

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY *JM*
CLERK

NO: 36222-8-II

COURT OF APPEALS DIV II
OF THE STATE OF WASHINGTON

In re Estates of)	No. 36222-8-II
ALFRED S. PALMER and SARAH)	
L. PALMER,)	
Deceased.)	APPELLANT'S REPLY BRIEF
Respondent)	
DAWN PALMER GOLDEN,)	
Appellant,)	
vs.)	
WORLD GOSPEL MISSION,)	
Respondent.)	

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APPELLANT'S REPLY BRIEF

Comes now the Appellant and in answer to Respondent's Brief states as follows:

The Respondent has cited in its brief numerous documents in its designation of Clerk's Papers that have no basis for inclusion in this appeal in that they were not before the commissioner or the trial court. This matter was argued prior to the trial, February 10, 2007, regarding ownership of certain assets which commenced February 13, 2007 and the oral decision was made on March 2, 2007. Therefore, the court should strike from the Respondent's Clerk's Papers the following:

Declaration of Mailing filed June 28, 204 Cp 75-77

Findings of Fact and Conclusions of Law filed April 13, 2007 Cp
166-1777

Judgment filed April 13, 2007 Cp 178-181

Notice of Appearance filed March 14, 2005 Cp 80

Notice of Appointment of Personal Representative filed June 25,
2004 Cp 72

Notice to Creditors filed June 25, 2004 Cp 73-74

Order Admitting Will to Probate and Appointment of Personal

Representative Cp69 -71

Order Denying Revision filed August 18, 2006 Cp 98-99

Order Determinating Ownership of Assets filed January 19, 2006 Cp
81-82

Report of Trustee filed June 29, 2006 Cp 85-97

The above Respondent's Clerk's Papers were not considered by either the commissioner or the trial court. They either are irrelevant and/or were filed after the trial court heard argument on the petition.

The issue before the court is did the Respondent indulge in the unauthorized practice of law making it subject to the Rules of Professional Conduct, specifically RPC 1,8©. There is no allegation of undue influence nor is that relevant to the matter at hand.

The Respondent throughout its brief refers to and includes alleged facts not before the trial court and not in the record. The first is on page 2 where it states the Palmers attended conferences by World Gospel Missions. There is nothing in the record to support that statement.

On page 5 of its brief it refers to litigation between the Appellant and the Personal Representative/Trustee which is not relevant and the trial on the matter commenced three days after the court heard Appellant's motion to

revise.

On page 6 of its brief it states the trial court claiming the petition was bared by RCW 11.24.010. The trial court did not rule on this issue in that Appellant did not move to revise the Commissioner's ruling on that issue.

The issue of the entering and filing the order denying the motion to revise by the court is clear. The Appellant's attorney did not receive notice of the order and its filing until April 17, 2007 by Mr. Handmacher while discussing another issue relating to the estate.

Even if the court believes the Appellant's attorney received the faxed notice on March 6, 2007, the court rules state the time to file a motion to reconsider is 10 days from date of entry/filing of the order/judgment, CR 59(b), not 10 days from the date of notice to counsel. In this case, the alleged notice was 12 days after entry/filing. The same argument applies to appeals RAP 5.2((a). The Appellant has 30 days from entry/filing of the order/judgment to file an appeal. If Respondent is correct, the Appellant had 18 days to file her appeal. CR 54(f) states that an order entered without notice to counsel is void. The case of **City of Spokane v. Landgren, 107 P.3d 114 (2005)** held that the parties' counsel were present when the court made its decision and the complaining party was not harmed. In this case,

Judge Grant made her decision in private without prior notice to either party and by not notifying Appellant's counsel eliminated the right to move for reconsideration and shortened the time for appeal to 18 days.

In answer to Respondent's Argument B, the declarations of Mark Moor and Dan Fivecoat as to how the trust was drawn up describe the procedure used by any lawyer of law firm that does any estate planning or just drawing simple wills. If that is not the practice of law, lawyers who do this should not be subject to RPC 1.8© in that they are not practicing law when they do estate planning. Obviously a ridiculous position.

Respondent's argument in B 1, page 10 of its brief, states RPC 1.8© has never been applied to trusts. There are no reported cases. However, RPC 1.8© is not limited to testamentary gifts. It states any substantial gift to the attorney or his/her immediate family. Mark Moor and Dan Fivecoat and the other parties mentioned are employees of Respondent whose primary purpose to raise money and obtain testamentary bequests, a common activity of any charitable organization.

The court should strike from page 11 from Respondent's brief the first full paragraph as it refers to matters not considered by Judge Grant.

The Appellant, in her amended petition, requested the bequest to

Respondent in the Palmer Trust be disallowed under RPC 1.8©.

In the Estate of Marks, , 957P.2d 235 (1998), the court held that the Blanford's acted in total good faith and there was no evidence of undue influence. The court even gave the Blanford's their attorney fees but stated that they violated RPC 1.8© and engaged in the unauthorized practice of law and that as such their actions were against public policy. That is what the Respondent engaged in this matter.

The Respondent claims it just filled in the blanks on a preprinted form. However, no such form was presented to the court as an example.

Wherefore, the Appellant requests the court to strike any and all Clerk's Papers designated by the Respondent and references to such documents in its brief and reverse Commissioner Pro Tem Johnson's and Judge Grant's refusal to disqualify the Respondent as a beneficiary under the Palmer trust on the basis that Respondent was engaged in the unauthorized practice of law and its action in drawing the trust violated RPC 1.8© and public policy.

Respectfully submitted by:


John A. Rorem WSBA#4069
Attorney for the Appellant

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

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L. PALMER,)
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WORLD GOSPEL MISSION,)
Respondent.)

No. 36222-8-II

DECLARATION OF SERVICE

I, JOHN A. ROREM, do hereby state under the laws of perjury of the State of
Washington as follows:

That on the 9TH day of August 2007, I, JOHN A. ROREM, did deliver to the offices of
JAMES V. HANDMACHER
P.O. BOX 1533
TACOMA, WA 98401 and
DOUG KIGER
3408 SO. 23RD
TACOMA, WA 98405
a copy of the Appellant's Reply Brief

DECLARATION OF MAILING

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SIGNED AT GIG HARBOR, WASHINGTON ON 9th DAY OF AUGUST, 2007.


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