Supreme Court No. 96535-8-III
COA No. 33356-6-III

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF:

JUDITH DIANE HOLCOMB

AMICUS CURIAE'S ANSWER TO PETITIONER'S DISCRETIONARY REVIEW OF DECISION OF THE COURT OF APPEALS

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I. IDENTITY OF PARTY

The Spokane County Superior Court Administrator's Guardianship Monitoring Program seeks the relief stated below under Section II.

II. STATEMENT OF RELIEF SOUGHT

Petitioner has filed a Motion for Discretionary Review of a Decision of the Court of Appeals. Although she asserts error in the Court of Appeals decision in *Matter of Guardianship of Holcomb*, 33356-6-III, 2018 WL 5096195, 5 Wn. App. 2d 1044 (2018),[1] she is actually asserting error in Division Three's previous procedural rulings dismissing her and her businesses' appeals of her removals as guardians in these matters. She additionally challenges the order of the Court Commissioner appointing the Spokane County Superior Court Administrator's Office, Guardianship Monitoring Board, as a Special Amicus to respond to all of her pleadings

[1] The decision the full panel addressed was the issue of whether due process had been accorded Hallmark in the assessment of GAL fees in each of the review hearings necessitated by Petitioner's suspension as a licensed Guardian. Finding that due process had not been complied in assessing fees due to a failure to accord Petitioner an additional hearing for fee assessment, the Court of Appeals remanded the matter back to the Superior Court for further proceedings. The Court of Appeals decision includes a lengthy summary of Petitioner's substantial challenge to her original suspension as a certified Professional Guardian for misconduct. *Matter of Guardianship of Holcomb*, 2018 WL 5096195 at *1. In the resulting guardianship review hearings to replace Ms. Petersen and her agencies due to her suspension, the Court of Appeals reported concerns expressed in the review hearings by the Superior Court and the GALs regarding mismanagement of funds, charging excessive or improper guardianship fees for clients with limited funds, providing insufficient personal allowance to the incapacitated person, failure to perform visits of the incapacitated person, failure to file periodic care plan reports, failure to list a current address for the incapacitated person in the guardianship file, improper care and complaints from caregivers concerning lack of communication from the guardian. *Id*. at *5.

before Division Three.[2] Special Amicus Curiae is seeking the dismissal of the petition.[3]

III. ISSUE PRESENTED

Whether there are grounds under RAP 13.4 to grant discretionary review of the Court of Appeals' decisions appointing the Superior Court Administrator's Office, Guardianship Monitoring Program as a Special Amicus Curiae and dismissing Petitioner's appeal of her removal in well over one hundred guardianships for lack of standing.

IV. STATEMENT OF THE CASE

This is a consolidated appeal of 122 guardianships where Lori Petersen and Hallmark Care Services, Inc., d/b/a Castlemark Guardianship and Trusts, Hallmark Care Services, d/b/a Eagle Guardianship and Professional Services, (known collectively as "Hallmark") were removed as guardians and ordered to pay guardian ad litem fees associated with the guardianship review hearings occurring in the wake of the suspension of Petitioner Lori Petersen's license as a Certified Public Guardian by the

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[2] *See* Order Denying Mot. to Modify Commissioner's Ruling, April 10, 2017; Commissioner Decision on Mot. to Strike Appellant's Br., Jan. 23, 2017; and Commissioner's Ruling, Aug. 26, 2015.

[3] Petitioner's appeals of sanctions for refusing to conduct accountings of her Guardianships has been stayed by the Court of Appeals pending final disposition of this appeal. Of course, Petitioner filed a Federal action arising from her removal as a guardian and of course it was dismissed by the District Court. *See* Mem. Opinion and Order Re Mot. to Dismiss and Mot. for CR 11 Sanctions, U.S. District Court No. 2:17-CV-00129-JLQ, July 27, 2017 attached hereto as Attach. A. And of course, Petitioner has appealed to the 9th Circuit where it is pending under cause number 17-35717.

Certified Professional Guardian Board. *See In re Disciplinary Proceeding Against Petersen*, 180 Wn.2d 768, 329 P.3d 853 (2014). Since the vast majority of the guardianship estates lacked the necessary resources for independent counsel, the Court of Appeals appointed the Spokane County Prosecuting Attorney's Office in its capacity as representative of the Superior Court Guardianship Monitoring Program to act as amicus to respond as necessary to all of the Petitioner's pleadings and participate in this appeal. *See* Commissioner's Ruling, Aug. 26, 2015, at p. 21

The Court of Appeals additionally ruled, after briefing and argument, on the issue of whether a guardian had standing to appeal her removal by the Superior Court.

In her August 26, 2015 opinion, Court of Appeals Commissioner Monica Wasson concluded:

> [T]he appeal of the Orders removing guardian and appointing a special master are dismissed because Hallmark is not an aggrieved party as to those Orders. The appeal of the Order that assessed fees is appealable by Hallmark, and the Clerk of Court shall set a perfection schedule in that matter. The motion to add amicus is granted. The motion to dismiss Hallmark and Ms. Petersen is granted as to their appeals of the Orders this Court has dismissed. Hallmark shall serve the appointed guardians with its notice of appeal of the Order that assessed its fees, in the manner directed in this ruling.

Commissioner's Ruling, Aug. 26, 2015, at pp. 22-23.

Petitioner did not seek review of Commissioner Wasson's ruling under RAP 17.7.

Petitioner filed her opening brief on December 2, 2016.

Amicus then moved to strike Petitioner's brief pursuant to RAP 10.7 since: (1) contrary to Commissioner Wasson's August 26, 2015 decision and order, Petitioner's first two assignments of error and almost all of the 52 pages of the main body of the brief were dedicated to Petitioner seeking review of her and her businesses removal as guardians; (2) the brief alleged error on behalf of a judicial officer and an administrative agency not parties to the appeal; and (3) the brief contained multiple statements of facts without proper reference to the record or referenced facts and proceedings beyond the scope of the appeal. *See* Amicus Mot. to Strike Appellants' Br., Dec. 19, 2016.

After additional briefing and argument, Commissioner Wasson ordered Petitioner's brief stricken. She further directed Petitioner, in conformity with her original decision, to file a new brief that provided for argument only as to the Superior Court's imposition of Guardian Ad Litem fees, to limit the recitation of the "Facts and Statement of the Case" to facts relevant to the imposition of the GAL fees and to otherwise adhere to the Rules of Appellate Procedure (specifically RAP 10.3 and 10.4) requiring

specific citation to the record for all factual assertions. *See* Commissioner's Decision on Mot. to Strike Appellants' Br., January 23, 2017, at pp. 22-23.

Petitioner moved to modify Commissioner Wasson's decision.

The Court of Appeals denied the motion to modify the Commissioner's ruling on April 10, 2017. *See* Order Denying Mot. to Modify Commissioner's Ruling, April 10, 2017.

Raising issues similar to the merits of her present petition for discretionary review, Petitioner then sought an interlocutory review of the Court of Appeals order denying her motion to modify the Commissioner's prior ruling per RAP 13.5(b). This Court denied that petition.

V. ARGUMENT

A. INTRODUCTION

A party seeking discretionary review of a Court of Appeals decision must demonstrate one or more of the criteria required by RAP 13.4(b) for this Court to accept review. RAP 13.4(c)(7). Those criteria preclude review unless (1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; (3) if the case involves a significant question of law under the Constitution of the State of Washington or the United States; or (4) the petition involves an issue of

substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(1)-(4).

To say the least, Petitioner is vague concerning which criteria she is petitioning for review. Critically, she offers no citation or authority other than references to the Federal and State constitutions in support of her petition. As such, the petition should be denied since, this Court generally does not consider constitutional ideas "***without specific citations and support***." *State v. Barry,* 183 Wn.2d 297, 313, 352 P.3d 161 (2015) (citing RAP 10.3(a)(6)) (emphasis added). "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none. Courts ordinarily will not give consideration to such errors unless it is apparent without further research that the assignments of error presented are well taken." *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)); *State v. McNeair*, 88 Wn. App. 331, 340, 944 P.2d 1099 (1997) (failure to cite authority constitutes a concession that the argument lacks merit).

The petition fails to provide any authority for the proposed remedies she seeks at page 24 of her petition. Finally, her petition for review fails to address the vital policies providing for the protection of incapacitated

persons under Washington State's guardianship scheme that would be endangered if she were to prevail in an appeal.

B. PETITIONER'S ISSUES ON APPEAL ARE NOT SUBJECT TO REVIEW BY THIS COURT UNDER RAP 17.7 AND 13.3(e).

Petitioner's first two issues presented for appeal allege error in Commissioner Wasson's August 26, 2015 ruling that: (a) The Court of Appeals erred in appointing the Spokane County Guardianship Monitoring Program Special Amicus status and (b) the Court of Appeals erred in dismissing her appeals challenging her removal as guardian for lack of standing.

Commissioner Wasson's August 26, 2015 order concluded:

> [T]he appeal of the Orders removing guardian and appointing a special master are dismissed because Hallmark is not an aggrieved party as to those Orders. The appeal of the Order that assessed fees is appealable by Hallmark, and the Clerk of Court shall set a perfection schedule in that matter. The motion to add amicus is granted. The motion to dismiss Hallmark and Ms. Petersen is granted as to their appeals of the Orders this Court has dismissed. Hallmark shall serve the appointed guardians with its notice of appeal of the Order that assessed its fees, in the manner directed in this ruling.

Commissioner's Ruling, Aug. 26, 2015, at pp. 22-23.

Petitioner never sought a review of the Commissioner's August 26, 2105 decision and order as required by RAP 17.7.[4]

[4] Under RAP 17.7, Petitioner had thirty days to object to the full Court of Appeals Panel of Commissioner Wasson's decision granting the Spokane County Guardianship

Petitioner now seeks review of Commissioner Wasson's Order appointing the Spokane County Guardianship Monitoring Program as Special Amicus and her decision dismissing Petitioner's appeals challenging her removal as guardians.

As previously stated, Petitioner never sought review of Commissioner Wasson's August 26, 2016 ruling.

RAP 13.3(e) states in relevant part:

> A ruling by a commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court. The decision of the Court of Appeals on a motion to modify a ruling by the commissioner or clerk may be subject to review as provided in this title.

Since Petitioner never brought a motion to modify the Commissioner's ruling as to the first two errors alleged in her petition, it is not subject to review by this Court. Petitioner did seek move to modify the Commissioner's order striking her brief. Since the underlying rationale for striking the brief was her spending all but three pages of the brief arguing issues that had been previously dismissed by Commissioner Wasson in her

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Monitoring Program special amicus status and dismissing her appeals alleging error in her removal from the guardianship for lack of standing. She failed to object until confronted with Special Amicus's motion to strike her brief two years later. In failing to object, she waived her right to raise the issue thereafter. RAP 17.7, *See also Det. of Broer v. State*, 93 Wn. App. 852, 857, 957 P.2d 281 (1998), *amended on denial of reconsideration sub nom. Broer v. State*, 973 P.2d 1074 (Wash. Ct. App. 1999); *Gould v. Mutual Life Insurance of New York*, 37 Wn. App. 756, 758, 683 P.2d 207.

August 26, 2016 order, her third issue on appeal is similarly not subject to review by this Court under RAP 13.3(e).

C. THE APPOINTMENT OF THE GUARDIANSHIP MONITORING PROGRAM AS A SPECIAL AMICUS WAS A NECESSARY ADMINISTRATIVE ACTION TO ASSIST THE COURT IN THE ABSENCE OF THE ABILITY OF INDIGENT, INCAPACITATED PERSONS TO PARTICIPATE IN THE APPEAL

Petitioner alleges error in the Court of Appeals appointing the Spokane County Guardianship Monitoring Board as a Special Amicus to respond to her voluminous volume of pleadings. She does not assert how she is prejudiced by having an entity with the resources to assist the appellate courts in an appeal where the record establishes that the indigent, incapacitated persons she exploited as a guardian lack the necessary resources to participate in the appeals. Moreover, as previously stated, she fails to cite any specific authority supporting error by the Court of Appeals. RAP 10.6 permits an appellate court to appoint a person or entity to file a brief "at any stage of review" as long as the pleading is filed by a licensed attorney if "all of the parties consent, ***or if the filing of the brief would assist the appellate court***." (Emphasis added.)

Relying on the sworn certificate of the Honorable Kathleen O'Connor that the guardianships involved in the appeal lacked sufficient resources to provide legal counsel to participate in the appeal, the

Prosecuting Attorney's Office moved on behalf of the Superior Court Administrator's Office Guardianship Monitoring Program to be permitted to be an amicus with special authority to file a responsive brief, but also file any and all necessary motions and pleadings in the appeal. *See* Declaration of Kathleen O'Connor, July 7, 2015, attached hereto as Attach. B; Mot. Permitting Steven J. Kinn Special Amicus Status Pursuant to RAP 1.2, RAP 8.3 and RAP 10.6, attached hereto as Attach. C. The Guardianship Monitoring Program relied additionally on RAP 8.3 (appellate court authority to issue orders to insure effective and equitable review) and RAP 1.2(a) (Rules of Appellate Procedure to be interpreted liberally to promote justice and facilitate the decision of cases on the merits).[5]

After Commissioner Wasson reviewed the motion of the Guardianship Monitoring Program, she granted the motion given that "the amicus is the only entity prepared to respond to Hallmark's appeals because the individual guardianships do not have the funds to do so." Commissioner's Ruling, Aug. 26, 2015, at p. 21.[6]

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[5] "[W]here justice demands," RAP 1.2(a) permits a reviewing court to depart from the established appellate rules where there is "no discernible or practical prejudice flowing to respondent, no unfairness to the trial judge, and no inconvenience to [the] court." *McClarty v. Totem Electric*, 119 Wn. App. 453, 462, 81 P.3d 901 (2003) (citing Millikan v. Bd. of Directors of Everett Sch. Dist. No. 2, 92 Wn.2d 213, 216, 595 P.2d 533 (1979)); *King Cty. Republican Cent. Comm. v. Republican State Comm*., 79 Wn.2d 202, 208, 484 P.2d 387 (1971).

[6] Petitioner apparently has issues with the Guardianship Monitoring Program, which is an administrative office of the Spokane County Superior Court Administrator, being

D. THE ESTABLISHED LAW IN WASHINGTON IS THAT A GUARDIAN HAS NO STANDING TO APPEAL HER REMOVAL BY THE SUPERIOR COURT.[7]

Commissioner Wasson, in her August 26, 2015 memorandum and order, dismissed Petitioner's appeals of her removal in the guardianships since in Washington "only an aggrieved party may appeal a trial court decision per RAP 3.1." Commissioner's Ruling, Aug. 26, 2015, at p. 19. "An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected." *Id*. (citing *Cooper v. Tacoma,* 47 Wn. App. 315,316, 734 P.2d 541 (1987)).

Citing *In Re Guardianship of Lasky,* 54 Wn. App. 841, 776 P.2d 695 (1989), and a number of earlier Supreme Court decisions,[8] Commissioner Wasson correctly noted that "well established Washington law" established that a guardian is not an aggrieved party simply by virtue of being removed as a guardian by the court since the guardian has no property interest in the guardianship estate. Conversely, in Washington, the guardian is an aggrieved party for purposes of seeking review from an "an order fixing or

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appointed an amicus since she alleges, it isn't a public entity. Assuming for a moment that this fantasy is correct, she ignores that any organization or person can be recognized as an amicus when permitted by the court as long as a licensed attorney files the brief. RAP 10.6

[7] Petitioner also asserts that the court's failure to appoint one of her agencies as replacement guardians after her suspension as a CPG violated her due process rights. Following this logic any attorney petitioning to represent an indigent client in a criminal case who is denied an appointment by the court would be denied due process.

[8] *See* Commissioner's Ruling, Aug. 26, 2015, at p. 20, n. 1.

denying him compensation for services rendered prior to removal and not from the removal itself." Commissioner's Ruling, Aug. 26, 2015, at p. 20, n. 1, and the authorities cited therein.

In the present case, Petitioner was denied the right to appeal her removal as a guardian, but permitted to appeal the entry of judgments by the Superior Court assessing her the GAL fees resulting from the review hearings.

The fact that a guardian can never be an aggrieved party with standing to appeal from an order of removal is further not only consistent with, but a compelling necessity given the common law and statutory guardianship scheme in Washington that emphasizes the Superior Court's responsibility to respect the rights and interests of the incapacitated persons above all else.

In establishing a statutory framework for the creation and administration of guardianships, our legislature has declared:

> It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately

> provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.88.005 ("Legislative Intent").

The Superior Court is the only entity granted the authority to appoint a guardian. RCW 11.88.010. In order to ensure the protection of the incapacitated person, then, "[o]nce appointed, a guardian is at all times under the general direction and control of the court making the appointment." RCW 11.92.010. "The court having jurisdiction of a guardianship matter is said to be the superior guardian of the ward, while the person appointed guardian is deemed to be an officer of the court." *In Re Guardianship of Lamb,* 173 Wn.2d. 173, 190, 265 P.3d 876 (2011) *(*quoting *Seattle-First National Bank v. Brommers,* 89 Wn.2d 190, 200, 570 P.2d 1035 (1970)).

A guardian is at all times under the general direction of the court making the appointment. *In re Guardianship of Cornelius*, 181 Wn. App. 513, 523, 326 P.3d 718 (2014) *(*citing RCW 11.92.010). The court is authorized "for ... good reason" to replace the guardian "[a]t any time." RCW 11.88.120(1). Elsewhere, the act provides that in a hearing on an application to replace a guardian, "the court may grant such relief as it deems just and in the best interest of the *incapacitated person.*

RCW 11.88.120(4)." *In re Cornelius,* 181 Wn. App. at 524 (emphasis added).

The primary focus then, under chapter 11 RCW, is the administration of guardianships "in the best interest of the incapacitated person." Nowhere in Washington's common law and legislative scheme is there any consideration of the "right" of a guardian to maintain their "control" of a guardianship.[9]

Petitioner argues, without citing any authority, that she is entitled to the same due process that was accorded her when her license as Certified Professional Guardian was suspended for misconduct under GR 23. *See, generally*, Pet'r Br. at 16-17. In so doing she continues to ignore the explicit language of GR 23(a):

> **Purpose and Scope.** This rule establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008 and prescribes the conditions of and limitations upon their activities. *This rule does not duplicate the statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian.*

(Emphasis added.)

[9] "No person is qualified to serve as a guardian who is: ...(f) a person whom the court finds unsuitable." RCW 11.88.020.

Petitioner has a due process right under GR 23 governing the licensing procedures for Certified Professional Guardians since she had a property interest in her guardianship license. As exemplified by GR 23(a) and *In re Guardianship of Lasky*, 54 Wn. App. 841**,** she has no property interest in either the subsistence estates or the lives of the incapacitated persons she exploited before her removal by the Superior Court. Lacking a property interest in her appointment as guardian, she lacks a due process right in her removal. As indicated by RCW 11.88.005, our legislature has made it clear that incapacitated persons are not chattels and it has ratified the Superior Court's ultimate authority to protect their interests. Petitioner is not an "aggrieved party" under RAP 3.1. To conclude otherwise would imperil the dignity and rights of this state's disabled population.

E. PETITIONER IS NOT ENTITLED TO THE RELIEF REQUESTED IN HER PETITION.

Petitioner's prayer for relief is found at page 24 of her petition. With the exception of her request for a remand to the Superior Court for due process hearing on the issue of guardianship fees, which has already been ordered by the Court of Appeals, this Court lacks the authority to grant any of the relief requested.

As to her request to "strike the language from the opinion limiting the Appellant(s) from challenging the orders removing them as guardians,"

as already indicated, the law in this State is clear. Petitioner is not an aggrieved party under RAP 3.1 and lacked standing to appeal her removal by the Superior Court. Moreover, the upheaval and uncertainty resulting from placing the guardianship status of well over a hundred guardianships in limbo would clearly be contrary to the interests of the incapacitated persons involved. As to damages, attorney's fees, court costs and "trial costs," Petitioner cites no authority as to how she would be entitled to any relief arising out of a guardianship proceeding because there is no authority.[10]

VI. CONCLUSION

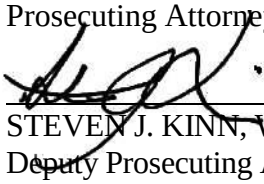
In Petitioner's world, the guardianships placed in her trust by the appointing authority were her personal property. As it should be, this

[10] Petitioner argues in the petition that she is entitled to relief given a violation of her due process rights under the Federal and State constitutions. As previously indicated, her federal due process claim has been dismissed in the Federal District Court and is awaiting review in the 9th Circuit Court of Appeals. As to the state constitutional due process claim under Article 3, even assuming there was a proper claim in any other proceeding other than a guardianship proceeding, there is no cause of action for damages for violations of the Washington State Constitution. *Spurrell v. Bloch*, 40 Wn. App. 854, 862, 701 P.2d 529, 535 (1985) (affirming dismissal of civil claim for due process violation brought under Article I, Section 3: "The constitutional guarantee of due process, Const. Art. 1, § 3, does not of itself, without the aid of augmenting legislation, establish a cause of action for money damages against the state in favor of any person alleging deprivation of property without due process").

distorted view is contrary to Washington State's guardianship administrative scheme. Her petition should be dismissed.

Dated this 1st day of March, 2019.

LAWRENCE H. HASKELL
Prosecuting Attorney



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PROOF OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that on the 1st day of March, 2019, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Dated this 1st day of March, 2019, in Spokane, Washington.

Kim Cornelius

EXHIBIT A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

HALLMARK CARE SERVICES, INC., et al., Plaintiffs, v. SUPERIOR COURT OF STATE OF WASHINGTON FOR SPOKANE COUNTY; SPOKANE COUNTY, Defendants.	NO. 2:17-CV-00129-JLQ MEMORANDUM OPINION AND ORDER RE: MOTION TO DISMISS AND MOTION FOR CR 11 SANCTIONS

BEFORE THE COURT is the Defendants' Motion to Dismiss (ECF No. 11) and Defendants' Motion for CR 11 Sanctions (ECF No. 18). After the Motion to Dismiss was filed, the court directed the parties to address the *Rooker-Feldman* doctrine in the Response and Reply briefs because it was not addressed in the Motion. *See* (ECF No. 16). The parties submitted response and reply briefs on both Motions. This Order memorializes the court's ruling on the Motions.

I. Introduction/Background

All well-pleaded facts are accepted as true for the purposes of the Motion to Dismiss.

On March 13, 2015, the Washington State Supreme Court issued an order suspending Lori Petersen from the practice of guardianship for one year. *See* (ECF No. 1-

Attach. A-1

1 at 2-3).[1] The Supreme Court also ordered Petersen to pay costs to the Certified Professional Guardian Board. (ECF No. 1-1 at 3). The suspension was set to begin on March 20, 2015. (ECF No. 1-1 at 2-3).

On March 17, 2015, Spokane County Superior Court Commissioner Rachelle Anderson sent a letter to Petersen acknowledging receipt of the Supreme Court order and directing Petersen to submit a "specific plan as to each individual you represent" no later than 4:00 p.m. on March 19, 2015. (ECF No. 1-1 at 5). The letter attached a list of guardianship cases, some of which were assigned to Petersen, and others to Hallmark Care Services, Inc. ("Hallmark"), doing business as Castlemark Guardianship and Trust ("Castlemark"), and Hallmark Care Services, Inc., doing business as Eagle Guardianship and Professional Services ("Eagle"). (ECF No. 1 at ¶14).

On March 18, 2015, attorney John Pierce, representing Petersen, sent a letter to Commissioner Anderson stating counsel was filing a motion with the Washington Supreme Court seeking to stay the suspension for 60 to 90 days. (ECF No. 1-1 at 7). Counsel's letter disclosed Petersen would be petitioning the court to transfer her cases to another guardian, but asserted the process would take "approximately 4-6 weeks." (ECF No. 1-1 at 7-8). Additionally, counsel disputed whether cases assigned to Castlemark or Eagle were subject to the suspension order. (ECF No. 1-1 at 7).

On March 26, 2015, the Washington Supreme Court granted a stay of the suspension to allow Petersen to work with the Certified Professional Guardian Board to ensure her clients were properly transferred to another guardian. (ECF No. 1 at ¶18).

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[1] On a motion to dismiss, the court may consider "material which is properly submitted as part of the complaint" and documents whose "authenticity ... is not contested" without converting the motion to dismiss into a motion for summary judgment. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (citations omitted). The court may also take judicial notice of "matters of public record." (*Id.*) (citation omitted).

Attach. A-2

On April 1, 2015, Lewis County Superior Court Judge James Lawler, a member of the Certified Professional Guardian Board, sent Petersen a letter stating the Board would review the status of all guardianships associated with Petersen. (ECF No. 1-1 at 10). The letter directed Petersen to provide information by April 10, 2015, including: all guardianship appointments in the name of Lori Petersen, Empire Care, Castlemark, Hallmark, or Eagle; a plan for compliance with transferring her cases to another guardian; and information about every person associated with any guardianship business where Petersen was a designated guardian or an individual certified professional guardian. (ECF No. 1-1 at 10-11).

On April 1, 2015, Hallmark held a shareholders meeting and elected a new director, officer, and proxy to ensure Petersen was not involved in the business during her one year suspension. (ECF No. 1 at ¶¶22-23). Hallmark also added another professional guardian. (ECF No. 1 at ¶24).

On April 7, 2015, Hallmark received four documents from the Spokane County Superior Court Guardianship Monitoring Program Coordinator. (ECF No. 1 at ¶27). The first document was a letter from Spokane County Superior Court Judge Kathleen O'Connor addressed to Hallmark stating "Hallmark/Castlemark/Eagle's ownership is in question" because the ownership was "confidential." (ECF No. 1-1 at 19). Because ownership had not been disclosed to the court "[d]espite inquiries on multiple occasions," the letter stated Petersen's association with those agencies was brought "into question." (ECF No. 1-1 at 19). The letter stated "[t]he Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella." (ECF No. 1-1 at 19). Additionally, the letter stated a special master would be appointed "to oversee the transition process and individual guardians ad litem will determine successor guardians." (ECF No. 1-1 at 19). Lastly, the letter required Hallmark to post a $100,000 surety bond to secure payment of fees. (ECF No. 1-1 at 19).

Attach. A-3

The second document was a letter from Judge O'Connor to local certified professional guardians. (ECF No. 1-1 at 21). The letter disclosed that guardians ad litem would be contacting the recipients "to take on several cases due to the recent suspension of CPG Lori Petersen." (ECF No. 1-1 at 21).

The third document was a letter from Judge O'Connor to local guardians ad litem informing them the court would be assigning 125 cases "currently assigned to Ms. Petersen and/or agencies with which she is involved." (ECF No. 1-1 at 21).

The final document was an Order Appointing Special Master, signed by Spokane County Superior Court Judge Ellen Kalama Clark for the 125 cases discussed in the prior letters. (ECF No. 1-1 at 26-32). The Order appointed retired Superior Court Judge Paul Bastine as special master. (ECF No. 1-1 at 31).

On April 7, 2015, attorney Pierce, representing Hallmark, sent a letter to Judge Lawler in response to the April 1 letter. (ECF No. 1-1 at 15-17). The letter states Petersen was in the process of "transferring certain cases" to Hallmark. (ECF No. 1-1 at 15). The letter stated Hallmark had moved to be appointed as successor guardian in Petersen's cases. (ECF No. 1-1 at 15). The letter also referred to letters and orders from Judge O'Connor and Judge Kalama Clark. (ECF No. 1-1 at 15-16).

On April 17, 2015, Petersen and Hallmark contested the actions of the Spokane County Superior Court by filing a motion for reconsideration. (ECF No. 1 at ¶34). The motion for reconsideration argued the Superior Court: (1) lacked jurisdiction to expand on the Supreme Court Order suspending Petersen; (2) lacked authority to order the $100,000 bond and appointment of special master; and (3) failed to give Hallmark due process because it allegedly did not receive notice or a right to appear and defend against the Order Appointing Special Master. (ECF No. 1 at ¶34). The motion also sought clarification of a number of issues regarding who was presiding over the reassignment of

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guardianships and whether there was a hearing that led to the Order Appointing Special Master. (ECF No. 1 at ¶35).

On May 4, 2015, Spokane County Superior Court Commissioners held a hearing wherein Petersen and Hallmark were removed as guardians of record. (ECF No. 1 at ¶36). Counsel for Hallmark and Petersen was present at the hearing and objected to the removal of his clients in each of the cases. (ECF No. 1 at ¶¶38-39).

On May 8, 2015, a deputy prosecutor from the Spokane County Prosecutor's Office entered a limited notice of appearance on behalf of the Spokane County Superior Court. (ECF No. 1 at ¶42). The deputy prosecutor then filed a memorandum in support of the court's Order and actions taken with regard to Petersen and Hallmark. (ECF No. 1 at ¶44).

On May 13, 2015, a hearing was held where counsel for Petersen and Hallmark was present, but the deputy prosecutor was not. (ECF No. 1 at ¶46). Counsel informed the court that a deputy prosecutor had appeared on behalf of the Superior Court and asserted the hearing should be postponed until the deputy prosecutor was present. (ECF No. 1 at ¶47). The hearing proceeded without the deputy prosecutor present. (ECF No. 1 at ¶47).

On May 18, 2015, Petersen and Hallmark's motion for reconsideration was heard by Judge Kalama Clark. (ECF No. 1 at ¶¶50, 52). Counsel for Petersen and Hallmark presented argument on the issues raised in the motion. (ECF No. 1 at ¶51). In the court's ruling on the motion, Judge Kalama Clark stated the court was the petitioner in the proceedings and the Order Appointing Special Master was presented *ex parte*. (ECF No. 1 at ¶52). It appears the court denied the motion for reconsideration. *See* (ECF No. 1 at ¶52).

On May 13, 2015, Petersen and Hallmark filed a notice of appeal to Division III of the Washington Court of Appeals regarding the Order Appointing Special Master. *See In re Guardianship of Holcomb*, No. 33356-6, Dkt. #1 (Wash. Ct. App. Div. III). On July 23, 2015, the Court of Appeals issued a motion to determine appealability. (*Id.* at Dkt. #26); (ECF No. 12-1 at 23). After receiving briefing, a Commissioner for the Court of Appeals

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issued an order on August 26, 2015. (ECF No. 12-1). The Commissioner found neither Petersen nor Hallmark were aggrieved parties based on their removal as guardians. (ECF No. 12-1 at 23-25). The Commissioner further found Hallmark was an aggrieved party as to the order assessing fees against it. (ECF No. 12-1 at 26).

A review of the online docket shows the state court appeal was eventually dismissed by Division III in April 2017, and a motion for discretionary review was filed in the Washington Supreme Court on May 1, 2017. *See* No. 33356-6 (Wash. Ct. App. Div. III); Dkt. #1, No. 94454-7 (Wash. Sup. Ct.). The Washington Supreme Court denied the motion on June 22, 2017 and no further filings have been made. *See* No. 94454-7 (Wash. Sup. Ct.).

On April 6, 2017, Petersen and Hallmark ("Plaintiffs") initiated the instant federal court action by filing the Complaint. (ECF No. 1). The Complaint alleges six causes of action against the Spokane County Superior Court and Spokane County ("Defendants"): (1) lack of due process by failing to follow the state rules of civil procedure and local court rules regarding initiating a civil action; (2) judicial abuse of authority by taking *ex parte* action against and issuing *ex parte* orders against Petersen and Hallmark in cases those judges and commissioners were not assigned; (3) lack of due process by failing to follow the process for removal of a guardian under the Revised Code of Washington; (4) lack of due process by failing to follow the process set forth by the Certified Professional Guardian Board for removal of a guardian; (5) lack of due process by failing to give due regard to the definitions of good standing for a certified professional guardian or certified professional guardianship under state court rules; and (6) breach of the separation of powers doctrine by taking executive administrative actions against Petersen and Hallmark. (ECF No. 1 at ¶¶58-67).

On May 19, 2017, Defendants filed the Motion to Dismiss (ECF No. 11). The Motion argues Defendants are entitled to absolute judicial immunity, Plaintiffs lack any

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property right in continued guardianships, and Plaintiffs' claims are barred by *res judicata*. (ECF No. 11). On June 8, 2017, the court held a telephonic hearing in this matter wherein the court raised the issue of whether Plaintiffs' claims are barred under the *Rooker-Feldman* doctrine and subsequently issued an Order on this issue. (ECF No. 16). On June 15, 2017, Plaintiffs filed a Response to the Motion to Dismiss and addressed the *Rooker-Feldman* doctrine. (ECF No. 17). On June 27, 2017, Defendants filed a Reply. (ECF No. 20).

On June 20, 2017, Defendants filed a Motion for CR 11 Sanctions. (ECF No. 18). The Motion seeks costs and attorneys' fees based on Plaintiffs' claims being frivolous. (ECF No. 18). On June 23, 2017, Plaintiffs filed a Response. (ECF No. 19). On June 28, 2017, Defendants filed a Reply. (ECF No. 22).

Both the Motion to Dismiss and Motion for Sanctions were submitted for decision without oral argument.

II. Discussion

A. Motion to Dismiss

To survive a motion to dismiss, the pleading must allege sufficient facts, which, accepted as true, "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In considering a motion to dismiss under Fed.R.Civ.P. 12(b)(6), "the court accepts the facts alleged in the complaint as true." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). However, a claim may be dismissed "based on the lack of a cognizable legal theory." (*Id.*). While a court may not generally consider evidence outside of the complaint in a Fed.R.Civ.P. 12(b)(6) motion, the court may consider "material which is properly submitted as part of the complaint" and documents the complaint

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"necessarily relies" on and whose authenticity "is not contested." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998)). A motion brought under Fed.R.Civ.P. 12(c) is "functionally identical" to a motion under Fed.R.Civ.P. 12(b)(6) and courts apply the "same standard." *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). The "principal difference" between the two motions "is the tim[ing] of filing." (*Id.*).

1. *Rooker-Feldman*

Under *Rooker-Feldman*, "a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court." *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). The doctrine takes its name from two Supreme Court decisions: *Rooker v.Fidelity Trust*, 263 U.S. 413 (1923) and *District of Columbia v. Feldman*, 460 U.S. 462 (1983).

Federal courts must dismiss the complaint "if claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003); *see Worldwide Church of God v. McNair*, 805 F.2d 888, 892 (9th Cir. 1986) ("claims are 'inextricably intertwined' if the district court must 'scrutinize not only the challenged rule itself but the [state court's] application of the rule."). "*Rooker-Feldman* looks to federal law to determine 'whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Bianchi*, 334 F.3d at 900-01 (quoting *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996)); *see also*, (*id.* at 900) (stating the *Rooker-Feldman* doctrine "does not require [the federal court] to determine whether or not the state court fully and fairly adjudicated the constitutional claim. Nor is it relevant whether the state court's decision is res judicata or creates the law of the case under state law.").

Attach. A-8

Plaintiffs argued to the Spokane County Superior Court that the actions taken were unconstitutional, beyond statutory and court rule authority, and were done *ex parte* without notice or opportunity to be heard by Plaintiffs. *See* (ECF No. 1 at ¶¶34, 46-47). When their motion was denied, Plaintiffs appealed to the Washington State Court of Appeals and Washington State Supreme Court. *See* (ECF No. 12-1); *In re Guardianship of Holcomb*, No. 33356-6 (Wash. Ct. App. Div. III); No. 94454-7 (Wash.).

Each of Plaintiffs' six causes of action herein challenges the specific acts taken against Plaintiffs and alleges those acts were unconstitutional. *See* (ECF No. 1 at ¶¶58-67). Plaintiffs seek damages for "the wrongful damage to the businesses of Hallmark and Petersen including the wrongful taking, without due process, of all of the Plaintiff's [sic] goodwill and going concern of their business." (ECF No. 1 at ¶68). To find for Plaintiffs on any one of their claims, the court would have to evaluate and find the acts of the Spokane County Superior Court were unconstitutional. Plaintiffs seek to have this court reverse the decisions of the state court system, which is improper and lies beyond this court's subject matter jurisdiction. It is immaterial that those arguments were rejected on procedural grounds on appeal.

To the extent Plaintiffs bring new claims for damages, those claims are inextricably intertwined with the state court decisions. Awarding damages for loss of business goodwill presumes a finding of unconstitutional conduct by the state court. Such arguments are indistinguishable from the arguments made in the state proceedings. Whether Plaintiffs initiated the state court proceedings is immaterial for the *Rooker-Feldman* doctrine, and Plaintiffs cite no cases suggesting otherwise. To the extent the time to seek modification of the Washington Supreme Court's order denying the motion for discretionary review has not passed, the fact the appeal may be technically ongoing does not prevent application of *Rooker-Feldman*. *See In re Birting Fisheries, Inc.*, 300 B.R. 489, 498 n.9 (9th Cir. 2003); *In re Metcalf*, 92 Wn. App. 165, 175 n.6 (1998).

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For all of the above reasons, the court finds this matter should be dismissed as a *de facto* appeal of state court decisions. Any new claims are inextricably intertwined with the state court decisions and this court could not render judgment for Plaintiffs without disturbing the findings made by the state courts. Additionally, as shown below, the claims are subject to dismissal based on judicial immunity.

2. Judicial Immunity

"It is well settled that judges are generally immune from suit for money damages." *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001); *see Adkins v. Clark County*, 105 Wn.2d 675, 677 (1986) ("It is well settled judges are immune from liability for damages from acts committed within their judicial capacity, even if accused of acting maliciously and corruptly"). "[J]udicial immunity does not apply to non-judicial acts, i.e. the administrative, legislative, and executive functions that judges may on occasion be assigned to perform." *Duvall*, 260 F.3d at 1133; *see Adkins*, 105 Wn.2d at 677-78 ("To find liability, the actions of the defendant judge must be in clear absence of all jurisdiction, not simply in excess of jurisdiction.... acts by a judge or judicial officer will be protected by immunity from civil action for damages if they are intimately associated with the judicial process.").

"[A] judge will not be deprived of immunity because the action he took was in error ... or was in excess of his authority." *Mireles v. Waco*, 502 U.S. 9, 12-13 (1991) (quotation and citation omitted). "Judicial immunity applies 'however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.'" *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). Judicial immunity is only overcome if the actions were "nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity" or were "actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles*, 502 U.S. at 11-12.

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The Ninth Circuit considers four factors to determine whether an act is judicial in nature: (1) "the precise act is a normal judicial function"; (2) "the events occurred in the judge's chambers"; (3) "the controversy centered around a case then pending before the judge"; and (4) "the events at issue arose directly and immediately out of a confrontation with the judge in his or her official capacity." *Duvall*, 260 F.3d at 1133 (quoting *Meek v. County of Riverside*, 183 F.3d 962, 967 (9th Cir. 1999)). "These factors are to be construed generously in favor of the judge and in light of the policies underlying judicial immunity." *Ashelman*, 793 F.2d at 1076; *see also*, (*id.*) ("Jurisdiction should be broadly construed to effectuate the policies supporting immunity").

Washington statutory law states "[a]t 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.... Such action may be taken based on the court's own motion." RCW 11.88.120(1)(a); *see In re Hemrich's Guardianship*, 187 Wn. 21, 26 (1936) ("Acting under the authority of this statute, the court always has power, under proper circumstances, to remove a guardian"). "Although governed by statute, guardianships are equitable creations of the court and it is the court that retains ultimate responsibility for protecting the ward's person and estate." *In re Guardianship of Lamb*, 173 Wn.2d 173, 184 (2011) (quoting *In re Guardianship of Hallauer*, 44 Wn. App. 795, 797 (1986)); *see* RCW 11.92.010 ("Guardians ... shall at all times be under the general direction and control of the court making the appointment."). "The court having jurisdiction of a guardianship matter is said to be the superior guardian of the ward, while the person appointed guardian is deemed to be an officer of the court." *In re Lamb*, 173 Wn.2d at 190 (quoting *Seattle First National Bank v. Brommers*, 89 Wn.2d 190, 200 (1977)).

Contrary to Plaintiffs' argument, the state court could lawfully initiate removal proceedings against Plaintiffs as guardians. As such, Defendants were not acting "in the

Attach. A-11

clear absence of jurisdiction." Rather, the Defendants were acting in a normal judicial function. Whether the statutory procedure was fully followed is immaterial to determine whether judicial immunity attaches. As there is statutory authority for the court to initiate removal proceedings, the court finds Defendants acted in a normal judicial function.

Plaintiffs admit they "have no idea where these events occurred." (ECF No. 17 at 8). The fact Plaintiffs lack personal knowledge is not dispositive in determining whether the events at issue took place in the judge's chambers. All letters were sent on the Superior Court letterhead, and the Order Appointing Special Master bore the signature of Judge Kalama Clark and the seal of the Clerk of the Court. Judge Kalama Clark allegedly stated the Order was presented *ex parte*. This court has no basis to believe these acts were done anywhere other than in the state court judge's chambers. Accordingly, the court finds the acts occurred within the judge's chambers.

As discussed above, the Spokane County Superior Court had the statutory right to initiate removal proceedings. *See* RCW 11.88.120(1)(a). The removal proceedings, while initiated by the court, constitute a case then pending before the court. Plaintiffs' contentions otherwise are unpersuasive. The fact it was initiated by the court does not disqualify it as a pending case, nor does the timing thereof change the analysis. Plaintiffs' claims regarding the failure to follow statutory procedures for removal is not before this court. *See supra* §(A)(1). For these reasons, the court finds the actions of Defendants concerned a then-pending case.

The court observes the unusual factual history of this case where the state court proceedings were initiated by the state court and were not in response to a particular confrontation. However, the fact the matter was initiated by the state court does not make it any less judicial in nature. *See Ashelman*, 793 F.2d at 1078 ("As long as the judge's ultimate acts are judicial actions taken within the court's subject matter jurisdiction, immunity applies."). The entirety of the proceedings were in fact a confrontation with

Attach. A-12

state court judges acting in their judicial capacity. While the state court was the initiator, this court finds the events at issue were immediately and directly related to acts performed in a judicial capacity.

In light of all of the foregoing, the court finds Defendants are entitled to judicial immunity. Based on the court's rulings on the *Rooker-Feldman* doctrine and judicial immunity, the court will not address the other arguments in the Motion to Dismiss.

B. Motion for Fed.R.Civ.P. 11 Sanctions

Defendants' Motion for Sanctions argues: (1) "Plaintiffs' claims are not warranted by existing law or by a nonfrivolous argument for modifying or reversing existing law"; and (2) "[a]ny attorney conducting a reasonable inquiry of the law before filing these claims would have discovered that they are legally baseless." (ECF No. 18 at 3). Plaintiffs assert the Motion for Sanctions "is a red herring - an attempted distraction by a party who is terrified of the facts that will come out through discovery in the course of this action." (ECF No. 19 at 10). The majority of the parties' briefs re-argue the merits of the claims addressed at length in the Motion to Dismiss briefing.

In the Reply, Defendants, for the first time, cite 42 U.S.C. § 1988 as a basis for an award of attorney's fees. *See* (ECF No. 22 at 2). The court will not consider this basis because it was not raised in the Motion for Sanctions and because Defendants do not otherwise argue or establish a basis for an award pursuant to that statute.

"By presenting to the court a pleading, written motion, or other paper ... an attorney ... certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; [and] (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed.R.Civ.P. 11(b)(1)-(2). When the complaint

Attach. A-13

is the focus of a motion brought pursuant to Fed.R.Civ.P. 11, "a district court must conduct a two-prong inquiry to determine (1) whether the complaint is legally or factually baseless from an objective perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before signing and filing it." *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005) (quotation marks and citation omitted). For this test, the term "frivolous" means "a filing that is *both* baseless *and* made without a reasonable and competent inquiry." (*Id.*) (emphasis in original) (citation omitted).

As discussed at length *supra*, the court found Plaintiffs' claims barred under the *Rooker-Feldman* doctrine and by judicial immunity. While Defendants are clearly entitled to dismissal of Plaintiffs' claims, the court does not find Plaintiffs' claims are baseless or frivolous. The fact defense counsel did not raise *Rooker-Feldman* until the court brought it to counsel's attention demonstrates the claims were not objectively baseless. The court does not find counsel failed to conduct a reasonable inquiry before filing the Complaint.

III. Conclusion

Plaintiffs' claims herein are the same and inextricably intertwined with those made in the Washington state court proceedings. Plaintiffs' arguments against application of the *Rooker-Feldman* doctrine are unavailing. Additionally, Defendants are entitled to judicial immunity. While the court finds dismissal appropriate, the court does not find Plaintiffs' claims frivolous or baseless. Accordingly, the Motion to Dismiss is Granted and the Motion for Sanctions is Denied.

IT IS HEREBY ORDERED:

1. The Motion to Dismiss (ECF No. 11) is **GRANTED** as set forth herein.
2. The Motion for CR 11 Sanctions (ECF No. 18) is **DENIED** as set forth herein.

Attach. A-14

3. The Clerk is directed to enter Judgment dismissing the Complaint (ECF No. 1) and the claims therein **WITH PREJUDICE** and without costs or attorneys' fees to any party.

IT IS SO ORDERED. The Clerk is hereby directed to enter this Order and Judgment, furnish copies to counsel, and close this file.

Dated July 27, 2017.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

Attach. A-15

EXHIBIT B

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF Judith Diane Holcomb, et al. Incapacitated Persons.	)	No. *33356-6* **DECLARATION OF KATHLEEN M. O'CONNOR**

I, **KATHLEEN M. O'CONNOR**, declare that:

1. I am currently a Spokane County Superior Court Judge and have served in that capacity since 1988. Prior to being elected to the Superior Court I served as a Superior Court Commissioner for nine (9) years.

2. As part of my duties as a Superior Court Judge, I serve as the Chair of the Superior Court Guardianship Monitoring Committee which in turn is charged with oversight of the Superior Court Monitoring Program.

3. In Washington State, Guardianships, although governed by statute, are nevertheless equitable creations of the courts and it is the court that retains ultimate responsibility for

Attach. B-1

protecting incapacitated persons and their estates. The Guardianship Monitoring Committee is a program within the Superior Court Administrator's Office that facilitates the furtherance of the Court's responsibility to each incapacitated person who is under the protection of a guardianship.

4. In my capacity as chair of the Guardianship Monitoring Program Committee I was aware that Appellant Lori Petersen's License to practice as a Certified Professional Guardian was suspended by the Washington Supreme Court effective April 27, 2015 for a period of one year.

5. Ms. Petersen was the appointed primary guardian in 31 Spokane County Guardianships in Spokane County in April, 2015. In another 93 cases she was appointed as the standby guardian where the primary guardian was listed as a variety of guardianship agencies owned by Hallmark Care Services where she also worked as a bookkeeper.

6. In light of Ms. Petersen's suspension, immediate action was necessary to replace her as the primary or standby

Attach. B-2

guardian. The vast majority of the Guardianships that Hallmark/Petersen were appointed as Guardians at the time of Ms. Petersen's suspension involve incapacitated adults who rely on subsistence level public assistance as their primary or sole source of income. The absence of capable guardians for even a limited period for any of these incapacitated persons could result in catastrophic consequences in their quality of life and to the benefits to which they are entitled.

7. At my request, the Honorable Ellen Clark of the Superior Court issued an Order Appointing Special Master to facilitate the appointment of Guardian Ad Litems who would independently review each guardianship and submit recommendations for successor guardians if required.

8. Appellants in this action, Lori Petersen and Hallmark Care Service, moved for reconsideration of the "Order Appointing Special Master".

9. After being advised of the motion for reconsideration, I requested the assistance of the Office of the

Attach. B-3

Prosecuting Attorney to reply to the motion for reconsideration pursuant to their duty to advise the Superior Court under RCW 36.27.020 (3). See *Neal v. Wallace*, 15 Wn. App. 506; 550 P.2d 539 (1976). With the approval of Superior Court Presiding Judge Salvatore Cozza, Deputy Prosecuting Attorney Steven Kinn was assigned to respond to the motion and I was designated as the contact to advise and consult on the legal issues surrounding the motion for reconsideration. At the same time it was agreed that I would screen myself from the proceedings and not discuss the pending motion for reconsideration with Judge Clark. With the exception of a bond requirement, the motion for reconsideration was denied by Judge Clark and the process to appoint successor guardians proceeded.

10. Since Ms. Petersen's suspension, GALs were appointed in all cases where Ms. Petersen was either the primary or a standby Guardian for Hallmark Care Services. Hearings have been held by other judicial officers with notice to Hallmark and Ms. Petersen and successor guardians appointed.

Attach. B-4

11. I have been informed of Hallmark/Petersen's appeal of the order appointing special master as well as the final judgments issued assessing GAL fees to Hallmark as a result of the process to appoint successor guardians.

12. The real parties in this appeal are the incapacitated persons who now have the necessary oversight and stability of newly appointed successor guardians appointed by the Superior Court. That oversight and stability was jeopardized by the suspension of Lori Petersen as a Certified Professional Guardian.

13. The vast majority of the incapacitated persons in the guardianships currently on appeal are indigent. They lack the resources to obtain legal representation on their own.

14. At the same time, a ruling by the Court of Appeals on the process by which the Superior Court ordered successor guardians to manage this large number of guardianships in the wake of Ms. Petersen's suspension has the potential for impacting the Court's ability to effectively provide guardianship services for vulnerable adults.

Attach. B-5

15. No one legal representative of any one guardianship can adequately represent the interests of the collective of incapacitated persons who will be impacted by the large number of guardianship matters currently on appeal.

16. Therefore, I respectfully request that the Court of Appeals permit Deputy Prosecuting Attorney Steven Kinn and the Spokane County Guardianship Monitoring Program to intervene in a special amicus curiae status to file all necessary affirmative and responsive pleadings pursuant to RAP 1.2 (a), RAP 8.3 and RAP 10.6.

17. All the guardianship appeals appear to have common legal issues and the Court of Appeals has consolidated all 124 cases for review.

18. The appeal also appears to assign error to the process by which appellants were removed as guardians from the cases. As such, permitting Mr. Kinn and the Superior Court Guardianship Monitoring Program to enter under special amicus status will "promote Justice and facilitate the decision of the

Attach. B-6

cases on the merits" under RAP 1.2(a). The Superior Court's input on the facts and legal authority for its process in appointing successor guardians in this large number of guardianships is essential to a complete resolution of the multiple cases on appeal.

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

June 25 2018 Spokane, WA
(Date) (Place) (Signature)

Attach. B-7

EXHIBIT C

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF:	)	No. *33356-6*
	)	**MOTION PERMITTING**
Judith Diane Holcomb, et al.	)	**STEVEN J. KINN SPECIAL**
	)	**AMICUS STATUS**
Incapacitated Persons.	)	**PURSUANT TO RAP 1.2 ,**
	)	**RAP 8.3 AND RAP 10.6**

I. IDENTITY OF THE MOVING PARTY

The Spokane County Guardianship monitoring program, a division of the Spokane County Court Administrator's Office is requesting the Court of Appeals grant it and its legal counsel, Spokane County Prosecuting Attorney Lawrence J. Haskell, by and through his Deputy, Steven J. Kinn with special status to proceed in these appeals amicus curiae.

II. REQUEST TO BE GRANTED SPECIAL AMICUS STATUS

Although not a party to these actions, the Spokane County Guardianship Monitoring Program, a division of the Spokane County Court Administrator is moving to seek the order of this Court to permit Deputy Prosecuting Attorney Steven J. Kinn to enter into the 122 guardianships currently consolidated for review in the

Attach. C-1

capacity of amicus curiae with the authorization to file all necessary pleadings in this matter pursuant to RAP 1.2, RAP8.3 and RAP 10.6.

III. STATEMENT OF FACTS RELEVANT TO THE MOTION

Lori Petersen, d.b.a. Empire Care Services, and Hallmark Care Services Inc., d.b.a. Castlemark Guardian and Trust, and Eagle Guardianship and Professional Services (hereinafter Petersen/Hallmark) are Appellants in 122 separate Spokane Guardianship appeals filed with this Court between May 13th and June 18, 2015. They appeal the orders issued by the Spokane County Superior Court in 122 guardianships where the Superior Court initiated a process involving the removal of Petersen and the Guardianship Agency she was associated with as appointed guardian. The formal process of removal and appointment of successor Guardians initiated by the Spokane County Superior Court were a consequence of Ms Petersen's suspension as a Certified Professional Guardian on April 27, 2015. See order of the Supreme Court Attached and *In the Matter of the Disciplinary Proceeding: Lori A. Petersen Guardian No. 9713,* 180 Wn.2d 768; 329 P.3d 853 (2014).

Attach. C-2

As part of the prosecuting attorney's statutory duty to represent the Superior Courts under RCW 36.27.020(3), Deputy Prosecuting Attorney Steven J. Kinn was requested by the Superior Court to respond and file pleadings in two hearings dealing with the Court's administration of all of the guardianships as a group (Motion Appointing a Special Master for all guardianships and Motion For Production of Records for all Guardianships).

Although the individual successor guardians acting on behalf of the incapacitated persons are the real parties to this action, this Court has already directed responsive pleadings from Mr. Kinn regarding appellant's emergency motion concerning a subpoena duces tecum for the production of guardianship records in all of the guardianships.

The Spokane County Superior Court is respectfully requesting that this Court permit Mr. Kinn to intervene amicus curiae in this action with full authority to file all necessary affirmative and responsive pleadings/briefs on behalf of the Spokane County Superior Court Administrator's Office. The Spokane County

Attach. C-3

Superior Court Administrator's Office monitors guardianships via the Spokane County Guardianship Monitoring Program.

All of the Guardianships on appeal have been consolidated preliminarily by this Court. At the same time the vast majority of the real parties in interest in these appeals are indigents without the resources to defend their interests. Of course, this Court has an obligation to reach a decision on the merits of an appeal without the filing of responsive pleadings even where a party lacks resources to adequately defend the appeal. *See Adams v, Department of Labor and Industries,* 128 Wn.2d 224, 905 P2d 1220 (1995). The interests of arriving at a fully informed decision, however, would best be served then to permit Mr. Kinn to serve amicus in this large volume of guardianships on appeal given the large number of appellees without the necessary resources to participate in the appeal.

RAP 1.2 (a) states:

> These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

Attach. C-4

"[W]here justice demands" under RAP 1.2(a) permits a reviewing Court to depart from the established appellate rules where there is "no discernible or practical prejudice flowing to respondent, no unfairness to the trial judge, and no inconvenience to [the] court." *McClarty v. Totem Electric*, 119 Wn. App. 453, 462, 81 P.3d 901 (2003); citing *Millikan v. Bd. of Dir. of Everett Sch. Dist. No. 2,* 92 Wn.2d 213, 216, 595 P.2d 533 (1979); *King County Republican Cent. Comm. v. Republican State Comm.,* 79 Wn.2d 202, 208, 484 P.2d 387 (1971).

In order to adequately facilitate a decision on the merits of this large number of cases as well promote justice by providing a sufficient response for all of the parties, the Superior Court is respectfully requesting that per RAP 1.2(a) and RAP 8.3, this court permit Mr. Kinn and the Superior Court Monitoring Program amicus status under RAP 10.6 and in addition to expand that amicus status to permit the filing of all necessary pleadings/briefs as are necessary to adequately assist this Court on the issues in contention as a result of these multiple appeals. Certainly, this Court permitting Mr. Kinn to appear as a special amici would assist this Court in resolving the

Attach. C-5

issues before it, and in addition there is "no discernible or practical prejudice flowing to respondent, no unfairness to the trial judge." *McClarty, supra.* This motion is supported by the sworn certificates of the Honorable Kathleen O'Connor, Judge of the Spokane County Superior Court and Ana Kemmerer of the Spokane County Guardianship Monitoring Program.

DATED this 7th day of July, 2015

LAWRENCE HASKELL
Prosecuting Attorney

STEVEN J. KINN, WSBA# 12984
Deputy Prosecuting Attorney

Attach. C-6

SPOKANE COUNTY PROSECUTOR

March 01, 2019 - 2:52 PM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	In the Matter of the Guardianship of: Judith Diane Holcomb
Superior Court Case Number:	-4-04191-

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