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No. 94632-9

SUPREME COURT OF WASHINGTON

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RALPH HOWARD BLAKELY,

Petitioner,

vs.

MICHAEL CHARLES KAHRS,

Respondent.

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RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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## I. INTRODUCTION

Petitioner Ralph Blakely is incarcerated as a result of his conviction for solicitation of first degree murder. While incarcerated, Blakely retained attorney Michael Kahrs for the limited purposes of assisting Blakely in pursuing post-conviction relief and in obtaining medical care. Blakely sued Kahrs for legal malpractice and breach of fiduciary duty. He alleged that Kahrs (1) refused to represent Blakely in pursuing civil rights complaints; (2) billed Blakely for services he did not perform; and (3) failed to provide Blakely with certain documents from his file.

Kahrs filed a motion for summary judgment. He argued that the malpractice claim should be dismissed because it focused on matters outside of Kahrs' limited scope of representation. He argued that the breach of fiduciary duty claim should be dismissed because (1) all of his fees were reasonable and approved by the trustee for Blakely's special needs trust, and (2) he sent Blakely all the materials from his file that Blakely requested.

The trial court granted Kahrs' motion for summary judgment and the Court of Appeals affirmed.

In his Petition for Discretionary Review, Blakely fails to state the reasons he believes review should be accepted under one or more of the tests established in RAP 13.4(b). This Court should deny review.

## **II. STATEMENT OF THE CASE**

The Court of Appeals opinion sets out the facts and the procedural history in a fair, detailed fashion.

The Court of Appeals affirmed dismissal of Blakely's legal malpractice claim because, "given the limited scope of the attorney-client relationship, the duty of care Kahrs owed to Blakely did not include an obligation to pursue the civil rights complaints or any other matters [outside the scope of representation]." Op. at 3-4. Blakely was the beneficiary of a special needs trust in Spokane Superior Court. Op. at 1. The Spokane Superior Court found that Blakely consented to disbursement of funds from the special needs trust to Kahrs to (1) pursue post-conviction relief, and (2) assist Blakely in obtaining medical care. Op. at 1. The Spokane Superior Court ordered the trustee of the special needs trust to disburse funds to Kahrs' trust account to pay for Kahrs' pursuit of the two matters.

The Court of Appeals affirmed dismissal of Blakely's breach of fiduciary duty claim because Blakely failed to produce any evidence rebutting Kahrs' evidence that all of his fees were approved by the trustee

of Blakely's special needs trust and that Kahrs sent Blakely all of the materials from his file that Blakely requested. Op. at 4-5.

## **II. ARGUMENT WHY REVIEW SHOULD BE DENIED**

RAP 13.4(b) provides that a petition for review will be accepted by this Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Blakely does not argue that any of the tests established by RAP 13.4(b) is satisfied in this case. He simply argues that the trial court and Court of Appeals erred when they ruled against him. Blakely has failed to establish that there is a basis for this Court to accept review.

## **III. CONCLUSION**

This is a simple case. The Court of Appeals affirmed the trial court's order granting a summary judgment motion because Blakely failed to produce competent evidence demonstrating the existence of a genuine issue of material fact supporting his claims. There are no grounds for

appeal under RAP 13.4(b). Blakely's Petition for Review should be denied.

Respectfully submitted this 13<sup>th</sup> day of September, 2017.

FORSBERG & UMLAUF, P.S.

By: 

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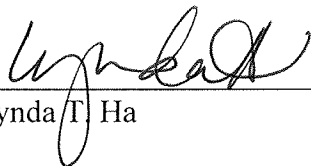
**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the **RESPONDENT'S ANSWER TO PETITION FOR REVIEW** on the following individual in the manner indicated:

Ralph Howard Blakely, #817995  
Stafford Creek Correction Center, H4 B36  
191 Constantine Way  
Aberdeen, WA 98520-9504  
(X) Via U.S. Mail  
(X) Via UPS Delivery

**SIGNED** this 13<sup>th</sup> day of September, 2017, at Seattle, Washington.

  
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Lynda T. Ha