

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

No. 95861-1

SUPREME COURT  
OF THE STATE OF WASHINGTON

In re the Estate of:

TAYLOR GRIFFITH

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KENNETH GRIFFITH and  
JACKIE GRIFFITH,

Petitioners,

v.

BRADLEY J. MOORE, in his  
capacity as Personal  
Representative,

Respondent,

MICHAEL B. KING, and the  
law firm of CARNEY BADLEY  
SPELLMAN, P.S. and  
JACQUELYN A. BEATTY,  
and the law firm of CARNEY  
BADLEY SPELLMAN, P.S.,

Petitioners.

HARRIS CREDITORS'  
OPPOSITION TO MOTION  
TO CONSOLIDATE/STAY  
CONSIDERATION

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Stefanie Harris, as Personal Representative of the Estate of Steven Harris, and Margaret Harris (“the Harris creditors”) ask this Court to deny the motion of the Griffith petitioners for “joint

consideration of review” and to stay consideration of the petition for review in this case, Cause No. 95861-1, filed by disqualified counsel Michael King, Carney Badley Spellman, Jacquelyn Beatty and Karr Tuttle (“disqualified counsel”), in which the Griffiths joined. This petition is scheduled for consideration by a department of this Court on September 4, 2018.

Having previously rejected petitioners’ attempts to link or consolidate these cases, the Court of Appeals considered the two cases separately, issuing separate decisions five months apart. The TEDRA action at issue in Court of Appeals Cause No. 75440-8-I was not and has never been consolidated with the disqualification action in Cause No. 7246-4-I, as the caption on petitioners’ motion for joint consideration of review falsely states.<sup>1</sup>

The two appeals have been separately briefed and have proceeded on separate tracks for good reason – they involve distinct legal and factual issues. The Griffiths’ current motion, coming on the eve of a holiday weekend and less than a week before this Court is scheduled to consider disqualified counsel’s petition, comes too late and fails to present any rational basis for consolidating review of

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<sup>1</sup> Accordingly, respondents are filing this response separately, in each action.

these two Court of Appeals decisions that address completely distinct issues. Equally spurious is disqualified counsel’s “joinder” in that motion yesterday.

**A. The Court of Appeals issued separate decisions on distinct issues after rejecting petitioners’ attempts to consolidate review.**

**1. The Court of Appeals previously refused to “link” the cases.**

The Griffiths’ misleading caption and their lengthy discourse on the facts and procedural history of these two cases ignores that the Court of Appeals denied the very relief they now seek in this Court. The Court of Appeals previously refused petitioners’ request to consolidate review by “link[ing] the appeals for purposes of oral argument,” (Aug. 7, 2017 Letter ruling) rejecting arguments that the appeals presented “the same issues.” The Griffiths offer no reasoned basis for “joint consideration” review or to “link” the two cases now.

**2. The two Court of Appeals decisions, and the respective petitions for review of those decisions, concern distinct issues.**

The Court of Appeals issued separate decisions, five months apart, in two separate cases. *Harris v. Griffith*, 2 Wn. App. 2d 638, 413 P.3d 51 (March 5, 2018), petition for review pending No. 95861-1 (“the attorney disqualification appeal”) and *Griffith v. Moore*,

Cause No. 75440-8-I (unpublished, July 30, 2018), petition for review pending No. 96241-3 (“the TEDRA appeal”). The decisions addressed disparate and distinct issues.

In the attorney disqualification appeal, the Court of Appeals affirmed an order disqualifying counsel under RPC 1.9, holding that “an insurance defense lawyer who files a notice of appearance on behalf of an estate may not, after withdrawing from representation of the estate, later act on behalf of another client to remove the personal representative of the estate.” 2 Wn. App. 2d at 640, ¶ 1.

In the TEDRA appeal, the Court of Appeals held the trial court did not abuse its discretion in refusing to remove a duly appointed personal representative of an estate in the absence of a breach of fiduciary duty. The Court of Appeals held that the personal representative neither breached his fiduciary duty nor had a conflict of interest that required removal.

Disqualified counsel sought review, arguing in this Court that the Court of Appeals decision in the disqualification appeal “judicially overrides RCW 2.44.030,” conflicts with the “test for an attorney client relationship as set forth in *Bohn v. Cody*, 119 Wn.2d 357, 832 P.2d 71 (1992)” and “fails to recognize that lawyers, as humans, make mistakes.” (Pet. No. 95861-1 at 1-2) In the TEDRA

appeal, the Griffiths yesterday sought review, arguing that the decision affirming the refusal to remove the personal representative conflicts with this Court's decision establishing the powers of personal representatives.

The cases have no common issues. In fact, the Court of Appeals decision in the attorney disqualification case does not even mention "whether the personal representative is a third party entitled to bring contribution and indemnity claims against the Griffiths," the issue that, according to the Griffiths is a "key issue[]" in both appeals." (Motion 6) Contrary to disqualified counsel's claims in their joinder in this motion, the Court of Appeals did not "reason[]" that Moore as personal representative was a "third part[y]" in affirming the trial court's refusal to remove the personal representative of the Estate.

**3. The Court should consider the attorney disqualification petition on September 4, as scheduled.**

That the Griffiths waited until the last minute to ask to delay consideration of the petition in the attorney disqualification appeal is an additional reason to deny them their relief. They have had four weeks in which to ask this Court to consider their request for relief in the ordinary course. Preliminary analysis of the issues raised in the

pending petition for review in Cause No. 95861-1 has undoubtedly been completed and circulated to the Department for review. The Court should be loath to reward the Griffiths' request without even an attempt to comply with RAP 17.4(b) for expedited consideration of a motion that could not be considered within the time allotted by RAP 17.4(e).

Dated this 31<sup>st</sup> day of August, 2018.

SMITH GOODFRIEND, P.S.

By: 

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**DECLARATION OF SERVICE**


The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 31, 2018, I arranged for service of the foregoing Harris Creditors' Opposition to Motion to Consolidate/Stay Consideration, to the Court and to the parties to this action as follows:

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**DATED** at Seattle, Washington this 31<sup>st</sup> day of August, 2018.

  
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Andrienne Pilapi



**SMITH GOODFRIEND, PS**

**August 31, 2018 - 12:19 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95861-1  
**Appellate Court Case Title:** In re the Estate of: Taylor Griffith  
**Superior Court Case Number:** 16-4-00622-9


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**Comments:**

Harris Creditors  Opposition to Motion to Consolidate/Stay Consideration

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