

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
CLERK'S OFFICE

Dec 05, 2016, 4:07 pm

RECEIVED ELECTRONICALLY

APPENDICES

Adult Guardianship Statutory Table of Authorities

STATE	STATUTES
AL	Ala. Code §§ 26-2-1 to -55; 26-2a-1 to -53; 26-2b-101 to -503; 26-3-1 to -14; 26-5-1 to -16; 26-8-1 to -52; 26-9-1 to -16.
AK	Alaska Stat. Ann. §§ 13.26.001 to .410; 13.27.010 to .495.
AR	Ariz. Rev. Stat. Ann. §§ 14-5101 to -5704; 14-12101 to -12503.
AR	Ark. Code Ann. §§ 28-65-101 to -707; 28-66-101 to -124; 28-67-101 to -111.
CA	Cal. Prob. Code §§ 1400-1490; 1500-1611; 1800-1970; 2100-2893; 2900-2955.
CO	Colo. Rev. Stat. Ann. §§ 15-14-101 to -122; 15-14-301 to -433; 15-14.5-101 to -503.
CT	Conn. Gen. Stat. Ann. §§ 45a-591 to -602; 45a-628 to -705a.
DE	Del. Code Ann. tit. 12, §§ 3901 to 3997; 39A-101 to -402.
DC	D.C. Code §§ 21-2001 to -2077; 21-2401.01 to -2405.03.
FL	Fla. Stat. Ann. §§ 744.101 to .715; 747.01 to .052.
GA	Ga. Code Ann. §§ 29-1-1; 29-4-1 to 29-10-11.
HI	Haw. Rev. Stat. §§ 551-1 to -13; 551-21 to -91; 551A-1 to -9; 551G-1 to -42.
ID	Idaho Code Ann. §§ 15-5-101 to -107; 15-5-301 to -435; 15-5-601 to -603.
IL	20 Ill. Comp. Stat. Ann. §§ 3955/1 to /36; 755 Ill. Comp. Stat. Ann. §§ 8/101 to /505.
IN	Ind. Code Ann. §§ 12-10-7-1 to -9; 29-3-1-1 to 29-3.5-5-3.
IA	Iowa Code Ann. §§ 633.551 to .722.
KS	Kan. Stat. Ann. §§ 59-3050 to -3097; 74-9601 to -9606.
KY	Ky. Rev. Stat. Ann. § 387.010 to .280; 387.500 to .854; 388.190 to .390.
LA	La. Code Civ. Proc. Ann. art. 4541 to 4569; La. Rev. Stat. Ann. §§ 9:1021 to 1034; 13:3421 to 3445.
ME	Me. Rev. Stat. tit. 18-A, §§ 5-101 to -105; 5-301 to -432; 5-511 to -614, 5-801 to -818.
MD	Md. Code Ann., Est. & Trusts §§ 13-101 to -222; 13-704 to -908; 13.5-101 to -504.
MA	Mass. Gen. Laws Ann. ch. 190B, §§ 5-101 to -107; 5-301 to 5-431.
MI	Mich. Comp. Laws Ann. §§ 700.5101 to .5109; 700.5301 to 5319.
MN	Minn. Stat. Ann. §§ 252A.01 to .21; 524.5-101 to -120; 524.5-301 to -903.
MS	Miss. Code. Ann. §§ 43-47-1 to -39; 93-13-1 to -281.

STATE	STATUTES
MO	Mo. Ann. Stat. §§ 475.010 to .555.
MT	Mont. Code Ann. §§ 72-5-101 to -104; 72-5-301 to -638.
NE	Neb. Rev. Stat. §§ 30-2601 to -2605; 30-2617 to -2661.
NV	Nev. Rev. Stat. Ann. §§ 159.013 to 161.030; 253.150 to 250.
NH	N.H. Rev. Stat. Ann. §§ 464-A:1 to 465-14; 547-B:1 to :8.
NJ	N.J. Stat. Ann. §§ 3B:12-1 to -5; 3B:12-24 to -78; 3B:12b-1 to -22; 3b:13-1 to -31; 3b:13a-1 to -36; 52:27G-1 to -43.
NM	N.M. Stat. Ann. §§ 28-16B-1 to -7; 45-5-101 to -106; 45-5-301 to -436.
NY	N.Y. Mental Hyg. Law §§ 81.01 to 81.44; N.Y. Soc. Serv. Law §§ 473-d to -e.
NC	N.C. Gen. Stat. Ann. §§ 34-1 to 34-18; § 35A-1101 to -1369.
ND	N.D. Cent. Code Ann. §§ 30.1-26-01 to -04; 30.1-28-01 to -30-06.
OH	Ohio Rev. Code Ann. §§ 2111.01 to .51; 5123.55 to .59.
OK	Okla. Stat. Ann. tit. 30, §§ 1-101 to -125; 3-101 to 6-102.
OR	Or. Rev. Stat. Ann. §§ 125.005 to .852.
PA	20 Pa. Cons. Stat. Ann. §§ 5501 to 5555.
RI	R.I. Gen. Laws Ann. §§ 33-15-1 to -47; 33-16-1 to 33-17-29.
SC	S.C. Code Ann. §§ 62-5-101 to -716.
SD	S.D. Codified Laws §§ 29A-5-101 to -510.
TN	Tenn. Code Ann. §§ 34-1-101 to 34-8-503.
TX	Tex. Est. Code §§ 1001.001 to 1356.056.
UT	Utah Code Ann. §§ 62A-14-101 to -112; 75-5-101 to -105; 75-5-301 to -504; 75-5b-101 to -503.
VT	Vt. Stat. Ann. tit. 14, §§ 2602 to 3011; 3060 to 3193.
VA	Va. Code Ann. §§ 37.2-1100 to -1109; 51.5-149 to -151; 64.2-2000 to 2120.
WA	Wash. Rev. Code Ann. §§ 2.72.005 to .900; 11.88.005 to .090; 11.90.010 to .470; 11.92.010 to .190.
WV	W. Va. Code Ann. §§ 44a-1-1 to 44a-5-9; 44c-1-1 to 44c-5-3.
WI	Wis. Stat. Ann. §§ 54.01 to .988; 55.001 to .23.
WY	Wyo. Stat. Ann. § 3-1-101 to 3-3-1106; 3-6-101 to -119; 3-8-101 to -502.

FILED
DEC 12 2013
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Guardianship of:
ELLA NORA DENNY,
A (Partly) Incapacitated Person.

NO. 89467-1
RULING

Division One of the Court of Appeals denied a petition by attorney Elena Garella to be appointed attorney for Ella Nora Denny in an appeal pending in that court concerning Ms. Denny's guardianship. Ms. Garella now seeks this court's discretionary review. For reasons discussed below, review is denied.

Finding Ms. Denny to be an incapacitated person pursuant to RCW chapter 11.88, the King County Superior Court in 2009 appointed Ohana Fiduciary Corporation as limited guardian of Ms. Denny's person and full guardian of her estate. Among the limitations under the guardianship is that Ms. Denny may enter into contracts only in relation to the planning of her estate and only under the advice of independent counsel. Otherwise, Ms. Denny does not have the right to enter into contracts, and she does not have the right to sue or be sued except through her guardian.

In the years since the establishment of the guardianship several more orders have been entered in relation to the administration of the guardianship. Appeals from many of these orders, which have been consolidated or linked, have been filed by Ms. Denny's son, Richard Denny, and her nephew, Thomas Anderson, who purports

681/3

to be acting on Ms. Denny's behalf as her "next friend." One of the orders appealed from relates to a petition in superior court for the appointment of independent counsel for Ms. Denny pursuant to RCW 11.88.045(2). In March 2012 attorney Mark Wilson petitioned to be appointed independent counsel for Ms. Denny in connection with a pending petition by the guardian for approval of an annual report, claiming that certain aspects of the report would adversely affect Ms. Denny's rights. Of specific concern was a request by the guardian for an order clarifying that Ms. Denny had a right to contract with legal counsel only for estate planning purposes, and for an order placing certain conditions on Ms. Denny's travel. Mr. Wilson claimed that Ms. Denny had requested his representation, and he submitted a declaration purportedly signed by Ms. Denny expressing her desire that Mr. Wilson and his firm represent her in the guardianship proceedings.

In a ruling issued in May 2012 the superior court found by clear, cogent, and convincing evidence that Ms. Denny suffers from dementia that significantly impairs her cognitive functions, that her condition has worsened since the guardianship order was entered, that she is highly susceptible to undue influence and exploitation by others, and that she lacks the mental capacity to understand whether the influence of others is contrary to her best interests or to understand and remember written documents she signs. Finding no credible admissible evidence that Ms. Denny wished to retain Mr. Wilson or that she needed independent counsel other than for estate planning purposes, and further finding that appointment of additional counsel would require the expenditure of estate assets with no discernible benefit, the court denied Mr. Wilson's petition.

Acting pro se, Mr. Anderson filed notices of appeal, purportedly on behalf of Ms. Denny, challenging numerous orders, including the order denying Mr. Wilson's petition for appointment as counsel. Richard Denny (represented by

counsel) filed a notice of appeal as well, also challenging the order denying appointment and other orders related to the administration of the guardianship.

Meanwhile, the guardian petitioned the superior court for instructions after Ms. Denny was hospitalized December 2012 and, without notification to the guardian, was administered a drug test that revealed cocaine in her system. In relation to this petition Mr. Denny again sought appointment of independent counsel for Ms. Denny. The superior court granted the guardian's petition, essentially approving its actions in response to the report of Ms. Denny's hospitalization and drug test and reiterating the guardian's authority in relation to Ms. Denny's healthcare and home care, subject to its duty to consult with her on these matters. Further, the court ruled that any prior orders that allowed Ms. Denny's children to assist with healthcare decisions no longer governed. The court also determined that Mr. Anderson had never been appointed Ms. Denny's "next friend" and that Ms. Denny would not benefit from his participation in the guardianship as a next friend. As to the appointment of independent counsel, the court reiterated that under the guardianship order Ms. Denny had the right to retain counsel only for estate planning, and it found no good cause to allow her to procure counsel for other matters, since her retained rights and welfare were adequately protected by the guardian, her children, and the court. Mr. Denny and Mr. Anderson also appealed from this order, and as indicated, the various appeals have been consolidated or linked, and they remain pending.

In the meantime, in June 2013 Ms. Garella petitioned the Court of Appeals to be appointed counsel for Ms. Denny on appeal. In an order issued by a panel of judges, the court denied the petition, ruling that the superior court, not the appellate court, has the authority to determine whether access to independent counsel is within the scope of Ms. Denny's guardianship. Ms. Garella now moves for discretionary review in this court.

To obtain this court's discretionary review, Ms. Garella must show that the Court of Appeals committed obvious error that renders further proceedings useless or probable error that substantially alters the status quo or limits the freedom of a party to act, or that the court so far departed from the usual course of proceedings as to call for this court's review. RAP 13.5(b). Ms. Garella argues that the Court of Appeals committed probable error that substantially limits the freedom of Ms. Denny to act.

But Ms. Garella demonstrates no probable error. Persons alleged to be incapacitated have the right to be represented at any stage of guardianship proceedings by "willing counsel of their choosing." RCW 11.88.045(1). And when, in the opinion of the court, "the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person." *Id.* During the pendency of a guardianship, "any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person," with fees subject to court approval. RCW 11.88.045(2). Ms. Garella argues that the Court of Appeals erred in ruling that the appointment of counsel under these statutes is exclusively within the province of the superior court. Further, she contends that, regardless of the reach of the statutes, an appellate court may appoint counsel on appeal pursuant to its power to "perform all acts necessary or appropriate to secure the fair and orderly review of a case." RAP 7.3.

But Ms. Garella does not show in either case that the Court of Appeals erred in declining to appoint her to represent Ms. Denny in the pending appeals. Even considering the statutes (without ruling on whether they apply to appellate courts), they speak to counsel of the ward's "choosing," and to act on its own initiative the court must be persuaded that the ward's rights and interests cannot otherwise be

adequately protected or represented. The superior court in its original guardianship order limited Ms. Denny's right to secure independent counsel to estate planning matters. And in subsequently denying Mr. Wilson's petition to be appointed counsel for other matters, the superior found by clear, cogent, and convincing expert evidence that Ms. Denny suffers from worsening dementia, lacks understanding of documents she signs, and is highly susceptible to the undue influence of others. And even when presented with a declaration purportedly signed by Ms. Denny, the court found no credible evidence that Ms. Denny wanted to be represented by independent counsel. Ms. Garella does not even provide that much, supporting her petition with only her own nonexpert observations about Ms. Denny's capacity to carry on an attorney-client relationship, gleaned from a one-hour visit, and a hearsay assertion that Ms. Denny wants Ms. Garella to represent her in the appeals. There are of course circumstances in which an incapacitated person is entitled to legal representation even though her desires are unknowable, but Ms. Garella does not show that this is such a case. A guardianship was duly established in a proceeding in which Ms. Denny was represented by independent counsel. As a result of that proceeding, she was limited in the extent to which she could she could further retain independent counsel. Her interests have since been represented by her guardian, and to some extent by her son. Ms. Garella fails to show that without independent counsel Ms. Denny's interests in the appeal cannot adequately be represented. In the absence of such a showing, and in the absence of any first-hand indication of Ms. Denny's wishes, it cannot be said the Court of Appeals probably erred in denying Ms. Garella's motion to be appointed counsel for Ms. Denny on appeal.¹ This court's review is therefore not warranted.

¹ Since the Court of Appeals based its order on what it perceived to be its authority in relation to the superior court, the order does not preclude Ms. Garella from petitioning the superior court for appointment. Ms. Garella believes this would futile, but the superior court has expressed no view on the propriety of appointing counsel to represent Ms. Denny solely on appeal.

Other parties have filed various motions in relation to Ms. Garella's motion for discretionary review. First, the guardian moves for an award of attorney fees to the guardianship estate for the expenses of answering Ms. Garella's motion. *See* RCW 11.96A.150(1) (superior court or appellate court may order attorney fees to be paid in any amount deemed equitable). But I do not find attorney fees appropriate at this time. Nothing in the materials provided suggests that this matter was initiated by anything but a good faith desire to ensure adequate representation of Ms. Denny's interests. The guardianship also moves to file a supplemental answer addressing the answers of Mr. Denny and Mr. Anderson to Ms. Garella's motion for discretionary review, in light of the fact that those answers support review. But given my ruling denying review, no more pleadings are necessary.

The guardianship further moves to strike from the answers of Mr. Denny and Mr. Anderson any references to Ms. Denny as the "appellant" in the appeals below. It argues that these references are inappropriate because Ms. Denny has not herself or through an authorized representative appealed any of the challenged superior court orders. But Ms. Denny's proper status, particularly in relation to Mr. Anderson's claimed "next friend" status, is presumably one of the issues to be addressed on appeal. I will not prejudice any decision of the Court of Appeals on this issue by striking references to Ms. Denny as "appellant." But in denying the motion to strike, I make no ruling on whether Ms. Denny is properly an appellant.

The guardianship finally moves to strike sealed medical records that Mr. Anderson appended to his answer. These records have no relevance to the issue presented by Ms. Garella's motion. They are therefore stricken. But in light of the potential for further review I do not at this time grant the guardian's additional motion to destroy the documents, though they will remain under seal.

In his response to the guardian's motions Mr. Anderson moves to strike all pleadings filed in this matter by the guardian's attorney, Carol Vaughn, on the basis that Ms. Vaughn's authority to represent the guardian does not extend to the defense of Ms. Garella's motion. But Ms. Vaughn was clearly authorized to represent the guardian in all matters of litigation, including appeals. Mr. Anderson also asks that sanctions be imposed on the guardian pursuant to RAP 18.9(a). But I find no basis for sanctions. Mr. Anderson finally moves to strike materials that the guardian appended to its reply in support of its motion to file a supplemental answer and motion to strike. But the reply contains no inappropriate arguments (regardless of the merits of those arguments), and the appended materials are all part of the record.

In sum, the motion for discretionary review is denied. In addition, the guardian's request for attorney fees is denied, the guardian's motion to file a supplemental answer is denied as moot, the guardian's motion to strike references to Ms. Denny as "appellant" is denied, the guardian's motion to strike the sealed medical record's appended to Mr. Anderson's answer is granted but without destruction of the records at this time, Mr. Anderson's motion to strike all pleadings filed by attorney Carol Vaughn is denied, and Mr. Anderson's motions to strike and for sanctions are denied.



ACTING COMMISSIONER

December 12, 2013

FILED

09 DEC 17 AM 10:52

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

EXPROI

ISSUED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In the Guardianship of:

ELLANORA DENNY

An Alleged Incapacitated Person.

NO. 09-4-04984-7SEA
ORDER APPOINTING LIMITED
GUARDIAN OF THE PERSON AND FULL
GUARDIAN OF THE ESTATE

THIS MATTER came on regularly for hearing on a Petition for Appointment of a Guardian of the Person and Estate of EllaNora Denny, the Alleged Incapacitated Person.

The following persons were present at the hearing: Petitioner Richard Denny, represented by Janet H. Somers, EllaNora Denny, represented by Timothy Austin, Guardian ad Litem Erv DeSmet, Marianne Zak, represented by Laura Hoexter, and _____

The Court considered the written report of the Guardian ad Litem and the Medical/ Psychological, the pleadings and declarations submitted by all parties and witnesses, remarks of counsel, and the Documents filed herein. Based on the above, the Court makes the following:

FINDINGS OF FACT

1.1 **Notices:** All notices required by law have been given and proof of service as required by statute is on file.

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

ORIGINAL

Order Appointing Full Guardian of the Estate and Limited Guardian of the Person - 1

1 **1.2 Jurisdiction:** The jurisdictional facts set forth in the petition are true and correct, and
2 the Court has jurisdiction over the person and estate of the Alleged Incapacitated Person.

3 **1.3. Petition Filed in Good Faith; Burden of Proof Met:** Based on the evidence
4 presented to the court, the Court finds that the petition was filed in good faith and was not
5 frivolous. The Court further finds that Petitioner has met its burden of establishing the statutory
6 bases for imposition of guardianship by clear, cogent and convincing evidence.
7

8 **1.4 Guardian ad Litem:** The Guardian ad Litem appointed by the Court has filed a
9 report with the Court. The report is complete and complies with all the requirements of RCW
10 11.88.090.

11 **1.5 Alternative Arrangements Made By Ms. Denny:**

12 Mrs. Denny has made alternate arrangements in the form of Durable Powers of Attorney
13 and/or Trusts and/or LLCs, but such arrangements are inadequate as, inter alia, they are currently
14 revocable by Ms. Denny.
15

16 **1.5 Capacity:** Ms. Denny is at significant risk of financial harm based upon a
17 demonstrated inability to adequately manage property, including her real property or financial
18 affairs. She is vulnerable to undue influence, is no longer capable of managing her financial
19 affairs without assistance and is in need of a full guardianship over her estate. Ms. Denny is
20 partially incapacitated as defined by RCW 11.88 because she is at significant risk of personal
21 harm based upon a demonstrated inability to provide independently for nutrition, health, housing
22 and physical safety. Therefore, she is capable of managing her personal affairs only with
23 assistance and is in need of a limited guardianship of her person as set forth herein. EllaNora
24 Denny has the capacity to exercise the retained rights as set forth in Conclusions of Law.
25
26

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

1 **1.6 Guardian:** The proposed Guardian is qualified to act as Limited Guardian of the
2 Person and Full Guardian of the Estate of EllaNora Denny. The proposed Guardian's contact
3 information is:

4 Ohana Fiduciary Corporation
5 Lynne Fulp, President
6 PO Box 33710
7 Seattle, WA 98133
8 Ohana CPG#10747
9 (206)782-1189
10 lmf@ohanafc.com

11 **1.8 Guardian ad Litem Fees and Costs:** The Guardian ad Litem was appointed at
12 estate expense and shall submit a motion for payment of fees and costs pursuant to the local
13 rules. The Guardian ad Litem has requested a fee of \$9,875.00 for services rendered and
14 reimbursement of \$815.00 for costs incurred while acting as Guardian ad Litem. Fees in the
15 amount of \$9,875.00 and costs in the amount of \$815.00 are reasonable and should be paid by
16 the Guardian from the guardianship estate.

17 **1.9** The fees and costs of Janet H. Somers as Petitioning Attorney as set forth in
18 separate declaration are reasonable and should be paid by the Guardian from the guardianship
19 estate. The fees and costs of Timothy Austin as court appointed counsel for EllaNora Denny and
20 Laura Hoexter as attorney for Marianne Zak as set forth by separate declarations are reasonable
21 and should be approved to be paid by the Guardian from the guardianship estate.

22 **1.10 Bond:** Bond should be set in the amount of \$100,000.00.

23 **1.11 Right to Vote:** Ms. Denny is capable of exercising the right to vote and her right to
24 vote should not be restricted.
25
26

CONCLUSIONS OF LAW

1 2.1 EllaNora Denny is an Incapacitated Person within the meaning of RCW Chapter 11.88,
2 and a Full Guardian of the Estate and a Limited Guardian of the Person should be appointed.
3 Ohana Fiduciary Corporation is a fit and proper agency as required by RCW 11.88.020 to be
4 appointed as Guardian of the Estate and to be appointed as Limited Guardian of the Person.
5

2.2 Rights Retained.

6 a. Mrs. Denny shall retain the right to make or revoke a will, trust or other
7 testamentary device under the direction of competent independent counsel. This estate planning
8 may include, but not be limited to, gifting and transfer of interests to a family trust.
9

10 b. Mrs. Denny shall retain the right to consent to or refuse medical treatment, subject
11 to the conditions set forth herein.
12

13 c. Mrs. Denny shall retain the right to decide who shall provide care and assistance,
14 subject to the conditions as set forth herein.
15

16 d. Mrs. Denny shall retain the right to make decisions regarding the social aspects of
17 her life, subject to the conditions as set forth herein.

2.3 Limited Guardian of the Person's Authority and Duties:

- 18
- 19 • In consultation with Ms. Denny, to select an appropriate living situation.
 - 20 • To consent to reasonable or necessary medical or dental treatment if EllaNora Denny is
21 unable to consent to necessary medical or dental treatment, or unreasonably withholds her
22 consent to same.
 - 23 • To arrange for medical, dental and other therapeutic appointments;
 - 24 • To supervise medications, including ensuring Mediset is properly configured and all other
25 issues related to medication.
26

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

1 2.4. The limitations and restrictions placed on Ms. Denny should be as follows:

2 a. Mrs. Denny shall have the right to enter into contract provided it is solely under
3 the advice and direction of competent independent counsel and in furtherance of her
4 estate planning. Mrs. Denny shall also have the right to appoint someone to act on her
5 behalf pursuant provided such appointment is solely in a testamentary devise. In all
6 other areas, Mrs. Denny shall not have the right to enter into a contract.
7

8 b. Mrs. Denny shall not have the right to sue or be sued other than through a
9 guardian.

10 c. Mrs. Denny shall not have the right to possess a license to drive.

11 d. Mrs. Denny shall not have the right to buy, sell, mortgage or lease property other
12 than through the guardian.
13

14 2.5 Upon the issuance of Letters of Limited Guardianship, the Limited Guardian of the
15 Person shall have the following authority and responsibilities:

- 16
- 17 • All of the powers and responsibilities of a Guardian of the person pursuant to the
18 provisions of Chapter 11.92 RCW, limited by the language in this Order, including but
19 not limited to:
 - 20 • To review, release, consent to the release of and use as appropriate all medical, dental,
21 mental health, psychological, psychiatric, medication, laboratory and social services
22 work records, charts, evaluations and reports concerning the incapacitated person;
 - 23 • To monitor the conditions and needs of the incapacitated person;
 - 24 • After consultation with Ms. Denny, and subject to the provisions of paragraphs 2.2 and
25 2.3, to consent to and arrange for, or refuse to consent to, medical, dental,
26

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

1 psychological or psychiatric treatment and care, including any and all medications,
2 diagnostic testing, evaluation, examination, placement and/or transfer to an appropriate
3 health care facility such as, but not limited to, an adult family home, hospital, assisted
4 living facility or nursing home;

- 5 • After consultation with Ms. Denny, to select or discharge any health care or medical
6 provider;
- 7
- 8 • After consultation with Ms. Denny, to decide code status of the ward, including the use
9 of life sustaining measures, including intravenous therapy, tube feedings, hydration,
10 antibiotics, pain medications and comfort care;
- 11
- 12 • Subject to the provisions of paragraphs 2.2 and 2.3, to provide substitute informed
13 consent (RCW 7.70.065) to medical or dental treatment, medications for the
14 incapacitated person, including surgery, except where contrary to law;
- 15
- 16 • To provide for or contract for case care or management services on behalf of the
17 incapacitated person;
- 18
- 19 • To provide for such other personal assistance as the incapacitated person requires;
- 20
- 21 • If needed, to establish a pre-need burial or cremation plan for the incapacitated person;

22 Pursuant to 45 CFR 164.514, all providers who are covered entities under the Health
23 Insurance Portability and Accountability Act (HIPAA), and/or their business associates shall
24 release any and all health information requested by the Guardian of the Person to the Guardian of
25 the Person, upon receiving a copy of this document.

26 **2.6** Upon the issuance of Letters of Guardianship, the Guardian of the Estate shall
have, the following authority and responsibilities:

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

Order Appointing Full Guardian of the Estate and
Limited Guardian of the Person - 6

- 1 • All of the powers of a Guardian of the estate pursuant to the provisions of Chapter 11.92
2 RCW, including but not limited to:
- 3 • To undertake the management of the financial affairs of the incapacitated person,
4 including but not limited to contracting for and incurring obligations on behalf of the
5 incapacitated person, becoming representative payee of any income from Social
6 Security, income from employment of the incapacitated person, and any other sources
7 of revenue or income;
- 8
- 9 • To locate and gather assets;
- 10 • To enter any safe deposit boxes held in the name of the incapacitated person
11 (individually or with another), and inventory and/or remove any contents there from
12 which belongs to the incapacitated person as his sole and separate property, and to
13 maintain and/or close said boxes or to add items thereto, or to drill open the safe
14 deposit boxes in the event the keys to the boxes are misplaced or missing, as deemed by
15 the Guardian to be in the incapacitated person's best interests;
- 16
- 17 • To close any financial accounts, including bank accounts held individually by the
18 incapacitated person as his separate property, and to make withdrawals, deposits or
19 transfer of funds into or out of any such accounts;
- 20
- 21 • To establish guardianship accounts;
- 22 • To proceed to expend funds as necessary for the benefit of the incapacitated person
23 subject to review by the Court;
- 24
- 25 • To convert all holdings, including but not limited to savings accounts, money market
26 accounts, IRAs, mutual funds, stocks, bonds, cash, automobiles, mobile homes, and

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

1 any other personal property, including pensions, annuities, 401Ks, and any other
2 income, into the name of said Guardian for the purposes of the guardianship, provided
3 such accounts are held by the incapacitated person as her sole and separate property;
4 and make arrangements for management of the estate, including removing family
5 members from bank accounts of the Incapacitated Person;

- 6
- 7 • this power is without liability to the financial institution for reliance upon the guardian's
8 authority.
- 9 • The signature of the guardian of the estate holds the full force and effect of the signature
10 of EllaNora Denny, with all the rights and authority and access to the asset as the
11 signature of EllaNora Denny would provide, whether the account is individually held
12 by EllaNora Denny or held jointly with another person;
- 13
- 14 • To sell, exchange lease or mortgage real property, pursuant to the requirements of
15 RCW 11.92, and to negotiate and determine the value of real property holdings and /or
16 interest in real property;
- 17
- 18 • To conduct an audit covering the past two years of the books and records of the limited
19 liability companies in which EllaNora Denny is a member, as well as an audit of the
20 financial records covering the past two years of the property management company
21 regarding any holdings of EllaNora Denny.
- 22
- 23 • To make disbursements for residential care, medical and incidental expenses on behalf
24 of EllaNora Denny;
- 25 • all other reasonable duties required of a Guardian.

26 Additionally:

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

- 1 • Any bank, savings and loan, credit union, stock brokerage, insurance company, or other
2 institution holding separate assets of the incapacitated person, including but not limited to
3 cash, investments, stocks, bonds, certificates, funds, safe deposit box or personal
4 property, shall release information or deliver the assets to the Guardian of the Estate as
5 directed by the Guardian of the Estate.
6
- 7 • The Guardian of the Estate is further authorized to remove the Incapacitated Person's
8 name from any joint bank account and/or financial account and to change the mailing
9 address of any bank and/or financial statement to any address the Guardian may request.
10
- 11 • If the Incapacitated Person's name appears on any bank account, credit card or financial
12 account held jointly with another person, the Guardian of the Estate shall have authority
13 to change the mailing address of any such bank and/or financial statement to any address
14 the Guardian may request. In the event that an asset has signatories or co-owners in
15 addition to the incapacitated person, the Guardian shall have the authority to block all
16 access to such account, safe deposit box or property until true ownership has been
17 determined.
18
- 19 • If necessary, the Guardian shall also have authority to arrange pre-need cremation or
20 burial arrangements as may be necessary;
21
- 22 • The Guardian is authorized to enter any dwelling, residence or storage area rented or
23 owned by the incapacitated person. The Guardian shall also have the authority to remove,
24 change, and/or re-key any lock to the incapacitated person's home, apartment, storage
25 unit, rental property, vehicles or any other locked property that is owned by the
26 Incapacitated Person.

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

1 Ohana Fiduciary Corporation upon the filing of an oath and the posting of bond in the amount of
2 \$100,000. The Guardian of the Estate is authorized to pay all fees and costs awarded in this
3 Order and all outstanding liabilities of EllaNora Denny determined to be due and owing. After
4 such disbursements are made, all liquid assets in excess of \$100,000 are to be held in blocked
5 accounts with receipts filed with this court within sixty (60) days of this order. Assets that are
6 held in trust shall be deemed outside the scope of this guardianship. Monthly income up to the
7 amount of \$ 10,000.00 shall be available to the Guardian of the Estate to pay monthly
8 expenses.
9

10 **3.3. Notification of Loss of Voting Rights:** Does not apply.

11 **3.4 Report of Substantial Change in Income of Assets:** Within 30 days of any
12 substantial change in the Estate's income or assets, the Guardian of the Estate shall report to the
13 Court and schedule a hearing. The purpose of the hearing will be for the Court to consider
14 changing the bond or making other provision in accordance with RCW 11.88.100.
15

16 **3.5 Inventory:** Within three months of appointment, the Guardian of the Estate shall file
17 a verified inventory of all the property of the Incapacitated Person, which shall come into the
18 Guardian's possession or knowledge, including a statement of all encumbrances, liens and other
19 secured charges on any item. A review hearing upon filing of the inventory is required.
20

21 **3.6 Disbursements:** On or before the date the inventory is due, the Guardian of the
22 Estate shall also apply to the Court for an Order Authorizing Disbursements on behalf of the
23 Incapacitated Person as required by RCW 11.92.040.
24
25
26

1 **3.7 Personal Care Plan:** The Guardian of the Person shall complete and file within
2 three (3) months after appointment a Personal Care Plan which shall comply with the
3 requirements of RCW 11.92.043(1). A review hearing on the Personal Care Plan is required.

4 **3.8 Status of Incapacitated Person:** Unless otherwise ordered, the Guardian of the
5 Person shall file an annual report on the status of the Incapacitated Person that shall comply with
6 the requirements of RCW 11.92.043(2).

7 **3.9 Substantial Change in Condition or Residence:** The Guardian of the Person shall
8 report to the Court within thirty (30) days any substantial change in the Incapacitated Person's
9 condition, or any change in residence of the Incapacitated Person.

10 **3.10 Designation of Standby Guardian:** Within three months, the Guardian shall file a
11 written designation of a standby Guardian that complies with the requirements of RCW
12 11.88.125.

13 **3.11 Authority for Investment and Expenditure:** No investments shall be made
14 without prior order of the court in any property other than unconditional interest bearing
15 obligations of this state or of the United States and in obligations the interest and principal of
16 which are unconditionally guaranteed by the United States, and in share accounts or deposits
17 which are insured by an agency of the United States government.

18 **3.12 Duration of Guardianship:** This Guardianship shall continue in effect until
19 terminated pursuant to RCW 11.88.140;

20 **3.13 Discharge/Retention of Guardian ad Litem:** The Guardian ad Litem is
21 discharged;

1 **3.14 Notice of Right to Receive Pleadings:** The following persons are described in
2 RCW 11.88.090(5)(d), and the Guardian shall notify them of their right to file with the Court and
3 serve upon the Guardian, or the Guardian's attorney, a request to receive copies of pleadings filed
4 by the Guardian with respect to the Guardianship:

5 Richard Denny
6 C/O Janet H. Somers
7 Somers Tambllyn King PLLC
8 2955 80th Avenue SE, Suite 201
 Mercer Island, WA 98040

9 Marianne Zak
10 32101 Weston Drive
 Beverly Hills, MI 48025

11 Martin Anderson shall not receive notice, copies of pleadings or reports in this
12 guardianship.

13
14 **3.15 Guardian ad Litem Fee.** The Guardian ad Litem fees and costs are approved as
15 reasonable in the amount of \$9,875.00 for services rendered and reimbursement of \$815.00 for
16 costs incurred while acting as Guardian ad Litem and should be paid by the Guardian from the
17 guardianship estate.

18 **3.16. Legal Fees:** The legal fees and costs of the following are approved as reasonable
19 and shall be paid from the guardianship estate.
20

21 The Petitioner's attorney, Janet H. Somers in the amount of \$9,515.22; [fees of
22 \$9,107.00 and costs of \$408.22].

23 The AIP's court appointed attorney, Timothy Austin, in the amount of \$6,780.00;
24 Marianne Zak's attorney, Laura Hoexter, in the amount of \$2,172.50.
25

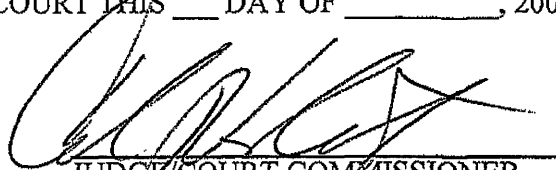
26 **3.17. Guardian's Report:** The Guardian's report shall cover the 12 (twelve) month

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

1 period following the anniversary date of the appointment. The Guardian's report is due within
2 90 days of the end of the reporting period and shall comply with the requirements of RCW
3 11.92.040(2).
4
5
6

7 **3.18 Other.** _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

20
21 DATED AND SIGNED IN OPEN COURT THIS 12/17/09 DAY OF _____, 2009

22 
23 _____
24 JUDGE/COURT COMMISSIONER
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:



Janet H. Somers, WSBA # 18605
Of Somers Tamblyn King,
Attorney for Petitioner

Approved:



Ervin A. DeSmet, WSBA #8105
Guardian ad Litem

COPY RECEIVED; APPROVED
NOTICE OF PRESENTMENT WAIVED



Timothy Austin, WSBA # 2939
Attorney for EllaNora Denny

Laura Hoextler, WSBA #23246
Of Helsell Fetterman
Attorneys for Marianne Zak

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

Order Appointing Full Guardian of the Estate and
Limited Guardian of the Person - 15

FILED

09 SEP 28 PM 3:40

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 09-4-04984-7 SEA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

In the Guardianship of ELLANORA DENNY, An Alleged Incapacitated Person.	}	Case No.: PETITION FOR GUARDIANSHIP OF PERSON AND ESTATE RCW 11.88.030 (PTAPGD)
--	---	--

I. ALLEGED INCAPACITATED PERSON INFORMATION

The name, date of birth, address of present residence, length of time at residence, post office address, and social security number of the Alleged Incapacitated Person are:

- A. Name:** EllaNora Denny
- B. Date of Birth/Age:** April 2, 1923 (86 years old)
- C. Present Residence:** Aljoya of Mercer Island
2430 76th Avenue SE
Mercer Island, WA 98040
- D. Length of Time at Residence:** Since January 15, 2008
- E. Social Security No.:** Reserved

II. NATURE AND DEGREE OF ALLEGED INCAPACITY

The nature and degree of the alleged incapacity are as follows:

- A. Nature of Alleged Incapacity:** Alzheimer's Disease, Short Term Memory Loss
- B. Degree of Alleged Incapacity:** Moderate

ORIGINAL

1
2
3
4
5
6
7 **C. DESCRIPTION/VALUES OF PROPERTY**

The approximate value and the description of the property owned¹ by the Alleged Incapacitated Person is reserved for privacy reasons. Information will be provided as needed to the Guardian ad Litem. Mrs. Denny is solvent and the Guardian ad Litem should be appointed at estate expense.

8
9
10
11
12
13
14
15 **III. EXISTING OR PENDING GUARDIANSHIPS**

A. There is not an existing or pending Guardianship action for the person and/or the estate of Mrs. Denny.

16
17
18
19
20
21
22
23
24
25
26 **IV. NOMINEE**

The name, address, telephone number, date of birth, and age of the proposed Guardian and the relationship of the Alleged Incapacitated Person are as follows:

A. Name of Nominee: Professional Guardian to be determined by Court after consultation with Mrs. Denny and recommendation by Guardian ad litem

V. RELATIVES

The name and addresses, and the nature of the relationship of the persons most closely related by blood or marriage to the Alleged Incapacitated Person are as follows:

A. Name: Richard Denny
Address: PO Box 604
Mercer Island, WA 98040
Relationship: Son

B. Name: Marianne Zak
Address: 32101 Weston Drive
Beverly Hills, MI 48025
Relationship: Daughter

1 **VI. CUSTODIAN OF PERSON TO BE ASSISTED**

2 The name, address, and telephone number of the person or facility having the care and
3 custody of the Alleged Incapacitated Person and the length of time of said care and custody is:

4 Name: **Aljoya of Mercer Island**
5 **Marla Becker, Director of Operations**
6 **2430 76th Avenue SE**
7 **Mercer Island, WA 98040**
8 **(206)230-0150**

9 **VII. REASON FOR GUARDIANSHIP:**

- 10 **A. The reason for petitioning for Guardianship is as follows: See Declaration of**
11 **Richard Denny, attached to this Petition as Exhibit A.**
- 12 **B. The interest of the Petitioner in the appointment is as follows: Petitioner is the son**
13 **and Co-Attorney-in-Fact of EllaNora Denny.**
- 14 **C. Designate whether the appointment is sought as Guardian or Limited Guardian of the**
15 **Person, the Estate, or both: Full Guardianship of Person and Estate.**
- 16 **D. Describe any alternative arrangements previously made by the Alleged Incapacitated**
17 **Person, such as trusts, powers of attorney including any Guardianship nominations**
18 **contained in a power of attorney, and why a Guardianship is nevertheless necessary.**
19 **Ms. Denny had previously executed serial Durable Powers of Attorney. See**
20 **attached Declaration.**

21 **VIII. AREAS OF ASSISTANCE**

- 22 **A. The nature and degree of the alleged incapacity: Short term memory loss.**
23 **Diagnosed with Alzheimer's Disease in June 2008.**
- 24 **B. The following are specific areas of protection and assistance required: Ms. Denny**
25 **requires full support and assistance in managing her finances; moderate**
26 **assistance in managing health care and residential issues.**
- C. The duration of Guardianship should be as follows: until further order of court.**

¹ Ms. Denny is the beneficiary of a Revocable Living Trust; her estate is also comprised of LLCs and partnerships
Petition for Guardianship
Of Person and Estate
2000 Guardianship Forms (Modified)
Page 3

1
2 **IX. GUARDIAN AD LITEM**

3 *Guardian ad Litem to be appointed by request of petitioner.*

4 **Because of the complexity of Mrs. Denny's financial matters, including**
5 **corporations, partnerships and trusts, some of which are as yet incomplete or**
6 **unfunded, Petitioner respectfully requests the appointment of one of the following**
7 **Guardians ad Litem each of whom have special expertise in these areas:**

8 **Mark Vohr**
9 **Erv DeSmet**
10 **Josh Brothers**
11 **Richard Furman**

12 **X. BONDS AND FEES**

13 Issue of Bond should be reserved until the filing of the Inventory.

14 The payment of Guardian ad Litem's fees should be provided as follows:

15 From the guardianship assets.

16 **XI. SUMMARY**

17 The Petitioner requests the following relief:

18 **1) An Order appointing a Guardian ad Litem as set forth in Paragraph**
19 **IX for the Alleged Incapacitated Person;**

20 **2) An Order directing that the Guardian ad Litem's fees in this matter**
21 **be paid by the guardianship estate.**

22 **3) An Order approving payment by the Estate of the Incapacitated**
23 **Person of reasonable attorney's fees and costs incurred in preparation and**
24 **presentation of this Guardianship Petition; and**

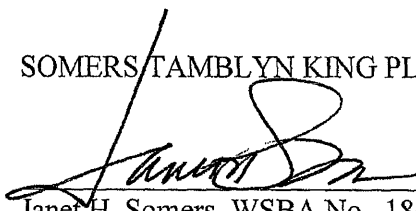
25 **4) An Order appointing RESERVED as Full Guardian of the Person**
26 **and Estate of Ella Nora Denny, subject to annual review.**

5) An Order directing that bond be reserved pending further order of
this Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated this 17 day of September, 2009.

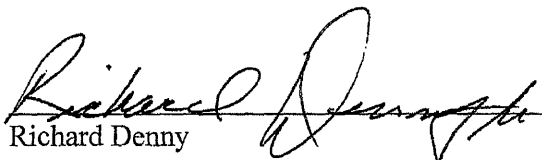
SOMERS/TAMBLYN KING PLLC



Janet H. Somers, WSBA No. 18605
Attorney for Petitioner

Certification

I certify (or declare) under penalty of perjury under the laws of the State of Washington
that to the best of my knowledge the statements above are true and correct.


Richard Denny

FILED

09 SEP 28 PM 3:40

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 09-4-04984-7 SEA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

In the Guardianship of

ELLANORA DENNY,

An Alleged Incapacitated Person.

Case No.:

**DECLARATION OF RICHARD DENNY
IN SUPPORT OF PETITION FOR
APPOINTMENT OF GUARDIAN**

I, Richard Denny, do declare:

1. I declare that I am over the age of eighteen, have personal knowledge of the facts herein and am competent to testify in this matter.
2. I am the son of EllaNora Denny and am also the named Attorney-in-Fact under several of the Durable Powers of Attorney.
3. My mother is highly intelligent and had a very successful career in commercial property. She owned and managed commercial property up until a few years ago, and pursuant to her estate planning, intended to place most of her assets in various vehicles- trusts, LLCs, etc.
4. We have noticed increasing difficulties with her memory. She was diagnosed with Alzheimer's disease in June 2008, but has been living semi-independently at Aljoya Mercer Island.
5. I have learned that over the past few years she has visited several lawyers and has executed at least four Durable Powers of Attorney in that time. She has appointed

Declaration of Richard Denny in Support of Petition for
Appointment of Guardian- Page 1

SOMERS TAMBLYN KING PLLC
2955 80th Avenue SE, Suite 201
Mercer Island, WA 98040
Phone: (206) 232-4050
Fax: (206) 232-4049

ORIGINAL

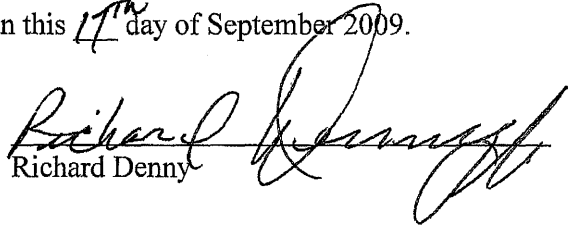
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

my sister, or me, or both of us in successive documents. She does not remember any of them.

- 6. Unfortunately, my sister and I do not agree on my mother's affairs.
- 7. This short term memory loss makes her vulnerable to undue influence and the serial Durable Powers of Attorney make it very difficult for health care and financial providers to provide necessary assistance.
- 8. I have discussed this issue very frankly with my mother and she is in agreement that she needs the protection of a professional fiduciary.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that to the best of my knowledge the statements above are true and correct.

Signed on Mercer Island, Washington this 17th day of September 2009.


Richard Denny

FILED

09 OCT 21 AM 9:35

EXPO1

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In Re the Guardianship)
of)
ELLANORA DENNY,)
An Alleged Incapacitated Person.)

NO. 09-4-04984-7 SEA

ORDER APPOINTING ATTORNEY
FOR ALLEGED INCAPACITATED
PERSON, AUTHORIZING INCREASE IN
HOURLY RATE FOR GUARDIAN AD
LITEM, AUTHORIZING ADDITIONAL
HOURS, AND GRANTING
CONTINUANCE

[CLERK'S ACTION REQUIRED]

THIS MATTER having come on for hearing upon the petition of Ervin A. DeSmet, court-appointed Guardian ad Litem, for an order appointing counsel for the alleged incapacitated person herein, Ellanora Denny, for an order authorizing a total of forty (40) hours for the Guardian ad Litem to perform his statutory duties, for an order increasing the hourly rate of the Guardian ad Litem to his normal hourly rate of \$250.00 per hour, and for a continuance of the hearing date on this Petition for Guardianship, and it appearing to the court that there is good cause for relief requested in the petition, now, therefore,

IT IS HEREBY ORDERED as follows:

1. Timothy L. Austin, telephone (425) 450-3307, be appointed as the attorney for Ellanora Denny, to be compensated at his normal hourly rate by the estate of Ellanora Denny.

Order Appointing Attorney for
Alleged Incapacitated Person, etc. - 1

DESMET & ASSOCIATES, LLC
10900 N.E. 8TH STREET, SUITE 820
BELLEVUE, WASHINGTON 98004-4454
TEL: (425) 450.9735 FAX: (425) 671.0914


 ORIGINAL

1 2. The hourly rate of the Guardian ad Litem shall be set at his normal hourly rate of
2 \$250.00 per hour.

3 3. The Guardian ad Litem shall be authorized to expend up to forty (40) hours to
4 perform his statutory duties, and these hours may be increased if additional time is warranted due
5 to the Petition for Guardianship being contested or for other reasons.

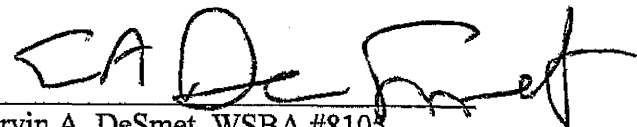
6 4. Because of good cause shown, the hearing on the Petition for Guardianship is
7 continued to December 17, 2009.

8
9 DONE IN OPEN COURT this 10-21-09 day of _____, 2009.

10
11
12 
13 JUDGE/COURT COMMISSIONER

14 Presented by:

15 DeSMET & ASSOCIATES, LLC

16
17 By 
18 Ervin A. DeSmet, WSBA #8105
19 Court-Appointed Guardian ad Litem

20 Approved as to form; Notice
21 of Presentation Waived:

22 SOMERS TAMBLYN KING PLLC

23
24 By _____
25 Janet H. Somers, WSBA #18605
26 Attorney for Petitioner
27
28

Order Appointing Attorney for
Alleged Incapacitated Person, etc. - 2

DeSMET & ASSOCIATES, LLC
10900 N.E. 8TH STREET, SUITE 820
BELLEVUE, WASHINGTON 98004-4454
TEL: (425) 480.9735 FAX: (425) 671.0914

1 2. The hourly rate of the Guardian ad Litem shall be set at his normal hourly rate of
2 \$250.00 per hour.

3 3. The Guardian ad Litem shall be authorized to expend up to forty (40) hours to
4 perform his statutory duties, and these hours may be increased if additional time is warranted due
5 to the Petition for Guardianship being contested or for other reasons.
6

7 4. Because of good cause shown, the hearing on the Petition for Guardianship is
8 continued to December 17, 2009.

9 DONE IN OPEN COURT this _____ day of _____, 2009.

10
11
12 _____
13 JUDGE/COURT COMMISSIONER

14 Presented by:

15 DeSMET & ASSOCIATES, LLC

16
17 By _____

18 Ervin A. DeSmet, WSBA #8105
19 Court-Appointed Guardian ad Litem

20 Approved as to form; Notice
21 of Presentation Waived:

22 SOMERS TAMBLYN KING PLLC

23
24 By _____

25 Janet H. Somers, WSBA #18605
26 Attorney for Petitioner

27
28
Order Appointing Attorney for
Alleged Incapacitated Person, etc. - 2

DeSMET & ASSOCIATES, LLC
10900 N. E. 8TH STREET, SUITE 820
BELLEVUE, WASHINGTON 98004-4454
TEL: (425) 450-9735 FAX: (425) 671-0914

F-3

FILED

09 DEC 16 PM 1:23

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 09-4-04984-7 SEA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In the Guardianship of:) Case No.: 09-4-04984-7SEA
ELLA NORA DENNY,)
) RESPONSE TO
) PETITION FOR GUARDIANSHIP OF
) PERSON AND ESTATE
) RCW 11.88.030
An Alleged Incapacitated Person.)

I. ALLEGED INCAPACITATED PERSON INFORMATION

The name, age, address of present residence, and post office address of the Alleged Incapacitated Person are:

- A. Name: **Ella Nora Denny**
- B. Birthdate: **April 2, 1923**
- C. Present Residence: **Alijoya of Mercer Island
24307th Ave SE
Mercer Island, WA 98040**

II. PETITION FOR LIMITED GUARDIANSHIP OF PERSON AND FULL GUARDIANSHIP OF ESTATE

A Petition for Limited Guardianship of Person and Full Guardianship of Estate was filed in the King County Superior Court by Richard Denny, Ella Nora Denny's son, and the hearing on such Petition is scheduled for December 17, 2009 at 10:30 a.m.

RESPONSE TO PETITION FOR GUARDIANSHIP- 1

Betts Austin, PLLC
11120 N.E. 2nd St., Suite 200
P.O. Box 53050
Bellevue, Washington 98015-3050
Phone: (425) 450-3300; Fax (425) 450-3310

1 **III. RESPONSE TO PETITION FOR FULL GUARDIANSHIP OF PERSON AND**
2 **ESTATE**

3 **A. Limited Guardianship of Person and Full Guardianship of Estate.** As
4 regard the establishment of a limited guardianship of her person and the establishment of a
5 full guardianship of her estate, Ellanora Denny hereby requests that she retain the following
6 rights:

7 **1. Estate Planning.** Ella Nora Denny hereby requests that she retain the
8 right to engage in the full range of estate planning, with the assistance of competent
9 independent counsel of her choice, which shall include but not be limited to, making gifts
10 and/or sales to the Ella Nora Denny Family Trust, making annual exclusion and exemption
11 equivalent gifts to Richard Denny and Marianne Zak, and their respective descendants, in
12 equal or in unequal amounts, revising the Last Will of Ella Nora Denny, and revising the
13 Ella Nora Denny Revocable Living Trust Agreement.

14 **2. Contracts.** Ellanora Denny hereby requests that she retain the right to
15 enter into contracts provided that such is solely under the advice and with the assistance of
16 competent independent counsel of her choice and in furtherance of her estate planning.

17 **B. Access to Pleadings and Reports.** Ellanora Denny hereby further requests
18 that her brother, Martin Anderson, be denied access to copies of the pleadings and reports
19 filed by the guardian in this matter.

20 **IV. REQUEST OF COURT**

21 Ella Nora Denny requests that any order entered by the Court:

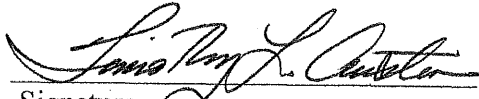
22 **A.** Retains to Ella Nora Denny the rights set forth above upon the establishment
23 of a limited guardianship of her person and a full guardianship of her estate.

24 **B.** Provides that Ms. Denny's brother, Martin Anderson, not be permitted to
25 receive copies of pleadings or reports filed by the guardian in this matter.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Bellevue, Washington, December, 16 2009.



Signature
11120 NE 2nd Street, Suite 200

Address
Bellevue, WA 98004

City, State, Zip Code

Timothy L, Austin

Printed Name
425-450-3300/425-450-3310

Telephone/Fax Number
taustin@nwtaxlaw.com

Email Address

Brian Isaacson, Mark Wilson
Isaacson & Wilson, P.S.
1200 Fifth Ave. Ste 1900
Seattle, WA 98104

In Re Denny, King Co. Sup. Ct. no. 09-4-04984-7 SEA

I withdraw my authorization for you to act as my attorney.

You breached your agreement to enter an appearance in my case within a retainer of \$20,000. You breached your alternate agreement to complete a petition to replace the guardian in my case within a retainer of \$20,000. Having failed to enter an appearance or complete a petition to replace the guardian, you requested additional funds and charged additional fees.

I understand that to date you have written no draft or final documents and filed no documents with the court. There have been too many "misunderstandings" for me to proceed with you in trust. Additionally, your representations of successful litigation seem to be questionable at best.

Dated: 3-20-2012
King Co., WA

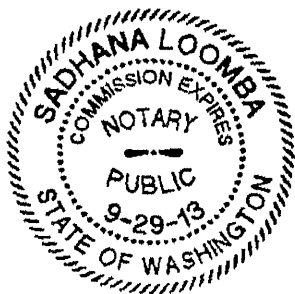
Signed: Ella Nora Denny
Ella Nora Denny
2430 76th Avenue SE #233
Mercer Island, WA 98040
206-232-8441

State of Washington,)
County of King.)

I certify that I know or have satisfactory evidence that Ella Nora Denny is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated Mar. 20, 2012,

by Sadhana Loomba
Notary Public,
Short Form - RCW 42.44.100(1)



ORIGINAL

FILED

12 MAY 16 AM 11:04

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

EXPO 1

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

Guardianship of
ELLANORA DENNY,

An Incapacitated Person.

No. 09-4-04984-7 SEA
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER ON MOTION

THIS MATTER having come on for hearing on the motion of Ohana Fiduciary Corporation, court-appointed limited guardian of the person and full guardian of the estate of EllaNora Denny; movant having appeared by and through its attorney, Thomas M. Keller of Thomas M. Keller, P.S.; and the Court having considered the motion and Sealed Personal Health Care Records filed by the guardian herein, as well as the files and records herein, now, therefore, this Court hereby enters the following Findings of Fact, Conclusions of Law and Order:

I.
FINDINGS OF FACT

1.1 The April 3, 2012 evaluation by Dr. Eisenhauer of EllaNora Denny shows Ms. Denny to be significantly cognitively impaired with dementia NOS, likely of the Alzheimer's type.

1 1.2 The April 3, 2012 evaluation by Dr. Eisenhower of EllaNora Denny shows
2 that Ms. Denny is preoccupied with the perceived need to provide financial assistance to her
3 son, Richard Denny.

4 1.3 The April 3, 2012 evaluation by Dr. Eisenhower of EllaNora Denny shows that
5 Ms. Denny is highly susceptible to influence from third parties and that she lacks the mental
6 capacity to understand whether the influence of others is contrary to her own best interests.
7

8 1.4 The April 3, 2012 evaluation by Dr. Eisenhower of EllaNora Denny shows
9 that Ms. Denny lacks the mental capacity to understand and remember written documents
10 that she signs.

11 1.5 The April 3, 2012 evaluation by Dr. Eisenhower of EllaNora Denny shows that
12 Ms. Denny's condition since her prior examination by Dr. Eisenhower on October 22, 2009
13 has worsened.
14

15 1.6 The April 3, 2012 evaluation by Dr. Eisenhower of EllaNora Denny shows
16 clearly that for her own protection and benefit, Ms. Denny continues to be in need of a
17 guardianship and the services of a professional guardian.

18 1.7 The Declaration of Thomas M. Keller shows that a number of attorneys have
19 attempted to represent Ms. Denny after this guardianship was started and despite the terms of
20 this Court's prior Orders limiting Ms. Denny to her current attorney Tim Austin for estate
21 planning matters only.
22

23 1.8 The Court was not presented with credible admissible evidence establishing
24 that Ms. Denny wishes to retain Mr. Wilson.
25
26

1 2.9 The evidence did not establish any reason for which Ms. Denny needs
2 independent counsel other than for estate planning purposes, for which she is already
3 represented by independent counsel Tim Austin.

4 2.0 The evidence did not establish that appointment of a second independent
5 counsel for Ms. Denny would benefit her or her estate, but rather that such appointment
6 would result in the expenditure of additional funds of her estate with no discernible benefit to
7 Ms. Denny.
8

9
10 **II.**
11 **CONCLUSIONS OF LAW**

12 2.1 Clear, cogent and convincing evidence establishes that Ms. Denny to be
13 clearly incapacitated and lacking contractual capacity.

14 2.2 Clear, cogent and convincing evidence establishes that Ms. Denny is highly
15 susceptible to undue influence and exploitation by others.

16 2.3 Clear, cogent and convincing evidence establishes that Ms. Denny is in need
17 of protection from the undue influence, exploitation and overreaching of third parties.

18 2.4 Clear, cogent and convincing evidence establishes that for her own protection
19 and benefit, Ms. Denny continues to be in need of a guardianship and the services of a
20 professional guardian.
21

22 2.5 Clear, cogent and convincing evidence establishes that EllaNora Denny is not
23 in need of independent counsel, other than continuing representation by her current attorney
24 Tim Austin for estate planning matters only, and then only to the extent that Mr. Austin
25
26

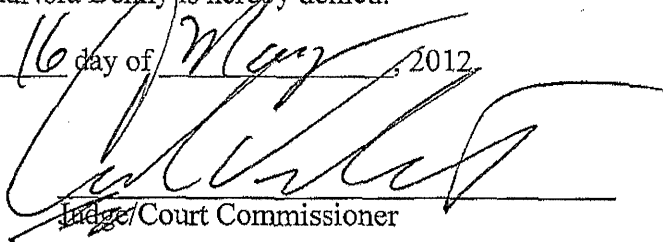
1 determines that Ms. Denny retains sufficient mental capacity to understand and engage in
2 estate planning.

3
4 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED
5 as follows:
6

7
8 **III.
ORDER**

9
10 ORDERED, ADJUDGED AND DECREED that the petition of Mark J. Wilson to be
11 appointed as independent counsel for EllaNora Denny is hereby denied.

12 DONE IN OPEN COURT this 16 day of May, 2012.

13
14 
15 Judge/Court Commissioner

16 Presented By:

17 THOMAS M. KELLER P.S.

18
19 By Thomas M. Keller
20 Thomas M. Keller
21 WSBA No. 7675
22 Attorney for Ohana Fiduciary Corporation

23 Copy Received:

24 ISAACSON & WILSON, P.S.

25 By _____
26 Mark J. Wilson
WSBA No. _____

EXPO 1

FILED
KING COUNTY, WASHINGTON

JUN 19 2012

SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Guardianship of:

ELLANORA DENNY,

An Incapacitated Person.

NO. 09-4-04984-7 SEA

ORDER DENYING MOTION TO
REPLACE GUARDIAN AND MODIFY
GUARDIANSHIP

THIS MATTER came before the Court pursuant to the Motion to Replace Guardian and Modify Guardianship filed by Thomas Anderson. The Court considered the Motion, the Guardian's Response to Motion, the Declaration of Timothy Austin Attorney for Ella Nora Denny, the Declaration of Marianne Denny Deming Zak, the Declaration of Nathan Riensche, and the "Son's Response to Guardian's Responses to Reconsideration Motion and Removal Motion and to Guardian's Request for Restraining Order" filed on behalf of Richard Denny. The following persons attended the hearing on May 31, 2012: Nathan Riensche, designated decision-maker for Ohana Fiduciary Corporation Guardian of the Estate and Limited Guardian of the Person of Ella Nora Denny, Carol Vaughn Attorney for Guardian, Thomas Keller Attorney for Guardian, Douglas Schafer Attorney for Richard Denny, Richard Denny, and Karolyn Hicks Attorney for Marianne Zak. Thomas Anderson did/did not appear.

Based on the foregoing, the Court enters the following:

FINDINGS OF FACT/CONCLUSIONS OF LAW

1. All parties and interested parties received advance and adequate notice of the hearing.

ORIGINAL

ORDER DENYING MOTION TO REPLACE
GUARDIAN AND MODIFY GUARDIANSHIP -- 1

THOMPSON & HOWLE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

- 1 2. The Motion to Replace Guardian and Modify Guardianship was filed by Thomas
2 Anderson *pro se*, who had not previously appeared in the guardianship and who
3 represents that he is Mrs. Denny's nephew and "next friend."
- 4 3. Mr. Anderson represented in his pleadings that the Motions to Replace Guardian and
5 Modify Guardianship were unanimously supported by Mrs. Denny's family. Mrs.
6 Denny's daughter filed a declaration refuting that she supported the Motions. Richard
7 Denny filed a response through his counsel Douglas Schafer refuting that he joined Mr.
8 Anderson's Motions.
- 9 4. Mr. Anderson represented in his pleadings that Mrs. Denny's estate planning attorney
10 Timothy Austin had made certain statements concerning the Guardian's handling of Mrs.
11 Denny's estate plan. Mr. Austin submitted a declaration refuting that he made the
12 statements attributed to him by Mr. Anderson.
- 13 5. The evidence in the Court file, in particular the recent report of Dr. Eisenhower, shows
14 that Mrs. Denny's mental functioning has diminished since the guardianship was
15 established in 2009.
- 16 6. Based on the documentary evidence in the record regarding Mrs. Denny's diminished
17 mental capacity, as well as the confusion exhibited by Mrs. Denny at the court hearing
18 conducted March 29, 2012, where Mrs. Denny did not appear to understand the purpose
19 for the hearing and questioned whether her son was in trouble, the Court finds that the
20 written letters, statements and declarations purportedly signed by Mrs. Denny are not
21 credible evidence.
- 22 7. The Motions brought by Mr. Anderson are governed by RCW 11.88.120. The evidence
23 does not establish that there is "good reason" to modify or terminate the guardianship or
24 to replace the guardian. The evidence does not establish that it would be in Mrs. Denny's
25 best interests to modify or terminate the guardianship or to replace the guardian.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 8. The evidence does not establish that Ohana Fiduciary Corporation as Guardian of the Estate and Limited Guardian of the Person violated any statutory duties under RCW 11.88 and RCW 11.92.
- 9. The evidence does not establish that Ohana Fiduciary Corporation as Guardian of the Estate and Limited Guardian of the Person failed to provide for Mrs. Denny's necessities or other needs.
- 10. The evidence does not establish that Ohana Fiduciary Corporation as Guardian of the Estate and Limited Guardian of the Person violated its fiduciary duty of loyalty or any other fiduciary duty owed to Mrs. Denny.
- 11. The evidence does not establish that Ohana Fiduciary Corporation as Guardian of the Estate and Limited Guardian of the Person violated any of Mrs. Denny's constitutional or statutory rights.
- 12. The evidence does not establish that Ohana Fiduciary Corporation as Guardian of the Estate and Limited Guardian of the Person acted contrary to the best interests of Mrs. Denny.
- 13. The evidence does not establish that Ohana Fiduciary Corporation has a conflict of interest that would prevent it from continuing to serve as Guardian of the Estate and Limited Guardian of the Person for Mrs. Denny.
- 14. The evidence does not establish that Thomas Keller has any conflict of interest in representing Ohana Fiduciary Corporation as Guardian of the Estate and Limited Guardian of the Person of Mrs. Denny.
- 15. Ohana Fiduciary Corporation has properly performed the functions of Guardian of the Estate for Ella Nora Denny.
- 16. Ohana Fiduciary Corporation has properly performed the functions of Limited Guardian of the Person for Ella Nora Denny. This has included taking affirmative action to

1 preserve and enhance Mrs. Denny's retained rights to make decisions about her health
2 care.

3 17. In support of Mr. Anderson's motion, he submitted a number of documents that Mrs.
4 Denny purportedly signed, which as found above, the Court does not find to be credible
5 evidence. It is not in Mrs. Denny's best interest for third parties to procure her signature
6 on documents that the evidence reflects she lacks capacity to understand or recall.

7 18. Authority exists under RCW 11.88.120(4), RCW 11.96A.020, .040, and .060 to restrain
8 Richard Denny and Thomas Anderson from procuring Ms. Denny's signature on any
9 documents, including but not limited to court pleadings, declaration, affidavits, letters,
10 and any written communications of any kind except as follows: Richard Denny may
11 assist Ms. Denny in signing documents relating to informed consent to medical care,
12 checks written on Ms. Denny's discretionary spending account provided they are not
13 written to Richard Denny, Ms. Denny's right to vote, and social communications such as
14 birthday cards and personal correspondence unrelated to the Guardianship or the
15 Guardian.

16 19. Pursuant to RCW 11.96A.150, the Court finds that it is equitable to order Mr. Anderson
17 to reimburse the guardianship estate for the reasonable attorneys' fees and costs incurred
18 by the Guardian in responding to the Motions to Modify Guardianship and Replace
19 Guardian for the following reasons:

- 20 a. The Motions did not benefit Mrs. Denny or her estate and required the Guardian
21 to incur attorneys' fees and costs responding.
- 22 b. The Motions falsely attribute statements to the Incapacitated Person's attorney,
23 Timothy Austin, which he credibly denied making.
- 24 c. Mr. Anderson falsely represented that his Motions were unanimously support by
25 Mrs. Denny's family.
- 26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

d. Mr. Anderson's assertion that attorney Thomas Keller had a conflict of interest in representing the Guardian was not well grounded in fact or law.

Based on the foregoing, the Court ORDERS, ADJUDGES AND DECREES:

ORDER

1. The Motions to Replace Guardian and Modify Guardianship shall be and hereby are DENIED with prejudice.
2. The Guardian's actions in opposing the Motions to Replace Guardian and Modify Guardianship are hereby APPROVED.
3. Richard Denny and Thomas Anderson shall be and hereby are PROHIBITED from procuring Ms. Denny's signature on any documents, including but not limited to court pleadings, declaration, affidavits, letters, and any written communications of any kind except as follows: Richard Denny may assist Ms. Denny in signing documents relating to informed consent to medical care, checks written on Ms. Denny's discretionary spending account provided they are not written to Richard Denny, Ms. Denny's right to vote, and social communications such as birthday cards and personal correspondence unrelated to the Guardianship or the Guardian.
4. Thomas Anderson shall reimburse the guardianship estate for the reasonable attorneys' fees incurred by the Guardian in opposing the Motions to Replace Guardian and Modify Guardianship.
5. The Guardian shall file a petition for approval of the amount of attorneys' fees incurred in responding to the Motions, supported by contemporaneous billing statements, with due notice to parties of record. The Petition for Approval of Fees shall be noted with at least 14 days' advance notice to the responding parties and shall be decided by Commissioner Velategui without oral argument. Any response to the fee petition shall be limited to the issue of the reasonableness of the attorneys' fees and costs.

1 6. Mr. Anderson is permitted to file a response to the petition for attorneys' fees
2 notwithstanding the prior order requiring him to post bond.

3 7. Other: _____

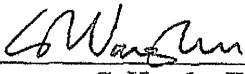
4
5 DONE IN OPEN COURT: 6/19/14

6 KING COUNTY SUPERIOR COURT

7
8 
9 COMMISSIONER CARLOS VELATEGUI

9 Presented by:

10 THOMPSON & HOWLE

11
12 
13 Suzanne C. Howle, WSBA #12977
14 Carol Vaughn, WSBA #16579
15 Attorneys for Ohana Fiduciary Corporation
16 Full Guardian of the Estate and Limited
17 Guardian of the Person of EllaNora Denny

16 Copy received and approved for entry:

17
18 _____
19 Douglas Schafer, WSBA #
20 Attorney for Richard Denny

20 Copy received and approved for entry:

21
22 _____
23 Karolyn Hicks, WSBA #
24 Attorney for Marianne Zak

24 Copy received and approved for entry:

25
26 _____
27 Thomas Anderson, pro se

ORDER DENYING MOTION TO REPLACE
GUARDIAN AND MODIFY GUARDIANSHIP -- 6

15726 kb197001

THOMPSON & HOWLE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

FILED
KING COUNTY, WASHINGTON

SEP 10 2012

SUPERIOR COURT CLERK
BY Jennifer McBeth
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Guardianship of:

ELLANORA DENNY,

An Incapacitated Person.

NO. 09-4-04984-7 SEA

ORDER DENYING MOTION FOR
REVISION

THIS MATTER came before the Court pursuant to Richard Denny's Motion for Revision. The motion was heard with oral argument by the Honorable Sharon Armstrong. Appearing at the hearing were: Richard Denny moving party; Douglas Schafer attorney for Richard Denny; Nathan Riensche of Ohana Fiduciary Corporation Guardian; Carol Vaughn attorney for Guardian. The Court considered the Motion for Revision, the Memorandum in Support of Motion for Revision, the Guardian's Response to Motion for Revision, and the court record and files. Based on the foregoing, the Court ORDERS, ADJUDGES AND DECREES as follows:

1. The Motion for Revision of the Order Denying Motion to Replace Guardian and Modify Guardianship entered June 19, 2012 shall be and hereby is DENIED.
2. The Motion for Revision of the Order Denying Motion to Reconsider the Findings of Fact, Conclusions of Law and Order on Motion Entered May 16, 2012, entered June 19, 2012, shall be and hereby is DENIED.
3. The Guardian's request for an award of attorney fees to the guardianship estate pursuant to RCW 11.96A.150 shall be and hereby is GRANTED. The Court finds that it is

SUB# 217

ORIGINAL

ORDER DENYING MOTION
FOR REVISION -- 1

15726 kb197901

Page 1663

THOMPSON & HOWLE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

K-1

1 equitable to award the guardianship estate its reasonable attorney fees and costs pursuant
2 to RCW 11.96A.150 for responding to the Motions for Revision, because the Motions
3 failed to comply with King County Local Rule 7(b)(3), the Moving Party admitted that
4 the Motion to Reconsider the May 16 Findings, Conclusions and Order was untimely
5 under CR 59 and CR 6, the Moving Party did not object to entry of the Findings of Fact,
6 Conclusions of Law and Order entered May 16, 2012 before filing the Motion for
7 Reconsideration, and the Moving Party sought revision of the Order Denying Motion to
8 Replace Guardian and Modify Guardianship after having expressly representing to the
9 Court that he did not join the Motion to Replace Guardian and Modify Guardianship.

- 10 4. The Guardian's attorneys shall file a fee petition supported by contemporaneous billing
11 records with notice to all parties. The fee petition shall be noted pursuant to LCR 7 and
12 decided without oral argument. The only issue will be whether the Guardian's attorneys
13 fees and costs are reasonable and necessary applying the lodestar measure.

14 DATED: September 7, 2012

KING COUNTY SUPERIOR COURT

Sharon A. Armstrong
JUDGE SHARON ARMSTRONG

18 Presented by:

19 THOMPSON & HOWLE

20 Suzanne C. Howle
21 Suzanne C. Howle, WSBA #12977

22 Carol Vaughn, WSBA #16579

23 Attorneys for Ohana Fiduciary Corporation

24 Full Guardian of the Estate and Limited

25 Guardian of the Person of Ella Nora Denny

26 Copy received:

Douglas Schafer, WSBA #

Attorney for Richard Denny

ORDER DENYING MOTION
FOR REVISION - 2

15726 k0197 001

FILED
KING COUNTY WASHINGTON

OCT 18 2012

SUPERIOR COURT CLERK
BY Jennifer McBeth
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

IN THE GUARDIANSHIP OF
ELLANORA DENNY,
An Incapacitated Person.

NO. 09-4-04984-7 SEA

JUDGMENT, JUDGMENT SUMMARY
AND ORDER AWARDED GUARDIAN'S
ATTORNEYS' FEES AND COSTS

CLERK'S ACTION REQUIRED

JUDGMENT SUMMARY

- A. Judgment Creditors: Ohana Fiduciary Corporation as Guardian for the Estate of EllaNora Denny, and incapacitated Person
- B. Judgment Debtor: Richard Denny
- C. Principal Judgment: \$9,338.44
- D. Interest: N/A
- E. Attorneys' Fees: Included above
- F. Costs: Included above
- G. Other Recovery Amount: N/A
- H. Principal judgment shall bear interest at 12% per annum
- J. Attorney for Judgment Creditor: Suzanne Howle/Carol Vaughn, 206.682.8400
- K. Attorney for Judgment Debtor: Douglas Schaffer, 253.383.2167

//
//

ORIGINAL

JUDGMENT AND ORDER AWARDED GUARDIAN'S
ATTORNEYS' FEES AND COSTS - 1

15912 bj035903zk.002

THOMPSON & HOWLE
DOWNTOWN OFFICE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

1 THIS MATTER came regularly before the Court pursuant to the Motion for Order
2 Awarding Guardian's Attorney Fees and Costs filed by Ohana Fiduciary Corporation. The
3 motion was heard without oral argument. The Court considered the above described Motion, the
4 Declaration of Carol Vaughn in Support of Motion, the contemporaneous billing statements of
5 the Guardian's attorneys, and any documents filed in response. Based on the foregoing, the
6 Court enters the following:

7 FINDINGS OF FACT

- 8 1. Ohana Fiduciary Corporation's attorneys filed a motion and declaration setting forth the
9 fees incurred and the number of hours spent representing the Guardian in responding to
10 the Motion for Revision filed by Richard Denny.
- 11 2. Contemporaneous billing records established that Ohana Fiduciary Corporation incurred
12 attorney's fees of \$9,100.00 and costs of \$238.44 on the work described in the
13 Declaration of Carol Vaughn and the billing statements attached thereto.
- 14 3. Thompson & Howle spent 26.08 hours responding to the motion for revision on behalf of
15 the Guardian.
- 16 4. The Guardian was the prevailing party.
- 17 5. The Guardian's attorney charged \$350 per hour for the work performed. The rate of
18 \$350 per hour charged by the Guardian's attorney was reasonable based on the attorney's
19 experience and reputation, community standards known to the court, and the quality and
20 nature of the work performed.
- 21 6. The Court reviewed the attorneys' contemporaneous billing statements and the
22 declaration filed by the Guardian's attorney in support of the fee petition, and found them
23 sufficiently detailed to describe the work performed by the attorney and the amount of
24 time spent by the attorney on the tasks described in the billing records.
- 25 7. The total fees and costs charged by the Guardian's attorney for responding to the Motion
26 for Revision are reasonable considering the benefit to the guardianship estate, the work

1 performed, the qualifications of the Guardian's attorney, the results obtained, the
2 expedited nature of much of the work, and the preclusion of other work by the Guardian's
3 attorney.

4 8. The billing records filed by the attorney in support of the fees incurred do not reflect any
5 redundancy, waste, duplication, unnecessary work, or clerical work.

6 9. The attorney fees incurred by Ohana Fiduciary Corporation as set forth in the
7 contemporaneous billing statements filed by Thompson & Howle benefitted the
8 guardianship estate of EllaNora Denny because the relief requested by Richard Denny
9 was not in the best interest of Mrs. Denny.

10 CONCLUSIONS OF LAW

- 11 1. Due notice was provided to all parties and interested parties.
- 12 2. The Court considered the reasonableness of the attorneys' fees requested by the Guardian
13 under both the lodestar measure and the criteria set forth in the Rules of Professional
14 Conduct. It determined the reasonable number of hours for the work performed and
15 multiplied the number of hours by the attorney's hourly rate, which it found was
16 reasonable based on the attorneys' experience, the nature of the work performed, and
17 community standards known to the court.
- 18 3. Attorney fees of \$9,100.00 and costs of \$238.44 for a total of \$9,338.44 should be
19 approved for responding to the motion for revision.

20 Based on the foregoing, the Court hereby **ORDERS, ADJUDGES AND DECREES** as
21 follows:

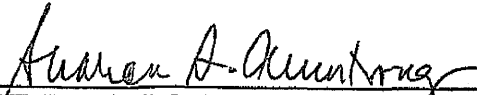
22 ORDER

- 23 1. The Motion for Approval of Attorneys' Fees and Costs is GRANTED.
- 24 2. Richard Denny shall reimburse the guardianship estate of EllaNora Denny \$9,100.00
25 for the Guardian's attorney fees and \$238.44 for Guardian's costs incurred responding
26 to Richard Denny's Motion for Revision.

1 3. Judgment is entered for \$9,338.44 in favor of Ohana Fiduciary Corporation, Guardian
2 of the Estate of EllaNora Denny, against Richard Denny.

3 DATED: OCTOBER 17, 2012

4 KING COUNTY SUPERIOR COURT

5
6 
7 JUDGE SHARON ARMSTRONG

8 Presented by:

9 THOMPSON & HOWLE

10 

11 Carol Vaughn, WSBA #16579
12 Attorneys for Ohana Fiduciary Corporation

13
14 Copy sent to:

15
16
17 Karolyn Hicks, WSBA # 30418
18 Attorney for Marianne Zak

19
20 Douglas A. Schafer, WSBA #8652
21 Attorney for Richard Denny

22
23 Thomas Anderson, *pro se*

24
25
26 Timothy Austin, WSBA #2939
Attorney for EllaNora Denny

JUDGMENT AND ORDER AWARDING GUARDIAN'S
ATTORNEYS' FEES AND COSTS - 4

15912 bj035903zk.002

THOMPSON & HOWLE
DOWNTOWN OFFICE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EllaNora Denny

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

January 22, 2013

Thomas Anderson
1508 N. Yachats River Rd.
Yachats, OR. 97498-9514

Karolyn Ann Hicks
Stokes Lawrence PS
1420 5th Ave Ste 3000
Seattle, WA. 98101-2393
kah@stokeslaw.com

Carol S. Vaughn
Thompson & Howle Downtown Office
601 Union St Ste 3232
Seattle, WA. 98101-2331
carolv@thompsonhowle.com

Douglas Allen Schafer
Schafer Law Firm
950 Pacific Ave Ste 1050
PO Box 1134
Tacoma, WA. 98401-1134
schafer@pobox.com

CASE #: 69117-1-I

In re the Guardianship of: Ella Nora Denny; Thomas Anderson, App. v. Ohana Fiduciary Corp., Res.

King County No. 09-4-04984-7 SEA

Counsel:

The following notation ruling by Mary Neel, Commissioner of the Court was entered on January 22, 2013, regarding appellant Richard Denny's emergency motion for stay:

RULING ON EMERGENCY MOTION FOR STAY

In re Guardianship of Ella Denny

No. 69117-1-I

January 22, 2013

In 2009 the superior court entered orders appointing a full guardian of the estate and a limited guardian of the person of Ella Nora Denny. Ohana Fiduciary Corporation was appointed as guardian. Ms. Denny has two adult children, Richard Denny and Marianne Zak. Richard Denny has appealed certain trial court orders related to the guardianship. Thomas Anderson, one of Ms. Denny's nephews, has also filed an appeal of certain trial court orders. He apparently claims standing in the trial court and this court as "next friend" to Ms. Denny. Mr. Denny's and Mr. Anderson's appeals have been consolidated. The record is in the process of being perfected.

Page 1 of 3

M-1

January 22, 2013

Ms. Denny, who resides at Alijoia on Mercer Island, was recently a patient at Overlake Hospital. Due to concerns regarding the result of a blood test, the guardian requested, and Mr. Denny and Ms. Zak apparently agreed, to temporarily stop visits with their mother. The guardian has hired a caregiver for Ms. Denny. Apparently at the guardian's request, the caregiver is responsible for giving Ms. Denny all medication. The guardian and Mr. Denny dispute whether Ms. Denny is satisfied with the caregiver.

Mr. Anderson apparently objected to the guardian's failure to provide him notice and/or copies of documents filed in the guardianship.

The guardian has filed a petition for instructions from the trial court related to several issues, including whether Mr. Denny and Ms. Zak should be permitted to resume visits with their mother, and whether the guardian is required to provide Mr. Anderson with copies of documents filed in the guardianship. The guardian has noted a hearing on the petition for instructions on Thursday, January 24, 2013.

Late in the day on Friday, January 18, 2013, Richard Denny filed an emergency motion to stay the trial court hearing and any actions by the court that diminish or deprive Ms. Denny of civil rights she retains under the guardianship, unless she is represented by, and here preferences are heard through, legal counsel of her choice. According to Mr. Denny, at some point the trial court declined to appoint counsel for Ms. Denny.

Today, the guardian filed an answer to the emergency motion. The guardian takes the position that a stay at this stage is unavailable and that a party can seek a stay only to avoid enforcement of a trial court order. The guardian also argues that its actions are within its authority under the guardianship. The guardian has not responded to Mr. Denny's argument regarding the appointment of counsel. The guardian seeks attorney fees for having to respond to a frivolous emergency motion for stay.

In its petition for instructions, in response to Mr. Anderson's argument that he is entitled to notice of all proceedings and copies of all documents, the guardian asserts that Ms. Denny's interests are adequately represented by the guardian, her children (both of whom are represented by counsel), and Ms. Denny's own attorney, who represents her on estate planning issues. In his emergency motion, Mr. Denny points out that Ms. Denny is represented by counsel only on estate planning issues, and he argues that she must be appointed counsel to represent her person. Ms. Denny's counsel has filed a declaration confirming that he continues to represent Ms. Denny only with regard to estate planning matters.

Page 3 of 3

69117-1-I, In re the Guardianship of: Ella Nora Denny; Thomas Anderson v. Ohana Fiduciary Corp.

January 22, 2013

At this point, Mr. Denny has not demonstrated a basis for this court to grant a stay of the trial court hearing set for January 24, 2013. Mr. Denny's request that counsel be appointed to represent Ms. Denny's person should be directed to the trial court. The parties and the trial court will have an opportunity to make a record regarding whether Ms. Denny should be appointed counsel to represent her person. If any party is dissatisfied with resolution of this or other issues, a motion to stay enforcement of trial court orders remains available. The guardian's request for attorney fees is denied.

Therefore, it is

ORDERED that Richard Denny's motion to stay the hearing set in the trial court on January 24, 2013 is denied; and it is

ORDERED that the guardian's request for attorney fees is denied.

Mary S. Neel
Commissioner

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

khn

c: The Hon. Carlos Velategui

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

In the Matter of the Guardianship of Ella Nora Denny,)	No. 69117-1-I
)	
ELLA NORA DENNY, THOMAS ANDERSON, AND RICHARD DENNY,)	
)	
Appellants,)	ORDER DENYING MOTIONS TO MODIFY COMMISSIONER'S RULING
)	
v.)	
)	
OHANA FIDUCIARY CORPORATION,)	
)	
Respondent.)	

Appellants Richard Denny and Thomas Anderson have each filed motions to modify the commissioner's January 22, 2013 ruling denying a stay. Respondent Ohana Fiduciary Corporation has filed a response and appellant Denny has filed a reply. We have considered the motions under RAP 17.7 and have determined that both motions to modify should be denied. The parties' requests for sanctions and attorney fees are also denied. The appellants' opening briefs are due not later than 30 days after the date of this order.

Now, therefore, it is hereby

ORDERED that the motions to modify are denied. It is further

ORDERED that the parties' requests for sanctions and attorney fees are denied; and, it is further

ORDERED that appellants' opening briefs are due not later than 30 days after the date of this order.

Done this 20th day of May, 2013.

Schneider, J.

Spencer, A.C.J.

Jay J.

FILED
COURT OF APPEALS DIV
STATE OF WASHINGTON
2013 MAY 20 PM 2:06

FILED

FILED

2013 JAN 25 AM 10:11

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Guardianship of:

ELLANORA DENNY,

An Incapacitated Person.

NO. 09-4-04984-7 SEA

ORDER GRANTING GUARDIAN'S
PETITION FOR INSTRUCTIONS
REGARDING CONTACT WITH THE
INCAPACITATED PERSON AND NOTICE
TO THOMAS ANDERSON

THIS MATTER came before the Court on January 24, 2013, pursuant to the Guardian's Petition for Instructions. Ohana Fiduciary Corporation, as limited guardian of the person for EllaNora Denny and full guardian of the estate of EllaNora Denny, appeared through Nathan Riensche and its attorney Carol Vaughn of Thompson & Howle. Richard Denny appeared in person and through his attorney Douglas Schafer. Marianne Zak appeared through her attorney Karolyn Hicks of Stokes Lawrence. Thomas Anderson did not appear. Ella Nora Denny did not appear. Attorney Thomas Keller was also present for the Guardian. The Court considered the court record and file, including but not limited to the numerous prior orders entered by the superior court, oral argument from counsel, and the following documents:

- Guardian's Petition for Instructions
- Declaration of Carol Vaughn with Exhibits A-K
- Declaration of Nathan Riensche with Exhibits A-B
- Declaration of Counsel Douglas Schafer filed on behalf of Richard Denny
- Statement by Jim Anderson dated January 14, 2013 filed on behalf of Richard Denny
- Progress Notes by Dr. Gregory Gorman filed on behalf of Richard Denny

ORDER GRANTING GUARDIAN'S PETITION FOR INSTRUCTIONS - 1

THOMPSON & HOWLE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

- 1 • Declaration of Delores A. Walther filed on behalf of Richard Denny
- 2 • Statement by Jim Anderson dated January 17, 2013 filed on behalf of Richard Denny
- 3 • Marianne Zak's Response to Guardian's Petition for Instructions
- 4 • Declaration of Marianne Zak
- 5 • Declaration of Todd Maybrow filed on behalf of Marianne Zak
- 6 • Motion to Strike and for Sanctions filed on behalf of Marianne Zak
- 7 • Declaration of Karolyn Hicks Per LR 7(b)(10(C) filed on behalf of Marianne Zak
- 8 • Objection to Motion for Advisory Opinion filed by Thomas Anderson
- 9 • Declaration of Thomas Anderson
- 10 • Guardian's Reply in Support of Petition for Instructions Relating to Positive Drug Test
- 11 • Guardian's Reply in Support of Petition for Instructions Relating to Thomas Anderson
- 12 • Guardian's Objection to and Motion to Strike Unauthenticated Medical Records
- 13 • Guardian's Objection to Declaration of Delores A. Walther
- 14 • Guardian's Objection to Declaration of Douglas Schafer
- 15 • Guardian's Objection to Statement of Jim H. Anderson
- 16 • Guardian's Objection to Statement of Jim H. Anderson dated January 14, 2013
- 17 • Reply to Objections of Guardian and Ms. Zak filed on behalf of Richard Denny
- 18 • Objections to Late-filed Declarations filed on behalf of Marianne Zak
- 19 • Objection by Ward filed by Thomas Anderson
- 20 • Letter Order from the Court of Appeals Denying Emergency Motion for Stay
- 21 • Proofs of Service of the above documents

22 Based on the foregoing, the Court enters the following:

23 FINDINGS OF FACT

- 24 1. Due notice of the Guardian's Petition for Instruction was provided to Richard Denny,
25 Marianne Zak, Ella Nora Denny, and Thomas Anderson. Proof of service is on file.
- 26 2. EllaNora Denny was hospitalized due to an elevated heart rate on December 15, 2012,
and discharged on December 16, 2012.
3. While EllaNora Denny was hospitalized, she underwent a drug screening test. It was
reported to the Guardian that the drug screening test was requested by Mrs. Denny's son
Richard Denny. Mr. Denny denies this and represented to the Court that the drug
screening test was requested by Mrs. Denny's half-brother Jim Anderson. It is undisputed
that the Guardian did not consent to the test for Mrs. Denny and was not consulted about
the drug test before it was administered. The drug test was positive for cocaine.

- 1 4. On December 17, 2012, the day after EllaNora Denny was discharged from Overlake
2 Hospital, the Guardian received notification from Richard Denny that Mrs. Denny had
3 been hospitalized. Mr. Denny did not inform the Guardian a drug test of his mother had
4 been requested or discussed with medical staff, and asserts that hospital staff informed
5 him that they could not perform the drug test unless the Guardian approved it.
- 6 5. After receiving notification of the hospitalization from Richard Denny, on December 17,
7 2012, the Guardian received notification from Overlake Hospital that EllaNora Denny had
8 tested positive for having cocaine in her system. Prior to this time, the Guardian was
9 unaware that a drug test had been performed.
- 10 6. After learning of the positive drug test, the Guardian filed a police report with the Mercer
11 Island Police, notified Mrs. Denny's children Richard Denny and Marianne Zak,
12 consented to a police search of Mrs. Denny's apartment with the acquiescence of Mrs.
13 Denny's children, authorized the locks on Mrs. Denny's apartment to be changed, and
14 hired a companion caregiver for Mrs. Denny.
- 15 7. At the Guardian's request, Marianne Zak and Richard Denny temporarily suspended in-
16 person visits with Mrs. Denny. They would both like to resume having in-person contact
17 with Mrs. Denny.
- 18 8. The Guardian has not been informed of the results of the police investigation.
- 19 9. The Guardian proposed that Mrs. Denny's children be permitted to resume unsupervised
20 in-person visits with their mother, provided (1) Mr. Denny and Ms. Zak do not interfere
21 with or discourage Mrs. Denny's acceptance of the companion caregiver who has been
22 hired for Mrs. Denny; (2) Mr. Denny and Ms. Zak do not receive a key to Mrs. Denny's
23 apartment; and (3) Mrs. Denny's daily medications continue to be managed and
24 administered exclusively by staff at the assisted living where she resides, Aljoya in
25 Mercer Island.
- 26

1 10. The Guardian consulted Mrs. Denny about hiring the caregiver for her. Mrs. Denny
2 agreed to the caregiver. The Guardian was subsequently informed by Mrs. Denny and by
3 staff at Aljoia that Mrs. Denny enjoyed having the caregiver. Marianne Zak filed
4 pleadings expressing her satisfaction with the caregiver and the positive impact on Mrs.
5 Denny of having a one-on-one caregiver. Richard Denny filed declarations stating that
6 Mrs. Denny did not want a caregiver.

7 11. It is in Mrs. Denny's best interests for the Guardian to have continuing authority to
8 employ a caregiver for Mrs. Denny for the number of hours and for the tasks that the
9 Guardian determines to be appropriate and in Mrs. Denny's best interests.

10 12. The Court has considered Mrs. Denny's safety and health care needs, as well as the desire
11 of her children to resume in-person contact with her, and finds that the Guardian's
12 proposal should be adopted. The Court also finds that the Guardian acted appropriately
13 and with due diligence in responding to and investigating the report of the positive drug
14 test.

15 13. It is in Mrs. Denny's best interests that the following conditions be adhered to for in-
16 person visitations with Mrs. Denny: (1) Richard Denny and Marianne Zak should not
17 interfere with or discourage Mrs. Denny's acceptance of the companion caregiver that the
18 Guardian hired for Mrs. Denny; (2) Richard Denny and Marianne Zak should not receive
19 a key to Mrs. Denny's unit, (3) Aljoia should retain exclusive responsibility for managing
20 and administering Mrs. Denny's daily medications, *subject to the Guardian's direction.*

21 14. The evidence indicated that Mrs. Denny agreed to the employment of the companion
22 caregiver, that she enjoys the company of the caregiver and gets along well with the
23 companion caregiver, and that the companion caregiver provides an additional level of
24 security and safety for Mrs. Denny that is appropriate considering her needs, her inability
25 to accurately recall who she has contact with, and safety concerns raised by the positive
26 drug test.

CV
KHH
DAS.

KAM J DAS

On ~~October~~ December 17, 2012,

1 15. At one time, Mr. Denny requested that the Guardian obtain a restraining order against
2 Marianne Zak. The police have not made any arrests. The Guardian has not accused
3 either one of Mrs. Denny's children of any wrong-doing with respect to the positive drug
4 test. The Court's findings and order should not be construed as casting suspicion on
5 either Marianne Zak or Richard Denny. However, based on the evidence, it is
6 appropriate, prudent and in Mrs. Denny's best interests that neither Richard Denny nor
7 Marianne Zak has a key to Mrs. Denny's apartment.

8 16. The evidence indicated that Mrs. Denny had an elevated heart rate on two occasions that
9 was serious enough for her to be hospitalized. Mrs. Denny takes a number of daily
10 medications. She is not capable of managing her own medications because of her
11 impaired short term memory and other symptoms of dementia. She tested positive for an
12 illegal controlled substance, cocaine, the source of which is still unknown. Prior to the
13 positive drug test, Mrs. Denny's son was overseeing her daily medications. However, due
14 to the new safety and health risks, it is in Mrs. Denny's best interests and necessary for
15 her well-being and safety to have her daily medications managed and administered
16 exclusively by the professional staff employed by the assisted living facility where she
17 resides.

18 17. The evidence indicated that Mr. Denny has requested that the Guardian take specific
19 action to investigate the positive drug test and that the Guardian disclose information
20 about the investigation of the incident that Mr. Denny believes the Guardian possesses.
21 The Guardian has acted prudently, appropriately and in the best interests of Mrs. Denny in
22 responding to Mr. Denny's inquiries and by referring Mr. Denny and his attorney to the
23 police department. It is in the best interests of Mrs. Denny for the Guardian to exercise its
24 discretion in responding to questions, requests for information and requests for action
25 relating to the drug test and investigation as it deems appropriate.
26

1 18. In response to the Guardian's Petition for Instructions, pleadings were filed on behalf of
2 Richard Denny seeking to reopen the question of whether Mrs. Denny should have
3 independent counsel appointed to represent her. In addition, there appears to be conflict
4 between Richard Denny and Marianne Zak that creates the potential for causing harm to
5 Mrs. Denny's person and estate. ~~In pleadings filed on behalf of Richard Denny by his~~
6 ~~attorney, Richard Denny asserted that the drug test was a "false positive" and accused his~~
7 ~~sister of being a drug addict and poisoning their mother.~~ In Ms. Zak's pleadings, she
8 submits a sworn declaration and results of a polygraph that she did not poison their
9 mother. In addition, the evidence indicates that Richard Denny was involved in
10 discussions that led hospital staff to administer a drug test to Mrs. Denny because he
11 suspected "foul play," and that the drug test occurred without notification of the Guardian.

12 19. It is of particular concern to the Court and contrary to Mrs. Denny's best interests that
13 medical decision-making, such as consenting to a drug test, has occurred without notice
14 to, or any opportunity for input from, the Guardian. The Court does not doubt that Mr.
15 Denny and Ms. Zak care about their mother and want what is best for her; however, the
16 evidence before the Court clearly establishes that it is NOT in Mrs. Denny's best interests
17 for her children to have control over her health care decisions or access to her health care
18 information, without the prior consent of the Guardian, except in the case of a medical
19 emergency.

20 20. Mrs. Denny will be at risk of significant harm if health care decision-making is not
21 exclusively under the control of the Guardian. Mrs. Denny's medical needs are complex
22 and her vulnerability is extreme. Mrs. Denny's children have each made allegations
23 against the other one that raise concerns for her safety. It is not clear from the evidence
24 who consented to the drug test, but what is undisputed is that it occurred without notice to
25 the Guardian. It is no longer appropriate or consistent with Mrs. Denny's best interests
26

1 or welfare for either one of her children to have decision-making authority or access to
2 health care information.

3 21. In the Order Appointing Guardian entered December 17, 2009, Mrs. Denny did not retain
4 the right to have independent counsel except for estate planning matters. At the request of
5 Richard Denny, this issue was reviewed by the Court again in 2012 after obtaining a new
6 psychological report from Dr. Eisenhower. On May 16, 2012, this Court ruled again that
7 Mrs. Denny did not have the capacity to retain counsel. Richard Denny filed for
8 reconsideration and revision of the May 16, 2012 Order. Both reconsideration and
9 revision were denied. The issue is now on appeal.

10 **Findings Relating to Thomas Anderson Standing:**

11 22. Thomas Anderson requested that the Guardian's attorney provide him with copies of all
12 pleadings filed in the guardianship, including pleadings that relate to matters that Mr.
13 Anderson has no direct interest in, such as financial gifts from Mrs. Denny to her
14 children. Mr. Anderson asserted in his correspondence to the Guardian that he had been
15 adjudicated to be a party entitled to notice under CR 5 based on the judgment entered
16 against him for payment of the Guardian's attorney fees and costs.

17 23. When the Guardian's attorney notified Mr. Anderson that he was not entitled to copies of
18 all pleadings under the guardianship statute, Mr. Anderson served the Guardian with a
19 Notice of Intent to Move for Sanctions.

20 24. Thomas Anderson was not identified in the Order Appointing Guardian as a person
21 entitled to request special notice pursuant to RCW 11.88.095(2)(j). Thomas Anderson
22 first made an appearance in the guardianship in April 2012, more than two years after the
23 Order Appointing Guardian was entered.

24 25. Thomas Anderson has filed numerous pleadings asserting that he is Mrs. Denny's "next
25 friend," that he is representing her interests, and that he is appearing for the benefit of
26 Mrs. Denny and the State.

1 26. Thomas Anderson was previously ordered by this Court to post a \$35,000 bond as a
2 condition for initiating any matters before the superior court. That order is on appeal.

3 Mr. Anderson has not posted a bond.

4 27. Thomas Anderson was previously ordered by this Court to refrain from having Mrs.
5 Denny sign any documents or court pleadings relating to this guardianship. That order is
6 on appeal.

7 28. In response to the Guardian's Petition for Instructions, Mr. Anderson filed a document
8 entitled "Objection by Ward," in which Mr. Anderson purports to be speaking for Mrs.
9 Denny in the capacity of her "next friend." Mr. Anderson has not been appointed to act as
10 Mrs. Denny's "next friend."

11 29. The Court finds that Mr. Anderson's injection of himself in the guardianship of EllaNora
12 Denny has not benefitted Mrs. Denny. To the contrary, Mrs. Denny has been harmed
13 financially by Mr. Anderson's many motions and communications with the Guardian's
14 attorneys because his involvement has significantly increased the Guardian's attorney
15 fees, which are paid from Mrs. Denny's funds.

16 30. Mrs. Denny's interests are adequately represented and protected by the Guardian and by
17 her estate planning attorney Timothy Austin. In addition, Mrs. Denny's children have
18 played an active role in this guardianship and are both represented by experienced
19 attorneys. Thomas Anderson has not shown that Mrs. Denny would benefit from his
20 participation in this guardianship as her "next friend."

21 31. It is not in Mrs. Denny's best interests for the Guardian, her children, or their respective
22 attorneys to read or respond to correspondence or pleadings filed by Thomas Anderson,
23 except as they relate to the pending matters before the Court of Appeals or any motion for
24 revision of this order that Mr. Anderson may file with respect to this Order.

25 Based on the foregoing, the Court enters the following:
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CONCLUSIONS OF LAW

1. "The welfare of incompetent persons and the care of their property are objects of particular care and attention on the part of the courts." *Shelley v. Elfstrom*, 13 Wn. App. 87, 889, 538 P.2d 149 (1975) (quoting *In re Mignerey*, 11 Wn.2d 42, 49, 118 P.2d 440 (1941); *Potter v. Potter*, 35 Wn.2d 788, 215 P.2d 704 (1950)).
2. The superior court that appoints a guardian retains jurisdiction and broad authority to supervise the guardian until the guardianship is terminated. *See In re Guardianship of Gaddis*, 12 Wn.2d 114, 125, 120 P.2d 849 (1942) ("a superior court which has once properly acquired jurisdiction over the administration of an incompetent's estate cannot divest itself of that jurisdiction until such time as the conditions requiring the guardianship have ceased."); *Seattle-First Nat'l Bank v. Brommers*, 89 Wn.2d 190, 200, 570 P.2d 1035 (1977) (the court appointing the guardian is the "superior guardian" of a ward while the appointed guardian is "an officer of the court").
3. Under the terms of the Order Appointing Guardian, entered December 17, 2009, Mrs. Denny did not retain the right to retain counsel except as to estate planning matters. The Court does not find good cause or sufficient basis for reinstating Mrs. Denny's right to retain counsel for matters other than estate planning. Mrs. Denny's retained rights and welfare are adequately protected by the Guardian, her children, and the Court.
4. Under the terms of the Order Appointing Guardian, Mrs. Denny retained the right to consent to or refuse medical treatment, subject to the authority of the Guardian to 1) supervise Mrs. Denny's medications and to address all issues relating to Mrs. Denny's medication; 2) consent to reasonable or necessary medical or dental treatment for Mrs. Denny after consulting with Mrs. Denny if she is unable to consent or unreasonably withholds her consent; 3) arrange for medical, dental and therapeutic appointments; and 4) review and consent to the release of all medical, dental, mental health, and other health care records of Mrs. Denny.

- 1 5. Under the terms of the Order Appointing Guardian, Mrs. Denny retained the right to
2 decide who shall provide care and assistance, subject to the authority of the Guardian to
3 1) provide or contract for care or case management services for Mrs. Denny; 2) provide
4 personal assistance that Mrs. Denny requires; and 3) select or discharge health care
5 providers after consultation with Mrs. Denny.
- 6 6. Under the terms of the Order Appointing Guardian, the Guardian has the authority to
7 exercise all powers and responsibilities of a guardian of the person pursuant to the
8 provisions of chapter 11.92 RCW unless expressly limited by the Order Appointing
9 Guardian.
- 10 7. Pursuant to RCW 11.96A.020, RCW 11.96A.060, RCW 11.92.020, the Court's plenary
11 authority, the terms of the Order Appointing Guardian entered December 17, 2009, and
12 this Court's authority and responsibilities as the superior guardian for Ella Nora Denny,
13 the Court concludes that the Guardian should have sole decision-making authority over all
14 aspects of Ella Nora Denny's health care, subject to its duty to consult with Ella Nora
15 Denny as required by RCW 7.70.065 and the terms of the Order Appointing Guardian.
16 The Court further concludes that it would be detrimental to Ella Nora Denny at this time
17 for either one of her children to make health care decisions for her, except in an
18 emergency, or to have access to Ella Nora's health care information as defined by RCW
19 70.02. The provisions of any prior orders that authorized Mrs. Denny's children to assist
20 with health care decision-making for Mrs. Denny should no longer govern.

21 **Conclusions Relating to Thomas Anderson:**

- 22 8. The State has a significant interest in ensuring that the needs of incapacitated persons are
23 met and that they receive protection under our laws. Thomas Anderson's participation in
24 this guardianship as the self-described "next friend" of Mrs. Denny does not serve the
25 public interest as Mr. Anderson claims.
26

- 1 9. The undersigned judicial officer has heard every motion, read every pleading, and listened
2 to every argument that Thomas Anderson has filed or made in this guardianship. Based
3 on its careful consideration of the information Thomas Anderson has presented under the
4 auspices of being Mrs. Denny's "next friend," it finds that his involvement has not
5 advanced or benefitted the interests of Mrs. Denny, the public or the State.
- 6 10. Thomas Anderson is not entitled to copies of pleadings filed in this guardianship or to
7 notice of matters pending in this guardianship based on the judgments that have been
8 entered against him or based on his claim of "next friend" standing.
- 9 11. Mrs. Denny's interests and retained rights are adequately represented by the Guardian,
10 Mrs. Denny's children, and the superior court overseeing Mrs. Denny's guardianship.
11 Even if Washington courts recognized "next friend" standing in guardianship matters, this
12 Court would not find Thomas Anderson to be an appropriate person for appointment as
13 Mrs. Denny's "next friend."
- 14 12. Thomas Anderson had no authority to file an objection to these proceedings on behalf of
15 behalf of Ella Nora Denny; therefore, that pleading should be stricken.

16 Based on the foregoing, the Court hereby ORDERS, ADJUDGES and DECREES as
17 follows:

18 ORDER

- 19 1. The Guardian's actions to date as set forth in its Petition for Instructions have been in the
20 best interests of Ella Nora Denny and are hereby approved in their entirety.
- 21 2. The Guardian shall continue to have discretion to respond to requests for information
22 and/or action with respect to the matters set forth in its Petition for Instructions as it
23 deems appropriate consistent with its fiduciary duties and the best interests of Ella Nora
24 Denny.
- 25 3. The Guardian shall have sole decision-making authority concerning Ella Nora Denny's
26 health care and medications, and shall exercise that authority consistent with Conclusion

1 of Law 7 above. Except in the case of a medical emergency, no third party other than the
2 Guardian shall make health care decisions, consent to medical procedures, or make health
3 care appointments, for Mrs. Denny, unless requested to do so by the Guardian.

4 4. No third party other than the Guardian shall have authority to access health care
5 information relating to Mrs. Denny. Richard Denny and Marianne Zak shall not represent
6 to any third parties that they have authority to access Mrs. Denny's health care
7 information or attend medical appointments with Mrs. Denny.

8 5. The provisions of any prior orders that authorized Mrs. Denny's children to assist with
9 medical decision-making for Mrs. Denny or to access Mrs. Denny's health care
10 information shall no longer govern.

11 6. Marianne Zak and Richard Denny may continue to have unsupervised in-person contact
12 with Mrs. Denny, consistent with Mrs. Denny's preferences, provided that Richard Denny
13 and Marianne Zak do not interfere with or discourage EllaNora Denny's acceptance of the
14 companion caregiver hired by the Guardian, that Richard Denny and Marianne Zak do not
15 receive keys to Mrs. Denny's apartment, and that Mrs. Denny's assisted living facility,
16 Aljoya, retains exclusive responsibility for the management and administration of Mrs.
17 Denny's daily medications as directed by the Guardian.

18 7. The Guardian has the authority to retain a caregiver for Mrs. Denny as it deems
19 appropriate, including the authority to employ live-in 24-hour care for Mrs. Denny if the
20 Guardian finds that to be in Mrs. Denny's best interests.

21 8. Thomas Anderson is not entitled to copies of pleadings filed in this guardianship or to
22 notice of matters pending in this guardianship as Mrs. Denny's "next friend."

23 9. Thomas Anderson is not entitled to copies of pleadings filed in this guardianship or to
24 notice of matters pending in this guardianship based on the judgments for attorney fees
25 and costs that were entered against him.

26 10. The "Objection by Ward" filed by Mr. Anderson shall be and hereby is stricken.

- 1 11. The Guardian and other interested parties are under no obligation to review or respond to
 2 any pleadings, notices, correspondence or other communications from Thomas Anderson,
 3 except as related to any motion for revision that Mr. Anderson may file of this order and
 4 the proceedings pending before the Court of Appeals.
- 5 12. The Guardian's attorney shall forward a copy of this order to Mr. Anderson.

6 DONE IN OPEN COURT: 11/29/13

7
 8 KING COUNTY SUPERIOR COURT

9
 10 
 COURT COMMISSIONER

11 Presented by:

12 THOMPSON & HOWLE

13 Carol Vaughn
 14 Suzanne C. Howle, WSBA #12977
 15 Carol Vaughn, WSBA #16579
 16 Attorneys for Ohana Fiduciary Corporation
 Full Guardian of the Estate and Limited
 Guardian of the Person of Ella Nora Denny

objection to Dr.
 Goodman's RECORDS
 AS HEAR SAY ARE
 SUSTAINED.

17 Copy received:

18 K. Hicks
 19 Karolyn Hicks, WSBA # 30418
 20 Attorney for Marianne Zak

21
 22 Douglas Schafer, WSBA #
 Attorney for Richard Denny

23
 24
 25 Thomas Anderson, *pro se*
 26

ORDER GRANTING GUARDIAN'S PETITION FOR
 INSTRUCTIONS - 13

THOMPSON & HOWLE
 601 UNION STREET, SUITE 3232
 SEATTLE, WASHINGTON 98101
 206-682-8400 (tel.) 206-682-9491 (fax)

FILED
13 JUN 26 AM 11:12
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

EROT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

IN THE GUARDIANSHIP OF
ELLANORA DENNY,
An Incapacitated Person.

NO. 09-4-04984-7 SEA
JUDGMENT, JUDGMENT SUMMARY
AND ORDER AWARDING GUARDIAN'S
ATTORNEYS' FEES AND COSTS AND
PROHIBITING NEW PLEADINGS UNTIL
JUDGMENTS ARE PAID

JUDGMENT SUMMARY

- A. Judgment Creditor: Ohana Fiduciary Corporation as Guardian for the Estate of EllaNora Denny, an incapacitated Person
- B. Judgment Debtor: Richard Denny
- C. Principal Judgment: \$10,355.98
- D. Interest: N/A
- E. Attorneys' Fees: Included above
- F. Costs: Included above
- G. Other Recovery Amount: N/A
- H. Principal judgment shall bear interest at 12% per annum
- J. Attorney for Judgment Creditor: Suzanne Howle/Carol Vaughn, 206.682.8400
- K. Attorney for Judgment Debtor: Douglas Schaffer, 253.383.2167

THIS MATTER came regularly before the Court pursuant to the Petition filed by Ohana Fiduciary Corporation. Appearing at the hearing were: Carol Vaughn attorney for the Guardian

JUDGMENT AND ORDER AWARDING GUARDIAN'S
ATTORNEYS' FEES AND COSTS - 1

THOMPSON & HOWLE
DOWNTOWN OFFICE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

15912 ce31dc03pw

ORIGINAL

1 and Douglas Schaffer attorney for Richard Denny. In addition, notice was given to Marianne Zak
2 through her attorney Karolyn Hicks, who filed a response supporting the Guardian's petition.
3 The Court considered the Guardian's Petition, the Declaration of Carol Vaughn attaching
4 contemporaneous billing statements of the Guardian's attorneys, and the documents filed in
5 response. Richard Denny's Response was untimely. Based on the foregoing, the Court enters
6 the following:

7 FINDINGS OF FACT

- 8 1. Ohana Fiduciary Corporation's attorneys filed a motion and declaration setting forth the
9 fees incurred and the number of hours spent representing the Guardian in responding to
10 the Motion for Reconsideration filed by Richard Denny.
- 11 2. Contemporaneous billing records established that Ohana Fiduciary Corporation incurred
12 attorney's fees of \$9,975.00 and costs of \$380.98 on the work described in the
13 Declaration of Carol Vaughn and the billing statements attached thereto.
- 14 3. The Guardian's attorney spent 28.5 hours responding to the motion for reconsideration on
15 behalf of the Guardian.
- 16 4. The Guardian was the prevailing party. The legal work directly benefitted the ward, Ella
17 Nora Denny, because the Motion for Reconsideration contested the Superior Court's
18 authority to continue to oversee the guardianship and supervise the guardian during the
19 pendency of Richard Denny's appeal.
- 20 5. The Guardian's attorney charged \$350 per hour for the work performed. The rate of
21 \$350 per hour charged by the Guardian's attorney was reasonable based on the attorney's
22 experience and reputation, community standards known to the court, and the quality and
23 nature of the work performed.
- 24 6. The Court reviewed the attorneys' contemporaneous billing statements and the
25 declaration filed by the Guardian's attorney in support of the fee petition, and found them
26 sufficiently detailed to describe the work performed by the attorney and the amount of

1 time spent by the attorney on the tasks described in the billing records.

- 2 7. The total fees and costs charged by the Guardian's attorney for responding to the Motion
3 for Reconsideration are reasonable considering the benefit to the guardianship estate, the
4 work performed, the qualifications of the Guardian's attorney, the results obtained, and
5 the preclusion of other work by the Guardian's attorney.
- 6 8. The billing records filed by the attorney in support of the fees incurred do not reflect any
7 redundancy, waste, duplication, unnecessary work, or clerical work.
- 8 9. The attorney fees incurred by Ohana Fiduciary Corporation as set forth in the
9 contemporaneous billing statements filed by Thompson & Howle benefitted the
10 guardianship estate of EllaNora Denny because the relief requested by Richard Denny
11 was not in the best interest of Mrs. Denny.
- 12 10. On October 17, 2012, Judge Armstrong entered a judgment against Richard Denny for
13 \$9338.44, to reimburse the guardianship estate for the attorney fees and costs incurred by
14 the Guardian in response to Mr. Denny's unsuccessful Motion for Revision. This
15 judgment has not been paid, and continues to accrue interest at 12% per annum.
- 16 11. Richard Denny's filing of pleadings in this guardianship has been a financial drain on the
17 guardianship estate. Mr. Denny's pleadings have not raised meritorious issues, and have
18 not benefitted the ward Ella Nora Denny.
- 19 12. Due notice was provided to all parties and interested parties. Richard Denny's Response
20 was untimely under LCR 98.20(d). The Response was due four court days before the
21 hearing and was filed two court days before the hearing.
- 22 13. The Court did not receive any objections to the hourly rate charged by the Guardian's
23 attorney or the number of hours billed by the Guardian's attorney.
- 24 14. This Court previously articulated its reasons for finding the award of attorney fees under
25 RCW 11.96A.150 to be equitable. *See* Conclusion of Law 7 Order Denying Motion For
26 Reconsideration dated May 23, 2013.

1 15. Mr. Denny's participation in legal proceedings relating to this guardianship through the
2 filing of pleadings has not benefited the ward Ms. Denny and it has harmed her
3 financially, because the the Guardian has had to incur attorney fees responding to the
4 arguments that Mr. Denny has made.

5 16. Mr. Denny has not indicated to this Court that he is financially unable to pay the
6 judgments previously entered against him. He is appearing through private counsel who
7 the Court assumes is being paid for representing Mr. Denny. The court file reflects that
8 Ms. Denny has engaged in estate planning through independent counsel Timothy Austin
9 that was intended to result in the transfer of significant sums to Mr. Denny. By all
10 indications, Mr. Denny has the ability to pay the judgments entered against him by this
11 Court, and has elected not to pay them, to the detriment of Ms. Denny, the incapacitated
12 person.

13 CONCLUSIONS OF LAW

- 14 1. The Court considered the reasonableness of the attorneys' fees requested by the Guardian
15 under both the lodestar measure and the criteria set forth in the Rules of Professional
16 Conduct. It determined the reasonable number of hours for the work performed and
17 multiplied the number of hours by the attorney's hourly rate, which it found was
18 reasonable based on the attorneys' experience, the nature of the work performed, and
19 community standards known to the court.
- 20 2. Attorney fees of \$9,875.00 and costs of \$380.98 for a total of \$10,355.98 should be
21 approved for responding to the motion for reconsideration.
- 22 3. This Court has a duty to guard against waste of the ward's assets. Under this Court's
23 plenary authority, as well as RCW 11.96A.020, .040, and .060, the Court concludes that
24 Richard Denny should be prohibited from filing new pleadings in this guardianship until
25 he pays all judgments, plus accrued interest, entered against him in this guardianship,
26 *except for* pleadings relating to any motion for revision of or appeal of this Order or any

1 pending appeal.

2 Based on the foregoing, the Court hereby **ORDERS, ADJUDGES AND DECREES** as
3 follows:

4 ORDER

- 5 1) The Petition for Approval of Attorneys' Fees and Costs is GRANTED.
6 2) Judgment is entered for \$10,355.98 in favor of Ohana Fiduciary Corporation,
7 Guardian of the Estate of EllaNora Denny, against Richard Denny.
8 3) This judgment is entered in addition to any other outstanding judgments previously
9 entered against Richard Denny.
10 4) This judgment shall accrue interest at 12 percent per annum until paid in full.
11 5) Richard Denny shall not file any new pleadings in this guardianship until the
12 judgment of \$10,355.98 and the prior judgment of \$9338.44, plus all accrued interest,
13 are paid in full. This prohibition does not apply to and shall not prevent Richard
14 Denny from filing pleadings requesting revision or appeal of this Order, or from filing
15 any pleadings that relate to any currently pending appeal.

16 DATED: 6/26/13

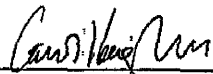
17 KING COUNTY SUPERIOR COURT

18 
19 COMMISSIONER CARLOS VELATEGUI

20 Commissioner Carlos Velategui

21 Presented by:

22 THOMPSON & HOWLE

23 
24 Carol Vaughn, WSBA #16579
25 Attorneys for Ohana Fiduciary Corporation
26

JUDGMENT AND ORDER AWARDING GUARDIAN'S
ATTORNEYS' FEES AND COSTS - 5

15912 ce31dc03pw

THOMPSON & HOWLE
DOWNTOWN OFFICE
601 UNION STREET, SUITE 3232
SEATTLE, WASHINGTON 98101
206-682-8400 (tel.) 206-682-9491 (fax)

1 Copy received:

2 

3 Douglas A. Schafer, WSBA #8652
4 Attorney for Richard Denny

5
6 Karolyn Hicks, WSBA # 30418
7 Attorney for Marianne Zak

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

In the Matter of the Guardianship of: ELLA NORA DENNY, an incapacitated person.)	
)	No. 69117-1-1 (consolidated with No. 69610-6-1)
)	
RICHARD DENNY and THOMAS ANDERSON,)	
)	COMMISSIONER'S RULING AWARDING ATTORNEY FEES AND COSTS
Appellants,)	
)	
v.)	
)	
OHANA FIDUCIARY CORPORATION, FULL GUARDIAN OF THE ESTATE AND LIMITED GUARDIAN OF THE PERSON OF ELLA NORA DENNY,)	
)	
Respondent.)	
)	

On August 1, 2016, this Court issued an unpublished opinion affirming the trial court's decisions in managing an ongoing guardianship. This Court awarded attorney fees on appeal under RCW 11.96A.150(1) to respondent Ohana Fiduciary Corporation against appellants Richard Denny and Thomas Anderson.

Respondent Ohana filed a declaration of counsel. It requests attorney fees and costs against Denny in the total amount of \$65,294.90 (\$61,708.50 in attorney fees + \$1,586 in attorney fees in preparing the declaration of counsel + \$2,000.40 in costs). Ohana requests attorney fees and costs against Anderson in the total amount of \$41,163.38 (\$38,552 in attorney fees + \$1,586 in attorney fees in preparing the declaration of counsel + \$1,025.38 in costs). Denny and Anderson did not file an objection to the requested fees or costs.

No. 69117-1-I (consolidated with No. 69610-6-I)

On October 4, 2016, this Court denied Denny and Anderson's motion for reconsideration and awarded Ohana additional attorney fees and costs incurred in responding to the motion for reconsideration. Ohana filed a declaration of counsel, requesting additional attorney fees of \$17,584 and costs of \$9.60 in the total amount of \$17,593.60 against Denny and Anderson, jointly and severally. Denny and Anderson did not file an objection to the requested fees or costs.

I have reviewed the declarations of counsel. Although the attorney fees for preparing the initial declaration of counsel (\$3,172) appears high, absent any objection, the fees and costs are awarded as requested. Therefore, it is

ORDERED that attorney fees and costs in the total amount of \$65,294.90 are awarded to respondent Ohana. Appellant Richard Denny shall pay this amount. It is further

ORDERED that attorney fees and costs in the total amount of \$41,163.38 are awarded to respondent Ohana. Appellant Thomas Anderson shall pay this amount. It is further

ORDERED that attorney fees and costs in the total amount of \$17,593.60 are awarded to respondent Ohana. Appellants Richard Denny and Thomas Anderson are jointly and severally liable for this amount.

Done this 2nd day of November, 2016.



Court Commissioner

FILED
COURT OF APPEALS DISTRICT
STATE OF WASHINGTON
2016 NOV -2 AM 9:50

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

In the Matter of the Guardianship of:) ELLA NORA DENNY, an incapacitated) person.)) RICHARD DENNY and THOMAS) ANDERSON,)) <div style="text-align: center;">Appellants,)</div>) <div style="text-align: center;">v.)</div>) OHANA FIDUCIARY CORPORATION,) FULL GUARDIAN OF THE ESTATE) AND LIMITED GUARDIAN OF THE) PERSON OF ELLA NORA DENNY,)) <div style="text-align: center;">Respondent.)</div> <hr style="width: 80%; margin-left: 0;"/>	No. 70312-9-1 (consolidated with No. 70610-1-1) COMMISSIONER'S RULING AWARDING ATTORNEY FEES AND COSTS
--	--

On August 1, 2016, this Court issued an unpublished opinion affirming the trial court's decisions in managing an ongoing guardianship. This Court awarded attorney fees on appeal under RCW 11.96A.150(1) to respondent Ohana Fiduciary Corporation against appellants Richard Denny and Thomas Anderson.

Respondent Ohana filed a declaration of counsel. It requests attorney fees and costs against Denny in the total amount of \$32,680.19 (\$30,731.50 in attorney fees + \$1,510 in attorney fees in preparing the declaration of counsel + \$438.69 in costs). Ohana requests attorney fees and costs against Anderson in the total amount of \$23,927.47 (\$21,912.50 in attorney fees + \$1,510 in attorney fees in preparing the declaration of counsel + \$504.97 in costs). Denny and Anderson did not file an objection to the requested fees or costs.

No. 70312-9-1 (consolidated with No. 70610-1-1)

On October 4, 2016, this Court denied Denny and Anderson's motion for reconsideration and awarded Ohana additional attorney fees and costs incurred in responding to the motion for reconsideration. Ohana filed a declaration of counsel, requesting additional attorney fees of \$3,336 and costs of \$9.60 in the total amount of \$3,345.60 against Denny and Anderson, jointly and severally. Denny and Anderson did not file an objection to the requested fees or costs.

I have reviewed the declarations of counsel. Although the attorney fees for preparing the initial declaration of counsel (\$3,020) appears high, absent any objection, the fees and costs are awarded as requested. Therefore, it is

ORDERED that attorney fees and costs in the total amount of \$32,680.19 are awarded to respondent Ohana. Appellant Richard Denny shall pay this amount. It is further

ORDERED that attorney fees and costs in the total amount of \$23,927.47 are awarded to respondent Ohana. Appellant Thomas Anderson shall pay this amount. It is further

ORDERED that attorney fees and costs in the total amount of \$3,345.60 are awarded to respondent Ohana. Appellants Richard Denny and Thomas Anderson are jointly and severally liable for this amount.

Done this 2nd day of November, 2016.

Marako Hanagawa
Court Commissioner

2016 NOV -2 AM 10:36
COURT OF APPEALS
STATE OF WASHINGTON

RCW 11.88.120**Modification or termination of guardianship—Procedure.**

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

(4) The administrative office of the courts must develop and prepare[,] in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form

for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant.

[2015 c 293 § 1; 1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

NOTES:

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.