall J. Langeland. Boone claimed, successfully before the trial court and unsuccessfully before Division I of the Court of Appeals, that her father's probate assets were his separate property. CP 848-66.[2] Drown, the woman with whom Langeland lived and shared a committed intimate relationship from 1991 until his death in 2009, claimed certain probate assets were joint property. CP 906-11.

In *Langeland I*, the Court of Appeals found disputed probate assets were joint property requiring an equitable distribution upon remand. *Estate of Langeland,* 177 Wn.App. at 327.

Boone's Petition does not provide a fair statement of the case, without argument. RAP 10.3(a)(5). Boone's statement

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[2] "Trial should be set to determine which assets, if any, were 'jointly acquired' by decedent and Sharon Drown during their CIR and (ii) the respective interest that the Estate and Sharon Drown have in each such asset. . . . Mr Langeland and Ms. Drown were exceedingly careful to split all expenses equally. . . . Mr. Langeland and Ms. Drown then entered into a written agreement . . ." **Boone Trial Brief**, CP 849, 851, 852. (Emphasis added.)

contains argument throughout. Without reference to the record, Boone *simply argues:*

> Drown has sought from the beginning to seize Randy's entire estate to the extent she could . . . Drown stated her intent to obtain ***every penny*** in Mr. Langeland's probate proceeding by one mechanism or another, not leaving a cent for his surviving family members: . . . It was not until the 2013 ruling in *Langeland I* that, ***for the first time in the case,*** the issue of whether all assets were jointly acquired was raised; . . . . There had been no reason to argue the contract theory where all parties agreed as to what were and were not jointly held assets and the separate nature of their earnings during the CIR.

Boone Petition for Review (corrected), at 3, 4, 7, and 9. This argument and these issues are found in Boone's Petition for Review in *Langeland I,* the first appeal.[3] Boone was not successful.

> As a matter of law, Boone failed to overcome the joint property presumption with respect to all three contested probate assets. . . . [A] determination that the contested probate assets were jointly owned does not require that the trial court divide them equally between Drown and Boone. **The three-part analysis adopted in *Connell* requires that the trial court determine what property is subject to division and make a fair and equitable division** based upon the factors identified in the court's opinion. . . . Because the court

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[3] "During the trial the Court limited her (Drown's) claims against the Estate with regard to the issues of . . . the status of estate assets as either jointly or individually acquired . . . . **Mr. Langeland and Ms. Drown had an agreement which prevented the accumulation of any jointly owned assets.**" Boone's Petition for Review, *Langeland I*, at 9-16. (Emphasis added.) See Appendix A. .

> failed to apply the correct presumption to property acquired during the Langeland/Drown committed intimate relationship, we reverse and remand to the trial court to reconsider the proper distribution of the jointly acquired assets and the issue of attorney fees.

Estate of Langeland, 177 Wn.App. at 327, 329. (Emphasis added.)

In *Langeland I*, the Court of Appeals and Judge Uhrig on remand, determined the 36 foot Catalina sailboat, the house and the software company were joint property. CP 1695; FF 25, 29, and 33. Judge Uhrig awarded the Estate's joint interest in the sailboat to Boone and Drown's interest in the sailboat to Drown. Judge Uhrig awarded the committed partners' joint interest in the home and business to Drown. The value of the joint property, subject to probate, awarded to Drown was $155,125.00. The value of the joint property, subject to probate, awarded to Boone was $9,628.74. CP 1696-98.

Not at issue in either appeal were non-probate assets of $4,200.00 that went to Boone and $176,500.00 that went to Langeland's mother. CP 1697-98; FF 44, 45.

Boone's Petition does not discuss the following:

> Although the trial court awarded most of the estate assets to Drown on remand and vacated its $70,000 attorney fee award against her, it declined to order that

> Boone's counsel, Helsell Fetterman LLP, repay the funds it withdrew from the court registry to pay this award. Drown cross appeals asking this court to remand for the trial court to enter judgment against Boone and her counsel, Helsell Fetterman. . . . [I]t would be inequitable to allow Helsell Fetterman to keep Drown's supersedeas funds of the assets the trial court determined belong to Drown . . . Allowing Helsell Fetterman to keep those fund would deny Drown the practical benefit of her successful appeal and cause her to pay her unsuccessful opposing party's legal expenses. . . . Restitution is meant to remedy just this type of unfairness.

Matter of Estate of Langeland, 195 Wn.App. at 74, 81-82, 93-94.

Drown discovered in 2014 that Helsell Fetterman withdrew $101,498.82 from the registry of the Court more than three years earlier. CP 97-8, 106. Upon receipt of these funds, neither Helsell Fetterman nor Boone satisfied any portion of the $70,000.00 judgment entered on Boone's attorney fees. CP 1580. On May 7, 2012, eight (8) months after Helsell Fetterman received the funds from the Clerk of the Court, Boone, in *Langeland I,* through counsel, objected to the trial court's supersedeas decision. Boone admitted and complained the supersedeas decision stayed all Orders except the Judgment on attorney fees. See Appendix B attached hereto.

> The Findings, Conclusions and Order entered on May 26, 2011 (CP 48-53) and the **Order Granting Motion for**

> **Attorney's Fees and Costs; Granting Non-Intervention Powers; and Granting Other Post Trial Motions, entered on August 12, 2011** (Addendum C) concern the sale of estate real property, the payment of $70,000 in attorneys fees and otherwise dealt with the separate and community tangible personal property and numerous issues pertaining to the administration of the estate.

Appendix B, at 2-3. (Emphasis added). In *Langeland I*, Boone argued that it was unfair for Judge Uhrig "**to stay the enforcement of all of these orders** . . ." *Id.* (Emphasis added.) On June 12, 2012, Division I of the Court of Appeals ruled on Boone's above argument as follows:

> **To the extent Boone argues that clarification of the scope of the** (supersedeas) **order is required, Boone should seek such clarification in the trial court.** Similarly, Boone's argument that Drown should be paying rent to the estate rather than the court registry is more properly addressed to the trial court, which is familiar with the facts of the case and entered judgment.

See Appendix C, at 2, attached hereto. (Emphasis added.)

On September 18, 2014, Judge Uhrig, consistent with the holding and instructions provided in *Langeland I,* found that $63,817.50 of the above funds in the possession of Helsell Fetterman belonged to Drown. CP 58-71. However, Judge Uhrig provided no remedy for Drown to collect her money from

either Boone or Helsell Fetterman. Division I, in *Langeland II*, granted the appropriate remedy of restitution.

V – ARGUMENT

1. Boone has raised no issue allowing for Review.

> A petition for review will be accepted by the Supreme Court **only**:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (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.

RAP 13.4(b). (Emphasis added.)

Langeland II is not in conflict with any decision of this Court or the Court of Appeals.

As support for review, Boone incorrectly argues the trial court was not an equity court.[4] For the fourth time, Boone seeks appellate review to argue that the parties intended to maintain the

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[4] "After discovery and an effort by Drown to have a jury trial in the probate matter . . . . The trial, however, was a ***probate*** proceeding and had proceeded as such, ***not*** as property division in the context of a CIR." *Boone Petition for Review (corrected)* at 4 and 7.

separate character of their property.[5]

2. <u>The character of the assets was the issue at trial.</u>

Boone argues "it was not until the 2013 ruling in *Langeland I* that, *for the first time in the case*, the issue of whether all assets were jointly acquired was raised; only, *after* the filing of *Langeland I,* was Boone forced into a position to argue that the assets were in fact not jointly acquired." *Boone's Petition for Review (corrected)* at 7. This argument misrepresents the record. CP 906. In her Trial Brief, Drown provided the Trial Court with the following arguments and law:

> Therefore, all property acquired during a meretricious relationship is presumed to be owned by both parties. This presumption can be rebutted. All property considered to be owned by both parties is before the court and is subject to a just and equitable distribution. *Connell v. Francisco*, 127 Wn.2d 339, 351, 898 P.2d 831 (1995) (citations omitted).

Id. at 907.

> 'The critical focus is on property that would have been characterized as community property had the parties been married. This property is properly before a trial

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[5] "Petitioner seeks review and reversal of *Langeland II* and the trial court's remand decision because they ignore the parties' agreements . . . . Drown and and Langeland had a 19-year working **agreement to treat their earnings as separate and to maintain the separate character of the property** acquired with it . . ." *Boone Petition for Review (corrected)*, at 1 and 8. (Emphasis added.)

> court and is subject to a just and equitable distribution.' *Connell v. Francisco*, 127 Wn.2d 339.

Id. at 910.

> '[P]roperty acquired jointly during the relationship could be equitably divided, between the partners, even if only one partner held title.' . . . *Olver v. Fowler,* 161 Wn.2d 9 at 666.

Id. at 911.

At the beginning of the trial, Drown's belief in the joint nature of the assets was disclosed when counsel discussed the burden of proof with Judge Uhrig.

> MR. SHEPHERD: As you can see from my trial brief, there is likely to be a difference of opinion on the burden of proof. **It's my position that Boone has the burden of proof as regards these assets not being joint or similar to community property and, therefore, they should go first.** I think opposing counsel has told me, to no surprise to me, that his position is we have the burden of proof to establish our ownership interest in the assets. I don't care who the court wants to go first. If the court determines we are to go first, I don't want the court to believe that we have the burden of proof on the issues.
>
> THE COURT: Okay.

5/10/11 RP 4-5.

It is disingenuous for Boone to argue the joint property issue was not before the trial court prior to the *Langeland I* decision.

Boone's Trial Brief discussed the need to determine if there was any joint property and whether a property agreement controlled. CP 848.

3. There was no separate property agreement.

Boone continues to incorrectly argue the joint property presumptions and equitable principals applied, by the Court of Appeals in *Langeland I,* by the trial court on remand, and by the Court of Appeals in *Langland II* to the division of probate joint property should not have been applied. Boone repeats this argument throughout her Petition.

> Petitioner seeks review and reversal . . . because they ignore the parties' agreements . . .

Boone Petition for Review (corrected) at 1.

> Does the evidence in this case as reflected in Findings of Fact 7-9 and 18, which includes writings and also 19 years of actions, satisfy the "direct and positive evidence" test for demonstrating a change in, or agreement on, the separate nature of the earnings and property acquired during this CIR.

Id. at 2.

> Drown and Langeland had a 19-year working agreement to treat their earnings as separate and to maintain the separate character of the property acquired . . .

Id. at 8.

> In this case the facts and circumstances provide the kind of 'direct and positive evidence' of . . . (a) working agreement to treat or 'convert' their only earnings during the CIR to separate property . . . .

Id. at 17.

The *Langeland I* court held property acquired during the CIR was presumed to be jointly owned at the time of death. *Langeland*, 177 Wn.App. at 319. The *Langeland I* court then correctly concluded "that the presumption that property acquired during a committed intimate relationship is jointly owned . . . prevail[s] over a presumption of correctness for an estate inventory." *Id.* at 324. The *Langeland I* court further held death does not convert joint property into separate property. *Id.* at 325. Finally, in a decision which was res judicata in both *Langeland II* and this petition, the *Langeland I* court held, as a matter of law, all three contested probate assets were joint property. *Id.* at 327.

Boone seeks review by asking this Court to ignore the doctrine of the law of the case.

> [T]he law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation.

Roberson v. Perez, 156 Wn.2d 33, 41, 123 P.2d 844 (2005).

The law of the case was correctly applied by the court in *Langeland II.*

> As a preliminary matter, Drown contends that the law of the case doctrine bars Boone's challenges to the trial court's characterization of the contested assets as joint property. We agree. This court generally applies the law of the case doctrine to preclude successive reviews of issues that a party raised, or could have raised, in an earlier appeal in the same case. . . . The law of the case precludes her arguments about the separate property agreement and house agreement.

Matter of Estate of Langeland, 195 Wn.App. at 82-83.

4. *Langeland I* and *Langeland II* correctly decided and instructed Judge Uhrig to do equity on remand.

On October 29, 2010, upon motion by Boone, the trial court struck Drown's jury demand. CP 760-61. Boone's successful motion argued that: "the issues . . . **are equitable** in nature and there is no right of trial by jury . . . ." CP 725, 728. (Emphasis added.)

The Court of Appeals, in *Langeland I,* held that the division of property in a CIR is grounded in equity. *Langeland,* 177 Wn.App. at 329. On remand, the trial court was instructed to divide the joint property, applying equitable principles. *Id.* at 331.

Boone did cite *Langeland I,* correctly:

> Even if the trial court mischaracterizes property as community or separate, this court may uphold a division of property, so long as it is fair and equitable. . . *Langeland I*, 177 Wn.App at 328-29.

Boone Petition for Review (corrected) at 6-7.

Without factual support, Boone argues Judge Uhrig and Division I of the Court of Appeals failed, in equity, to do equity. *Id.* at 7. Boone seeks review arguing she did not understand the issues at trial, did not understand her burden at trial, and failed to introduce imagined evidence which is now allegedly relevant; therefore, she is entitled to a second trial. Without legal authority, Boone argues that the trial court and Division I of the Court Appeals erred by not allowing a second trial on the issues of whether a separate property agreement existed and/or whether equity was done. *Id.* at 9.

As support for Review, Boone relies on Washington cases, which cases are supportive of *Langeland I and II:* including, *Peffely-Warner v. Bowen,* 113 Wn.2d 243, 778 P.2d 1022 (1989) and *Olver v. Fowler*, 161 Wn.2d 655, 168 P.3d 348 (2007). The decisions in *Langeland I* and *Langeland II,* required the trial court

to divide the joint probate property fairly. On remand, the trial court divided the joint probate property fairly. *Langeland II* affirmed the award as fair and equitable and provided a remedy, as allowed under Washington law, for Drown to recover her money from Boone and Boone's attorneys.

In doing so, the decisions of *Langeland I* and *II*, are consistent with *Peffely-Warner* and *Olver.* "The division of property following termination of an unmarried cohabiting relationship **is based on equity** . . . and not on inheritance." *Peffely-Warner*, 113 Wn.2d at 253. (Emphasis added.) "We hold that when a committed intimate relationship is terminated by the death of both parties, the couple's joint acquired property can be **equitably divided** between the partner's estates." *Olver,* 161 Wn.2d at 672. (Emphasis added.)

5. Findings of Fact 6, 7, 8, 9 and 18 were not ignored by Drown in *Langeland I*, and as they no longer exist in the Amended Findings, they are clearly vacated.

Boone argues in her Petition as follows: "Findings of fact 6-9 & 18 cited *supra* have not been challenged or vacated for lack of

substantial evidence."[6] *Boone's Petition for Review (corrected)* at 18. This is factually and legally wrong. Drown, in *Langeland I,* did challenge Findings of Fact 6, 7, 8, 9 and 18. Drown's Opening Brief in *Langeland I*, Appendix D at 5-6.

Findings of Fact 6, 7, 8, 9, and 18 no longer exist as they were vacated. They were replaced by Amended Findings of Fact 6, 7, 8, 9 and 18, which Boone did not appeal in *Langeland II.* CP 1693-94. Boone knows this and yet argues they still exist as factual findings. CP 1712.

6. <u>There is no substantial public interest in Boone's continued argument regarding how to achieve equity in this case.</u>

Boone and Helsell Fetterman's mischaracterization of the facts in this case do not create an issue of substantial public interest. Review should be denied under RAP 13.4(b)(4). The undersigned could not find a decision of this Court where it was held that review of a trial court's exercise of equity was a matter of

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[6] "6. Decedent and Sharon Drown shared equally in all household expenses.
7. Decedent and Sharon Drown maintained separate bank accounts at all times.
8. Decedent and Sharon Drown did not commingle assets . . .
9. Decedent and Sharon Drown maintained the separate character of all property except property which was intentionally purchased jointly . . . .
18. The parties received their earnings in their own name; they scrupulously deposited their own earnings into their own accounts . . ." CP 1289-1290.

substantial public interest. Perhaps that is why Boone advances this argument without citing any legal authority. The remedy, provided by Court Rule and the Court of Appeals in *Langeland II*, for which Boone requests review, does not involve an issue of "widespread public interest," does not involve persons or entities in the "public eye" and does not have the potential to affect members of the public who did not directly participate in the conduct. *Alaska Structures, Inc. v. Hedlund*, 180 Wn.App. 591, 600, 323 P.3d 1082 (Div. 1, 2014); *rev. denied* 184 Wn.2d 1026 (2016).

7. Helsell Fetterman's conditional review should also be denied.

Helsell Fetterman, a non-party, requests conditional review because of the alleged impact of the decision on their professional reputation. The Petition is filed without any legal authority. Drown would be surprised and disappointed, if the Washington state supreme court would accept review of this matter because of the alleged impact of a decision on the professional reputation of the attorney for a party. The professional reputation of counsel who seeks to keep money belonging to another is not a matter of substantial public interest. An individual attorney's professional

reputation is at all times a personal matter, sustained by one's conduct. Any substantial public policy in this matter lies squarely with Drown, who does not seek review.

VI – REQUEST FOR ATTORNEY FEES AND EXPENSES

Attorney fees were awarded in *Langeland II*.

> If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review.

RAP 18.1(j). Helsell Fetterman and Boone have lost. Drown respectfully requests this Court award reasonable attorney fees and expenses for the preparation and filing of this Answer to the Petitions for Review pursuant to RCW 11.96A.150, RAP 18.1(j), and RAP 18.9.

> (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but

> need not include whether the litigation benefits the estate or trust involved.

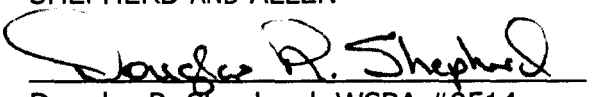
RCW 11.96A.150(1). RCW 11.96A.150(1) provides this Court with broad discretion to award attorney fees. *In re Estate of Frank,* 146 Wn.App. 309, 327, 189 P.3d 834 (Div. 2, 2008).

VII – CONCLUSION

The second appeal is an attempt by Boone and her counsel to wrongfully keep money belonging to Drown based upon a mistake made by the Whatcom County Superior Court Clerk, which mistake both Boone and her counsel kept quiet during *Langeland I.* Neither the losing side nor her attorney, in equity, is allowed to retain the benefits of a trial court decision reversed on appeal. Drown respectfully requests that Boone's Petition for Review and Helsell Fetterman's "Conditional" Review be denied, and Drown be awarded her reasonable attorney fees and costs incurred.

Respectfully submitted this 10th day of November 2016.

SHEPHERD AND ALLEN



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DECLARATION OF SERVICE

I, Jen Petersen, declare that on November 10, 2016, I caused to be served a copy of **Respondent Drown's Answer to Boone's Petition for Review** in the above matter, on the following person, at the following address, in the manner described:

Michael L. Olver, Esq. Kameron L. Kirkevold, Esq. Helsell Fetterman, LLP 1001 4th Avenue, Suite 4200 Seattle, WA 98154 molver@helsell.com kkirkevold@helsell.com	(X) U.S. Mail ( ) Express Mail ( ) Fax (X) E-Mail ( ) Messenger Service ( ) Hand Delivery
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Gregory M. Miller, Esq. Michael B. King, Esq. Carney Badley Spellman, P.S. 701 Fifth Avenue, Suite 3600 Seattle, WA 98104-7010 miller@carneylaw.com king@carneylaw.com	(X) U.S. Mail ( ) Express Mail ( ) Fax (X) E-Mail ( ) Messenger Service ( ) Hand Delivery

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

DATED this 10th day of November 2016, at Bellingham, Washington.

Jen Petersen

NO. 67255-0-1
(Consolidated with No. 67659-8-1)

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

In Re The Matter of The Estate of Randle J. Langeland

SHARON DROWN,

Appellant,

vs.

JANELL BOONE as Personal Representative of THE ESTATE OF RANDAL J. LANGELAND,

Respondent/Cross Appellant.

PETITION FOR REVIEW

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APPENDIX A

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I. IDENTITY OF PETITIONER

Janell Boone is the petitioner in this Court and was the Respondent in the Court of Appeals.

II. DECISION BELOW

The Court of Appeals' published opinion was filed on October, 28, 2013. Appendix, A-1 to A-18. The court denied a motion for reconsideration on December 5, 2013. Appendix, A-19.

III. ISSUES PRESENTED FOR REVIEW

A. Does the ruling of the Court of Appeals conflict with Supreme Court Precedent by failing to recognize a second means by which individuals in a Committed Intimate Relationship may maintain the separate character of property, besides tracing, to wit, by written and oral agreements acted upon that all property acquired during the relationship will remain the separate property of the individual who acquires it?

B. Does the ruling of the Court of Appeals conflict with prior case law from a different division of the Court of Appeals, to wit *Estates of Palmer*, 145 Wn. App. 249, 187 P.3d 758 (2008) (Div. II), by analyzing the change of an Individual Retirement Account beneficiary designation as a testamentary gift similar to a term life insurance policy purchased with community funds rather than an inter vivos transfer similar to a pay on

death account as in *Palmer*?

IV. STATEMENT OF THE CASE

A. Separation Of Assets

Mr. Langeland and Ms. Drown originally met in Chico, California in 1983. RP 68-69. In 1991, while still residing in Chico, Ms. Drown moved into Mr. Langeland's home, and they continued to co-habitate in a Committed Intimate Relationship ("CIR") until the time of Mr. Langeland's death on January 9, 2009. CP 274; RP 52. The existence of the CIR is not in dispute as the Estate stipulated to the existence of such a relationship months before trial. CP 274.

Beginning in 1991, and throughout the duration of their relationship, Mr. Langeland and Ms. Drown were exceedingly careful to split all expenses equally, and never comingled or pooled their separate assets. RP 216-220; Exhibit 23. In order to maintain the complete separation of their assets, they would meticulously determine each other's proportionate share of all the normal household expenses for each week of each of the 216 months that they lived together, including the requirement that Ms. Drown pay her portion of "rent." RP 216-220; RP 177-179; Exhibit 23; Exhibit 27 (interrogatory no. 23).

Throughout the 18 years of their relationship, Ms. Drown's check registers show the high degree of precision they employed to keep their

assets separated and to divide to the penny each month's expenses. Exhibit 23. Ms. Drown testified that she would make a list of all of the expenses of the household such as groceries, appliances, meals, and all other expenses. RP 216-220; Exhibit 23. Ms. Drown would then determine whether she or Mr. Langeland had initially paid for each individual such expense out of his or her separate account, and credit either herself or Mr. Langeland half of the value of the item in order to ensure that they split all cost precisely in half. *Id.* At the end of each month, Ms. Drown would calculate the difference between her contributions to the mutual expenses, and the credits she received for paying for items with her separate assets. *Id.* Ms. Drown would then subtract what she had already paid from what she owed to the community, and write a check to Mr. Langeland to cover the remainder of her share of expenses. *Id.* In addition, pursuant to a written agreement (Exhibit 30), she would pay "rent" to Mr. Langeland each and every month (see also check register Exhibit 23.) The process was very meticulous and precise, and Ms. Drown and Mr. Langeland followed this same formula each month for the duration of their relationship. *Id.*

This separation of living expenses by Mr. Langeland and Ms. Drown went beyond a simple equal division of all bills. Mr. Langeland and Ms. Drown were also very careful to prevent any co-mingling of

assets and made it a point to never share a common bank account. RP 216-220; RP 328. Ms. Drown testified that she and Mr. Langeland maintained separate bank accounts throughout their relationship. RP 328. The only document which was in both of their names was a short term home equity line of credit used to pay off Mr. Langeland's boat loan. However, Ms. Drown testified that all of the money to repay that loan came out of Mr. Langeland's separate bank account. RP 328. Mr. Langeland did not name Ms. Drown as co-owner or pay on death beneficiary on any accounts, instead naming his mother or daughter as residual beneficiaries. RP182; Exhibit 1; Exhibit 2. Mr. Langeland did not execute a durable power of attorney naming Ms. Drown as his attorney-in-fact, thus preventing her from having any access to his finances. RP 243-244. And he declined to marry her.

B. Disposition Of Separate Property.

1. J. Randle and Associates, Inc.

Mr. Langeland owned a small business known as J. Randall and Associates, Inc. that he ran out of his home. Ex. 1; Ex. 3. When he was able to work full time, tax returns admitted at trial showed business income ranging from $13,059 (2004) to $26,275 (2006) per year. Exhibit 21. The estate inventory, which was not challenged under RCW 11.44.035, valued minor cash and receivables and valued the physical

assets and the good will at zero. No other evidence of value was introduced at trial. This business represented his source of income, which as described above, was kept meticulously separated from Ms. Drown's income. RP 216-220. The court found (FF 18) that Ms. Drown and decedent had conducted their affairs, by agreement (in writing as to the house, Exhibit 30) and by their acts, such that, the court concluded that any claim by Ms. Drown to his (decedent's) own income or assets exclusively is substantially rebutted by his careful and meticulous conduct described in Finding 18. (COL 8).

2. Mr. Langeland's Sailboat.

In 1998 Mr. Langeland purchased a sail boat in Oregon. RP 79. Ms. Drown testified that Mr. Langeland purchased the boat using his own separate assets, and that the boat was registered in his name only. RP 245; RP 79. Notably, he named the boat "Janell" after his only child, Respondent herein. RP 245. Ms. Drown further testified that, after the couple took out a home equity line of credit to pay off the original boat loan, Mr. Langeland repaid the entire home equity line of credit using his own separate assets. RP 328.

3. Bellingham Property.

When the couple moved to Washington in 1999, Mr. Langeland purchased the home located at 3946 Lakemont Street in Bellingham for

$158,500, cash. RP 177-179; Exhibit 30. The couple did not contribute equal assets to the purchase of the property. *Id.* Ms. Drown agreed to contribute $50,000 by a promissory note payable over 15 years to acquire up to a 31.7% interest in the property. Mr. Langeland paid all cash from the sale proceeds of his house in California, which they anticipated would over time be paid down by Ms. Drown to 68.3% interest in the property. *Id.* To fulfill her obligation, Ms. Drown paid $10,000 cash and borrowed the additional $40,000 from Mr. Langeland. *Id.* The loan was memorialized in a promissory note requiring her to pay Mr. Langeland $40,000 over 15 years at 7% interest with a monthly payment of $359.54. *Id.* Exhibit 30. Three documents in Exhibit 30 evidence this contractual intent.

After borrowing the money from Mr. Langeland, Ms. Drown's monthly payments previously classified as "rent," were replaced with her monthly payments on the promissory note. RP 177-179. These payments were made by Ms. Drown out of her separate assets to pay her contractual loan obligation to Mr. Langeland, and did not result in any comingling of assets or acquisition of property rights over and above those specifically allowed by the loan contract. *Id.* Ms. Drown testified that she continued to make payments until December 2008, which was just prior to Mr. Langeland's death. At the time of trial, she had made payments totaling

via hand delivery

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

In Re the Estate of: RANDAL J. LANGELAND, Deceased. SHARON DROWN, Appellant/Cross-Respondent, vs. JANELL BOONE, Respondent/Cross Appellant.	NO. 67255-0 Whatcom County Superior Court Case No. 09-4-00039-9 MOTION OBJECTING TO SUPERSEDEAS DECISION

1. Identity of Petitioner. Janell Boone, decedent's only child, heir and Personal Representative, files this motion in her capacity as Respondent-Cross Appellant.

2. Decision Below. On October 25, 2011, the trial court entered an order staying enforcement of the trial court's May 26, 2011 Findings of Fact and Conclusions of Law, Decree and Order, except for attorneys fees and costs (CP 48-53). The Order of Stay is not in the Clerk's Papers, so it is attached as Addendum A hereto.

3. Issues Presented for Review.

a. Whether appellant should have been required to post a cash bond relative to the $70,000 Judgment of August 12, 2011 in addition to paying rent of $683 per month?

COPY

b. Whether the rent payment should be payable to the estate instead of the court registry.

4. Statement of the Case. On October 25, 2011, the trial court approved Supercedeas Terms as follows:

> "Enforcement of the May 26, 2011 Findings of Fact, Conclusions of Law, Decree and Order, except for attorney's fees and costs, are stayed on the condition that Sharon Drown pay a monthly sum of $683 into the Registry of this Court and all other funds remain in the Registry of this Court pending appeal.
>
> This order does not stay enforcement of the August 26, 2011 Judgment."

Addendum A.

Thereafter Sharon Ann Drown filed a proceeding in the bankruptcy court, which this court found to have been filed in bad faith, and was dismissed on April 26, 2012. A copy of the Order Dismissing Case is attached as Addendum B to this motion. This objection could not have been filed earlier and is brought timely.

5. Argument.

a. The Findings, Conclusions and Order entered on May 26, 2011 (CP 48-53) and the Order Granting Motion for Attorney's Fees and Costs; Granting Non-Intervention Powers; and Granting Other Post Trial Motions, entered on August 12, 2011 (Addendum C) concern the sale of estate real property, the payment of $70,000 in attorneys fees

and otherwise dealt with the separate and community tangible personal property and numerous issues pertaining to the administration of the estate.

It is unfair and contrary to the appellate rules to stay the enforcement of all of these orders solely by paying 31.7% of the fair market rental value ($1,000/mo) into the registry of the court.

Because the trial court ordered the property vacated and sold and entered a judgment for fees of $70,000, the court should have ordered a bond based upon RAP 8.1(c)(2) which states:

> "The supersedeas amount shall be the amount of any money judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs and expenses likely to be awarded on appeal entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review. (Emphasis Added)"

Ms. Boone has a monetary judgment against Ms. Drown for attorney's fees and costs through trial for $70,000. In addition, based on the prior award at trial, and the amount of work which will be required to defend against Ms. Drown's appeal, it is likely that the Estate will incur additional attorney's fees and costs in the amount of $60,000, at a minimum, through the appeal. The appeal process is likely to take

approximately one year, and interest at the rate of 12% per year should be applied to the total amount of the judgment plus fees and costs on appeal. According to RAP 8.1 (c) (1), the Court should require that the supersedeas bond be equal to $60,000 for fees on appeal, plus the attorney's fees awarded by this Court ($70,000) and 12% interest for one year ($8,400) or $138,400.

b. The Estate Is Entitled To Receive The Required Rental Payments Of $683/month Directly From Ms. Drown.

Every personal representative has a "...right to immediate possession of the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over...". RCW 11.48.020. "...[T]he power of executors to manage and control an estate exists for the protection of creditors and for the purpose of paying expenses and other proper charges against the estate." *Kerns v. Pickett*, 49 Wn.2d 770, 773, 306 P.2d 1112 (1957).

The Estate is legally entitled to receive rent directly from Ms. Drown and requires those assets for payment of the expenses of the Estate. Ms. Drown's attempt to prevent the Estate from having access to these funds is an impermissible attempt to deprive the Estate of its statutory right to rents and profits from Estate property under RCW 11.48.020.

In addition to black letter law, equity also favors the requirement that Ms. Drown pay rent directly to the Estate. Without the monthly rent payments from Ms. Drown, the Personal Representative will be forced to expend her own personal assets on Estate expenses. Such a result would be highly inequitable and entirely unnecessary because Ms. Drown is required to pay rent of $683/month regardless of whether those assets are paid into the court registry or to the Estate directly. Therefore, whereas the Personal Representative would be harmed if forced to expend her own resources on the payment of expenses and maintenance of the Estate, Ms. Drown would not be harmed by a requirement that she pay rent directly to the Estate. Thus equity, in addition to law, favors a requirement that Ms. Drown pay rent directly to the Personal Representative of the Estate.

6. Conclusion. Sharon Drown should be required to post a bond in the amount of the final fee judgment awarded to Janell Boone, $70,000 plus $60,000 in expected fees and costs on appeal, plus 12% interest for one year. If Ms. Boone's requested fees are awarded, this would be a bond in the amount of $138,400. In addition to said bond, Sharon Drown should be required to continue to pay rent to the Estate in the amount of $683/month.

Dated this 7 day of May, 2012.

HELSELL FETTERMAN LLP

By: _____

Michael L. Olver, WSBA No. 7031
Christopher C. Lee, WSBA No. 26516
Kameron L. Kirkevold WSBA No. 40829
Attorneys for Janell Boone

EXHIBIT A

SCANNED 2

FILED IN OPEN COURT
10/25 20 11
WHATCOM COUNTY CLERK
By _____
Deputy

IN THE SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

In Re the Estate of:

RANDALL J. LANGELAND,

Deceased.

Case No: 09-4-00039-9
11-9-02680-1

ORDER ON DROWN'S MOTION TO STAY ENFORCEMENT OF JUDGMENT AND TO SET SUPERSEDEAS TERMS

263

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THIS MATTER having come on regularly before the undersigned, the Estate appearing through Brian L. Hansen of Resick Hansen & Follis; Sharon Drown appearing through Douglas R. Shepherd of Shepherd Abbott Alexander; and Janell Boone appearing through Michael L. Olver of Helsell Fetterman, LLP; and the Court having reviewed the files and materials submitted in support thereof and in opposition thereto, and based upon the argument of counsel

IT IS ORDERED, ADJUDGED AND DECREED as follows:

Enforcement of the May 26, 2011 Findings of Fact, Conclusions of Law, Decree and Order, except for attorney's fees and costs, are stayed on the condition that Sharon Drown pay a monthly sum of $683 into the Registry of this Court and all other funds remain in the Registry of this Court pending appeal.

This order does not stay enforcement of the August 26, 2011 Judgment.

DONE IN OPEN COURT THIS 25 day of ~~September~~ Oct 2011.

JUDGE IRA UHRIG

Presented by:
SHEPHERD ABBOTT ALEXANDER

Douglas R. Shepherd, WSBA No. 9514
of Attorneys for Sharon Drown

Copy Received:

(Telephone)
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RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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CASE #: 67255-0-I
In re Estate of Randall J. Langeland.
Sharon Drown, Appellant / Cross-Respondent v.
Janell Boone, Respondent / Cross-Appellant

APPENDIX C

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on June 11, 2012, regarding respondent/cross-appellant's motion objecting to supersedeas decision:

"Respondent/cross appellant Janell Boone has filed an objection to the October 25, 2011 trial court order on appellant/cross respondent Sharon Drown's motion to stay enforcement of the judgment pending appeal and set supersedeas terms. Drown has filed an answer, and Boone has filed a reply.

To the extent Boone argues that clarification of the scope of the order is required, Boone should seek such clarification in the trial court. Similarly, Boone's argument that Drown should be paying rent to the estate rather than the court registry is more properly addressed to the trial court, which is familiar with the facts of the case and entered judgment.

Boone also argues that the supersedeas amount should include attorney fees and costs likely to be incurred on appeal and interest on the judgment. Drown has neither responded to the arguments, nor objected to the amount of fees Boone asserts she is likely to incur on appeal, $60,000. Because the trial court supersedeas decision may be modified, I will deny Boone's objection on these grounds at this time without prejudice to renew it either upon entry of a modified decision or a trial court order declining to modify the October 25, 2011 supersedeas decision."

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

emp

NO. 67255-0-I

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

(Whatcom County Cause No. 09-4-00039-9)

IN RE THE ESTATE OF LANGELAND:

SHARON DROWN, an individual,

Appellant/Cross-Respondent,

vs.

JANELL BOONE, an individual,

Respondent/Cross-Appellant.

APPELLANT DROWN'S APPEAL BRIEF

Douglas R. Shepherd, WSBA #9514
Bethany C. Allen, WSBA #41180
SHEPHERD and ABBOTT
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Bellingham, WA 98225
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May 21, 2012

APPENDIX D

TABLE OF CONTENTS

TABLE OF AUTHORITIES
Washington Supreme Court

Washington State Court of Appeals

I – INTRODUCTION

In 1983, Sharon Drown was 20 years old, single, and living in California when she met and fell in love with Randall Langeland. At that time Mr. Langeland was 33 years old. In 1991, she accepted a ring from Mr. Langeland, moved in with him and they began a lasting intimate committed relationship.[1] There were no children born of the relationship. Mr. Langeland had one child, Janell Boone (Boone), from a prior marriage.

In 1994, Ms. Drown and Mr. Langeland started a business known as J. Randall and Associates, Inc. (J. Randall). At that time, both of them worked at NT Enloe Hospital in Chico, California. RP 69. In 1998, they purchased a 36 foot sailboat in Washington. RP 79. Title to the sailboat was taken in the name of Langeland. Ex. 6. In 1999, they moved to Bellingham, Washington. RP 68.

In December of 1999, they purchased a home in Bellingham, Washington. Title to the home was taken in the name of both Ms. Drown and Mr. Langeland. After moving to Bellingham, Mr.

---

[1] "You and each of you will please take note that for the purposes of the proceedings herein, Janell Boone hereby stipulates that decedent and Sharon Drown were in an intimate committed relationship." CP 275.

Langeland worked only for J. Randall. Ms. Drown worked for PeaceHealth dba St. Joseph Hospital.

In 1999, Mr. Langeland broke his leg and for the next 10 years suffered a number of difficult injuries and illnesses, which eluded diagnoses and treatment. On January 9, 2009, Mr. Langeland died after a long, complicated and painful series of illnesses. CP 338. On January 23, 2009, Mr. Langeland's adult daughter, Boone, filed a probate which is the origin of all issues in this appeal. CP 339. In her initial pleadings, Boone alleged that Randall Langeland died intestate and that Sharon Drown was an heir, legatee and devisee. CP 340. Boone also petitioned the trial court as follows: "During their ICR (intimate committed relationship) decedent and Ms. Drown jointly acquired property that needs to be equitably divided." CP 247.[2]

[2] "THE COURT: . . . I also, frankly, welcome to see what the Court of Appeals does with this. This, in my mind is, if there ever is a case to make new law, this might be the type of case to make it. This certainly was a committed intimate relationship. And I know many people in such committed intimate relationships who are perhaps more dedicated and more loving than some of the married persons that I know." RP 36, l. 16.

After trial, the trial court determined that Sharon Drown had no interest in the 36 foot sailboat, no interest in J. Randall, a 24.7% interest in the home and entered judgment in favor of the estate and against Ms. Drown for $70,000 for Boone's attorneys' fees and costs.[3] Two cars, acquired during the intimate committed relationship and titled in both names, are also the subject matter of this appeal. The trial court ordered both cars sold and the proceeds to be divided between Drown and Boone. 59-8-I (Second) CP 71.

[3] "THE COURT: . . . . The one thing that I saw in these filings (sic) [findings] that was really, I hated seeing it, I do not want anything that I have done or said in this case at any time from which is (sic) [its] inception until now to lead anyone or to leave anyone with the impression that I am in any way attempting to punish or sanction Ms. Drown or Mr. Shepherd. That's clearly not the case. That may be how it feels. I certainly understand that. But certainly that's not my intention, not my goal, and has no part of my decision."

"As I said, if the Court of Appeals decides my decision was in error or simply decides this is the case and the time to change Washington law, to push it forward, um, then so be it. But there is, in my mind, there is absolutely nothing punitive in my ruling or any aspect of it, nor is any aspect of my ruling, or my, of my comments intended to in any way sanction Mr. Shepherd or his client. That's clearly, clearly not the case. . . ." RP 69-70.

II – ASSIGNMENTS OF ERROR

Sharon Drown assigns error to the following decisions of the trial court:

No. 1. The trial court erred when it entered an Order Determining Heirship and Referring Issues for Trial on March 5, 2010 and made the following erroneous finding of fact or conclusion of law: "3. That the Inventory on file herein is presumed to be correct . . . . and the burden of proof to show the contrary is on Ms. Drown." CP 201.

No. 2. The trial court erred when it entered an Order Determining Heirship and Referring Issues for Trial on March 5, 2010 and made the following erroneous finding of fact: "4. That the Administrator has filed an Inventory herein listing assets owned by decedent." CP 200.

No. 3. The trial court erred when it entered an Order on Motion for an Order in Limine, to Re-Appoint Sole Heir as Personal Representative of the Estate and to Order Sharon Drown to Pay Rent on April 29, 2011. CP 135-36.

No. 4. The trial court erred when it held that Boone had not waived the protection of the Dead Man's Statute by entering into evidence Exhibit 27. See Order on Deadman's Statute entered on May 26, 2011. CP 46-47.

No. 5. The trial court erred when it entered an Order Granting Motion for Attorney's Fees & Costs; Granting Non-Intervention Powers; and Granting Other Post Trial Motions on August 12, 2011. 59-8-I (Second) CP 9-16.

No. 6. The trial court erred when it entered its Judgment on attorneys' fees against Sharon Drown on August 12, 2011. 59-8-I (Second) CP 17-18.

No. 7. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 7. CP 49.

No. 8. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 8. CP 49.

No. 9. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 9. CP 49.

No. 10. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 10. CP 50.

No. 11. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 11. CP 50.

No. 12. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 12. CP 50.

No. 13. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 13. CP 50.

No. 14. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 14. CP 50.

No. 15. The trial court erred, in part, on May 26, 2011, when it made and entered Finding of Fact number 16; to wit, approving the accounting. CP 50.

No. 16. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 17. CP 50.

No. 17. The trial court erred, on May 26, 2011, when it made and entered Finding of Fact number 18. CP 51.

No. 18. The trial court erred, on May 26, 2011, when it made and entered Conclusion of Law number 3. CP 51.

No. 19. The trial court erred, on May 26, 2011, when it made and entered Conclusion of Law number 4. CP 51.

OFFICE RECEPTIONIST, CLERK

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Subject: RE: In re the Estate of Langeland - Case No. 93665-0

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Subject: In re the Estate of Langeland - Case No. 93665-0

Attached please find "Respondent Drown's Answer to Boone's Petition for Review" for filing.

Case Name: In re the Estate of Langeland, Deceased, Janell Boone, as Personal Representative vs. Sharon Drown, Respondent
Case Number: 93665-0
Filed By (on behalf of Douglas R. Shepherd, WSBA #9514 and Bethany C. Allen, WSBA #41180):

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