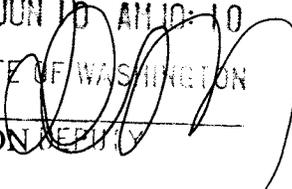


FILED  
COURT OF APPEALS  
DIVISION II

08 JUN 10 AM 10:10

STATE OF WASHINGTON  
BY 

NO. 36682-7

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

R. SIDNEY SHAW, PERSONAL REPRESENTATIVE OF THE  
ESTATE OF GARY DELGUZZI and DAVID L. MARTIN,

Appellant,

v.

THE ESTATE OF JACK DELGUZZI,

Respondent.

---

BRIEF OF RESPONDENT KATHRYN A. ELLIS

---

Kathryn A. Ellis, WSBA #14333  
Attorney for Respondent  
600 Stewart Street, Suite 620  
Seattle, WA 98101

## TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. STATEMENT OF CASE	1
A. Summary	1
B. Procedural Facts	2
II. ARGUMENT	7
A. The 1998 Order Approving the Final Report is final.	7
B. The prior distribution orders of 2005 and 2006 were final for purposes of appeal.	10
C. The July 2007 order was in compliance with the Order Approving Final Report and other distribution orders previously entered.	13
D. This appeal is frivolous, advanced without reasonable cause, and attorney fees and costs should be awarded against Appellant and his counsel pursuant to RAP 18.9.	15
III. CONCLUSION	16
RESPONDENT'S APPENDIX	
1. Motion, Subjoined Declaration & Order to Show Cause	
2. Order Denying Motion for Order to Show Cause	
3. Motion for Reconsideration of the Denial of Plaintiff's Motion for Order to Show Cause	
4. Order Denying Motion for Reconsideration	

## TABLE OF AUTHORITIES

### CASES

<i>Batey v. Batey</i> , 35 Wn.2d 791, 795 (1950)	9
<i>Ryan v. Plath</i> , 18 Wn.2d 839, 140 P.2d 968	9
<i>Farley v. Davis</i> , 10 Wn.2d 62, 116 P.2d 263	9
<i>Castanier v. Mottet</i> , 14 Wn.2d 615, 128 P.2d 974	9
<i>In re Christianson's Estate</i> , 16 Wn.2d 48, 132 P.2d 368	9
<i>In re Doane's Estate</i> , 64 Wash. 303, 116 Pac. 847	9
<i>Bostock v. Brown</i> , 198 Wash. 288, 292 (Wash. 1939)	9
6 <i>Moore's Federal Practice</i> para. 54.43[2] (2d ed. 1965)	11
<i>Beebe v. Russell</i> , 60 U.S. (19 How.) 283, 285, 15 L. Ed. 668 (1857)	11
<i>Nestegard v. Investment Exchange Corp.</i> , 5 Wash. App. 618, 624, 489 P.2d 1142 (1971)	12
<i>Tucker v. Brown</i> , 20 Wn.2d 740, 799 (1944)	12
<i>In re Estate of Ginsberg</i> , 136 Wn. App. 1029 (2006)	13
<i>In re Estate of Ehlers</i> , 80 Wn. App. 751, 761, 911 P.2d 1017 (1996)	13

### STATUTES

RCW 11.76.030	2, 7 & 9
RCW 96A.020	13

### RULES

RAP 5.2 (a)	8
RAP 2.4	14 (fn3)
RAP 18.9	15 & 17

Assignments of error: Were the orders entered between 1998 and 2007 entered improperly?

Issues pertaining to the assignments of error:

1. Was the 1998 Order approving the Plan of Distribution a final order subject to appeal.
2. Were the 2005 and 2006 Distribution orders final orders subject to appeal.
3. Was the closing order entered in July of 2007 entered in compliance with the 1998 Order approving Plan of Distribution.

## I. STATEMENT OF THE CASE

### A. Summary.

Jack Delguzzi passed away in 1978. Initially, his son, Gary Delguzzi, was the first Personal Administrator of his estate. William Wilbert became the Personal Administrator in 1982. The Final Report filed by Mr. Wilbert was approved by the superior court on June 5, 1998. The vast majority of the assets of the estate had been liquidated at the time the Final Report was approved. After the Final Report was approved, Mr. Wilbert continued to serve as the administrator of the estate and so served until his death on March 24, 2004. On July 1, 2004, after Mr. Wilbert's death, an accounting of his post 1998 administration was filed. (CP \_\_\_\_; Sub # 1142)

David Martin, Appellant herein, was subsequently appointed temporary Personal Administrator on August 8, 2004.

Respondent Kathryn A. Ellis was appointed as the fourth Personal Administrator on the 7<sup>th</sup> day of January, 2005, with limited duties to liquidate the remaining real property and close the case. (CP 1859) Respondent Ellis liquidated the remaining properties, filed an accounting, and an order approving closure of the estate was entered by the superior court on July 27, 2007. That July 2007 closure order is the subject of this appeal. (CP 2488)

B. Procedural Facts.

On December 17, 1996 William Wilbert filed a Final Report and Petition for Decree of Distribution. (CP 1746) On or about January 20, 1997 Wilbert filed a Supplement to Final Report and Petition for Decree of Distribution, all pursuant to RCW 11.76.030. (CP 1189, 1263, 1363, 1464 & 1564) After testimony and evidence were taken, on October 16, 1997 the trial court issued a Memorandum Decision on the Final Report of Wilbert which provided:

The Administrator, William E. Wilbert, filed a Final Report and Petition for Distribution pursuant to RCW 11.76.030. The Report and Petition included a comprehensive accounting for the Estate during the period of his administration. The Court heard testimony

and evidence from the Administrator and other interested persons regarding the approval of the Final Report and the Accounting during the periods of January 21 through 23, 1997, and March 24 and 25, 1997. .... It appears to this Court, having heard the testimony and reviewed the documents made part of the record at the hearings in January and March, that this Estate is ready to be settled and closed or at least as ready to be settled and closed as it will ever be. In light of the length of time this Estate has been open and in light of the complexity of the Estate, it appears to this Court that the most orderly way to proceed is for the Court to address the issues contested in January and March regarding administrative expenses and other claims and then allow the parties to attempt to reach an agreement regarding distribution in light of the Court's decision.

(CP 1966; 2566) An agreement regarding the 'plan' for distribution was not reached and, accordingly, the Court entered a subsequent Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution on June 5, 1998. (CP 1959; 2559) That Order provided:

3. **Plan for Distribution and Closing the Estate.**

\*\*\*

- e. The administrator is authorized to accept on behalf of the Estate an offer to purchase any parcel of Estate real property at a price equal to or greater than the property's current assessed value.  
\*\*\*
- g. The administrator is authorized and directed to proceed to liquidate Delhur Inc. and Cedarwood Inc., and with notice to all parties, including but not limited to payment of any outstanding liabilities of each corporation, preparation and filing of final tax returns .... dissolving the corporations...
- h. Following notice of the same to all interested parties, the administrator is authorized to pay from

assets of the Estate all necessary and reasonable fees of the administrator, attorneys, and accountants for time spent on matters relating to carrying out the plan for distribution and closing the Estate, and all other necessary and reasonable expenses incurred in continuing the administration to the Estate or in carrying out the plan for distribution and closing the Estate.

- i. The administrator is authorized and allowed with prior notice to all parties to make pro rata interim distributions to the three administrative claimants in partial satisfaction of their approved administrative claims.

\*\*\*

1. **This order is entered as a final order on this day.** (Emphasis supplied).

(CP 1959; 2559) No appeal was filed by any party to the entry of the June 5, 1998 Order approving the Report and Plan for distribution.

After the Report was approved and before he died, Wilbert proceeded to liquidate the remaining real estate (with the exception of the 19 parcels remaining in 2005). Mr. Wilbert also liquidated both Delhur Inc. and Cedarwood Inc., and caused final tax returns to be filed with the IRS reporting the liquidation and distribution of all assets in 1999 and 2000. (CP \_\_\_; Sub # 1142)

On July 1, 2004, after Mr. Wilbert passed away, an accounting was filed with consolidated balance sheets, showing Mr. Wilbert's 1998 - 2004 administration of the case. (CP \_\_\_; Sub # 1142) The accounting

and attached documentation showed, *inter alia*, the receipt and disposition of funds since the Final Report was approved. That accounting and report also identified nineteen remaining pieces of undeveloped real estate for liquidation. That accounting and report also confirmed that all of the entities in which the deceased had been involved, including Cedarwood Properties Inc., had been liquidated and final federal income tax returns had been filed. (CP \_\_\_; Sub # 1142)

After Mr. Wilbert's death, Appellant Martin was appointed temporary administrator of the estate on August 9, 2004<sup>1</sup>. (CP 1865) When Martin was not approved as the permanent administrator of the estate, he was ordered on February 11, 2005 to file an accounting and surrender all records to Respondent Ellis, both of such acts to be completed by March 1, 2005. (CP \_\_\_; Sub # 1247) Mr. Martin filed an 'accounting' (Report of Former Administrator David L. Martin filed March 1, 2005) stating that he had neither collected or liquidated anything and he therefore distributed nothing during his 'administration'. (CP \_\_\_; Sub # 1248)

---

<sup>1</sup> Gary Delguzzi died in 2004. Initially, the representative of the Gary Delguzzi estate was E. Sidney Shaw. Thereafter, Appellant Martin was appointed the representative of the Gary Delguzzi estate.

When the fourth administrator of this estate was appointed, the estate was grossly administratively insolvent; there were approved and unpaid professional fees in the aggregate sum of \$2,025,038.00 owed to Wilbert, Short & Cressman and Benson & McLaughlin, and assets remained with an assessed value of only \$244,000. (CP 1959; 2559) The Order appointing Respondent Ellis provided that her efforts were to be “directed towards the winding up of the Estate as far a tangible, known assets” were concerned, to “sell and liquidate the remaining Estate parcels” and “provide the Court with an updated final accounting”. That order further relieved Respondent Ellis “from any liability arising out of the omissions, conduct and/or actions of any prior administrator, their agents, or attorneys” and prohibited her from processing or pursuing claims against prior administrator Wilbert:

Unless otherwise ordered by the Court, the Administrator of the Estate of Jack Delguzzi shall not process or pursue the claim against the Estate of William E. Wilbert pending final resolution of the case of Estate of Gary Delguzzi vs. Estate of William E. Wilbert, et al.

(CP 1859)

In accordance with the order appointing Respondent Ellis, the remaining properties were listed for sale, with no objection to the sales by

any party. The superior court approved disbursement of the funds pursuant to prior orders entered, with notice to all parties. No appeal was taken from those prior distribution orders. Ellis had previously liquidated assets and distributed proceeds in the amount of \$355,000.00, pro rata, to the three approved administrative claimants. This appeal only addresses the third and final distribution by Ellis, an order entered in July 2007, an Order that attempted to distribute the remaining funds of \$15,643.45, transfer the remaining real estate and close the case. (CP 1784)

## II. ARGUMENT

### A. The 1998 Order Approving the Final Report is Final.

RCW 11.76.030 provides:

When the estate shall be ready to be closed, such personal representative shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his previous report, and debts paid, and generally the condition of the estate at that time. **...and shall give a particular description of all the property of the estate remaining undisposed of**, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative.  
(Emphasis supplied)

The vast majority of the assets of this estate were liquidated prior to the

Order approving the Final Report, but some assets remained for liquidation. The Order approving the Final Report was entered 10 years ago, and no appeal was filed. The June 5, 1998 Order provided, *inter alia*, that fees and costs were allowed to William Wilbert in the amount of \$806,661.00, Short Cressman & Burgess in the amount of \$1,077,204.00 and Benson & McLaughlin in the amount of \$141,173.00. The 1998 Order also provided:

The administrator is authorized and allowed with prior notice to all parties to make pro rata interim distributions to the three administrative claimants in partial satisfaction of their approved administrative claims; provided, however, that the administrator retains in the Estate sufficient liquid assets to meet all necessary and reasonable expenses of the continuing administration of the Estate until it is closed or to carry out the plan for distribution and closing the Estate. Any pro rata Interim distribution shall be based on the ratio of the amount of each administrative claim to the total amount of all three administrative claims.

RAP 5.2 (a) requires that an appeal be filed within 30 days of the entry of the decision of the trial court sought to be reviewed, subject to certain post-trial motions. No appeal was filed regarding the Order approving Final Report and Administrative Fees in 1998, and accordingly it is final.

It is well settled that an order approving a Final Report of an administrator in a probate proceeding is a final order. Indeed, the

Washington Supreme Court long ago confirmed that this had always been the rule. In *Batey v. Batey*, 35 Wn.2d 791, 795 (1950), the Court noted:

The order of the probate court approving the guardian's final account is a final judgment and is entitled to the same consideration as any final judgment entered by the superior court.

Our decisions to this effect are referred to in *Ryan v. Plath*, 18 Wn. (2d) 839, 140 P. (2d) 968, where this court said:

"Appellant recognizes the **settled law in this state that orders and decrees of distribution made by superior courts in probate proceedings upon due notice provided by statute are final adjudications** having the effect of judgments in rem and are conclusive and binding upon all persons having any interest in the estate and upon all the world as well. See the following recent decisions of this court upon this question, and the many prior decisions cited therein: *Farley v. Davis*, 10 Wn. (2d) 62, 116 P. (2d) 263; *Castanier v. Mottet*, 14 Wn. (2d) 615, 128 P. (2d) 974; *In re Christianson's Estate*, 16 Wn. (2d) 48, 132 P. (2d) 368." (Emphasis supplied)

Wilbert's report and accounting in 1997 and 1998 were filed pursuant to RCW 11.76.030, were approved and a plan for distribution was ordered.

The order in probate upon the statutory published notice approving the executor's final account and the decree of distribution is final and res adjudicata of all matters covered by that order and all questions that should have been raised at the hearing upon the final account and petition for distribution. *In re Doane's Estate*, 64 Wash. 303, 116 Pac. 847.

*Bostock v. Brown*, 198 Wash. 288, 292 (Wash. 1939). As there was no appeal of that order, it is final and res judicata on "all matters covered"

and “all questions that should have been raised” at the time of the hearing.

B. The prior distribution orders of 2005 and 2006 were final for purposes of appeal.

The two prior distributions made by Respondent Ellis were made in accordance with the 1998 Order Approving Final Report, all with prior notice to the parties. Neither of the prior orders approving distributions were appealed.

Specifically, the Respondent filed a motion in December 2005 to approve distribution of the sum of \$275,000.00 pro rata to the administrative claimants. (CP \_\_\_\_; Sub # 1317) In response to the Motion for Partial Distribution, Appellant objected to distribution of the proceeds from the sale of the Three Sisters’ Property. (CP 1847)

Appellant filed a cross-motion to have the superior court declare that the proceeds from the sale of the Three Sister’s properties were held in constructive trust for Appellant. (CP 1847) That cross motion was denied, and the superior court ordered the distribution of the funds from the sale of the Three Sister’s property. An Order on Motion for Partial Distribution was entered on December 22, 2005. (CP 2553) No appeal was taken from that order. Accordingly, distribution was made in accordance with that order, paying \$275,000.00, pro rata, to the three

administrative claimants.

An Annual Report was filed in January of 2006 summarizing the properties sold, including the sale of the Three Sister's Property, and the distribution of funds from the same. (CP \_\_\_; Sub # 1344) No objection was filed to that Annual Report regarding the sale and distribution of the proceeds.

A second motion for distribution was filed on May 18, 2006, seeking permission to distribute \$80,000.00, pro rata, to the three administrative claimants. (CP \_\_\_; Sub # 1383) The Court approved that second distribution, and no appeal was taken from that order. (CP 2549) Accordingly, the sum of \$80,000.00 was distributed in accordance with that order.

The plan for distribution provided for the liquidation of the remaining property and distribution of the proceeds.

A final decree of distribution in probate may direct the payment of particular claims or legacies, and may direct that receipts be filed in order to show compliance with the decree, yet the necessity of taking these subsidiary steps, even if they must be confirmed by order subsequent to the decree, does not make the final decree of distribution any less final for purposes of appeal. In *6 Moore's Federal Practice* para. 54.43[2] (2d ed. 1965), the definition of a final decree is quoted from *Beebe v. Russell*, 60 U.S. (19 How.) 283, 285, 15 L. Ed. 668 (1857):

A "decree may be final, although it directs a reference to a master, if all the consequential directions depending upon the result of the master's report are contained in the decree, so that no further decree of the court will be necessary, upon the confirmation of the report, to give the parties the entire and full benefit of the previous decision of the court." . . . Also a decree may be final although leave is given to apply for further relief, or the court reserves the right to make further orders.

*Nestegard v. Investment Exchange Corp.*, 5 Wash. App. 618, 624, 489

P.2d 1142 (1971). The subsequent distributions were made in accordance with the 1998 plan for distribution, and there was no appeal from any of those interim distribution orders.

These cases hold that the superior courts sitting in probate are courts of general jurisdiction, including all matters in probate. That interim orders made during the course of probate after notice of the hearing are final in their nature and cannot be attacked or litigated at the hearing upon the final report. There can be no quarrel with the rules of law put forth by appellant.

*Tucker v. Brown*, 20 Wn.2d 740, 799 (1944). As there was no appeal taken to either of the interim distribution orders, there can be no collateral attack by the Appellant now to the distribution orders of the superior court in 2005 and 2006. This appeal can only address the final order of 2007 that attempted to close the case.

C. The July 2007 order was in compliance with the Order Approving Final Report and other distribution orders previously entered.

On the 6<sup>th</sup> day of July, 2007, Respondent Ellis filed a Final Supplemental to Final Report, showing the proposed final distribution of the remaining funds of \$15,643.45 collected during her tenure, and the proposed transfer of the remaining ‘unsaleable’ real estate in lieu of further distribution to one remaining administrative claimant. (CP 261 & 267) An Order was entered approving the final proposed distribution, closing the case and discharging the bond of the Personal Administrator. (CP 1784) This is the only order that is the proper subject of this appeal.

RCW 11.96A.020 confers plenary power on the probate court. The court has “full power and authority” to proceed “in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court”. *In re Estate of Ginsberg*, 136 Wn. App. 1029 (2006). A trial court’s decision to remove a personal representative receives considerable deference and is reviewed only for an abuse of discretion. *In re Estate of Ehlers*, 80 Wn. App. 751, 761, 911 P.2d 1017 (1996). Review of this last order closing the case must be limited to whether the entry of the closure order was an abuse of

discretion. No abuse is argued or shown by Appellant.

Instead, Appellant vociferously complains about the actions of all parties and all counsel ever involved in this proceeding, but such allegations are not the subject of this appeal<sup>2</sup>. All of Appellant's rambling about orders entered between 1997 and 2006 are irrelevant to the sole order that is the subject of this appeal. The only order that is the subject of this appeal is the one order attached to the Appellant's Notice of Appeal<sup>3</sup>.

The July 2007 order was entered pursuant to a motion of the Personal Administrator with a re-capitulation of funds collected during her tenure, and the proposed distribution of the remaining funds. In July 2007, the superior court only addressed the final distribution of the sum of

---

<sup>2</sup> The Appellant has also sued Short, Cressman & Burgess, Chicoine & Hallett and Larry Johnson. King County Superior Case Number 06-2-27262-5SEA. That action has been dismissed with prejudice, and violation of Rule 11 has been found. Sanctions have been awarded to Short Cressman against Shaw and Mr. Cruikshank in the amount of \$540,379 and to Chicoine & Hallett in the amount \$291,624. The amount of sanctions awarded to Larry Johnson against the plaintiff and counsel is under advisement by the Honorable Glenna Hall. Appellant and Cruikshank have also filed independent actions against Kathryn A. Ellis, King County Case Number 07-2-21635-9SEA, and the estate of William Wilbert, King County Case Number 06-2-0185-2SEA. Those two actions are still pending as no dispositive motions have yet been filed.

<sup>3</sup> Although the Appellant filed an "Amended Notice of Appeal" in December of 2007, this Amended Notice attached an unrelated order not involving the Respondent or affecting the Order originally appealed from. This is ineffective to change the Order that is the subject of this appeal. RAP 2.4.

\$15,643.45, and the real estate known as 9999 Bumpy Rd, Port Angeles, WA<sup>4</sup>. The July 2007 application requested the court to approve the proposed final distribution, calculated in accordance with the various prior orders of the Court, discharge the Personal Administrator and discharge the bond. Where the trial court enters an order in compliance with a prior, final order, there can be no showing that it was an “abuse of discretion”.

D. This appeal is frivolous, advanced without reasonable cause, and attorney fees and costs should be awarded against Appellant and his counsel pursuant to RAP 18.9.

RAP 18.9 provides that the Court may award terms or compensatory damages to a party who has been harmed by a frivolous appeal and/or the failure to comply with the rules. As this is an administratively insolvent estate, plainly the Personal Administrator and the professionals with outstanding, unpaid awards of fees and costs of over \$2 million have been harmed by the delays and cost of this frivolous appeal. The Appellant and counsel have shown no basis in law or fact for

---

<sup>4</sup> The remaining pieces of real estate were believed to be unsaleable. However, when an ‘offer’ of \$1,200.00 was received, the Personal Administrator was authorized “in her sole discretion, to sell the parcels” providing that the parcels could be sold on the terms represented: no formal closing, no fees or costs to be paid by the estate, and the transfers to be by Quit Claim Deed and without warranty. When that was accomplished, the amount to be distributed was increased by \$1,200. This provision was inserted by hand to the July 27, 2007 order.

the appeal of the July 27, 2007 order closing this estate. The allegations that are made by the Appellant and counsel simply regurgitate complaints that pertain to the Court's approval of the Final Report and the award of fees, orders that were final over ten years ago and which the Appellant failed to appeal.

### III. CONCLUSION

Ironically, the Appellant previously complained that the estate was not closed, and sought to compel the Personal Administrator to close the estate even though all assets were not liquidated and a final tax return had not been filed:

The Plaintiff is merely asking the Court to instruct the administrator, as it did on June 5, 1997 [sic], that the estate is ready to be closed and to close it. The prior administrator, Mr. Wilbert, ignored the Court's mandate and the estate limped along for another nine plus years, and continues to be open today wasting others' time and its money.

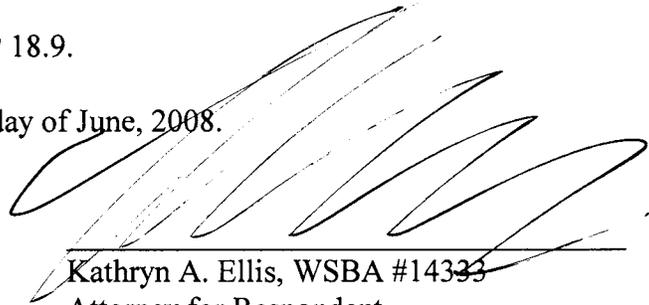
Plaintiff's Reply Re: Order Directing Closure of Estate dated May 11, 2006. (CP \_\_\_; Sub # 1380) Now, the Appellant objects to the closure of the case, and appeals the entry of an order approving the same.

To add insult to injury, while this appeal was pending, the Appellant sought to have the Respondent held in contempt of court for not

distributing the funds and property that are the subject of the order that is the subject of this appeal. **See appendix.** That attempt has been denied by the trial court, on two occasions. **See appendix.**

The senseless litigation that the Appellant and his counsel have generated in this case must come to an end. Judicial resources should not be wasted on this type of frivolous litigation, and parties and counsel should not have to bear the cost and the loss on their own given the litigiousness demonstrated by Appellant and his counsel. There should be finality to this thirty year old probate case. The appeal from the July 2007 order closing this case is baseless, the superior court's order should be affirmed, and fees and costs should be awarded against Appellant and his counsel pursuant to RAP 18.9.

DATED this 5<sup>th</sup> day of June, 2008.



Kathryn A. Ellis, WSBA #14333  
Attorney for Respondent  
600 Stewart Street, Suite 620  
Seattle, WA 98101  
(206) 682-5002

C:\Shared\KAE\Doc\DelGuzzi\Closing Appeal\delguzzi\_brief\_2.wpd

# RESPONDENT'S APPENDIX 1

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  
27  
28

CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>In re the Estate of Jack Delguzzi,  Deceased  Estate of Gary Delguzzi,  Plaintiff  v.  Estate of William E. Wilbert,  Defendant</p>	<p>No. 8087  MOTION, SUBJOINED DECLARATION &amp; ORDER TO SHOW CAUSE</p>
--	--

Comes now counsel for the Plaintiff, who moves for Order Tor Show Cause directed to Administrator Ellis requiring her to show cause, if any she may have, why she has failed and refused to comply with this court's Orders of July 29, 2007 and March 21, 2008, and why she should thus not be adjudicated to be in contempt of court for failure to obey the lawful orders of this Court and to further show cause why such contempt should not be punished by fines and/or confinement until such time as Ms. Ellis is in compliance with those Orders and why she, as a fiduciary and officer of the court should not be sanctioned by order requiring her to pay plaintiff the reasonable attorney fees and costs in the amount of \$1,000.00 incurred in bringing this matter on for hearing.

On March 21, 2007, an order was entered by this Court [Exhibit A] requiring Ms. Ellis to comply with the Order of Judge Leonard Costello dated July 27, 2007

MOTION, SUBJOINED  
DECLARATION & ORDER  
TO SHOW CAUSE

Charles M. Cruikshank III  
108 So. Washington St. #306  
Seattle, Washington 98104  
206 624-6761 WSB #6682

1 [Exhibit B] which directed that Ms. Ellis was to sell the remaining real properties of the  
2 estate, file and serve proof of receipt of the funds for these sales, to distribute of the  
3 purported sole remaining asset of the estate, a parcel of real property known as 9999  
4 Bumpy Road in Port Angeles and to distribute the proceeds held by the estate to certain  
5 administrative claimants and that consequently the estate would be closed as a result of  
6 these transactions actions.

7 The order of March 21 required Ms. Ellis to complete the requirements of the  
8 July 27, 2007 Order "as soon as possible".

9 A copy of this Order was served upon her on March 26th, [Exhibit C] by the  
10 undersigned, and which included the request that she obey the Orders of July 27 and  
11 March 21 and requesting that she advise of taking steps to accomplish such actions no  
12 later than Friday, April 4<sup>th</sup>, 2008.

13 On April 1, Ms. Ellis filed an accounting, not under oath as required by statute,  
14 (Annual Report re: Sale of Assets) [Exhibit D] which included her argument that she  
15 should not be required to disburse the remaining funds and distribute the remaining parcel  
16 of real estate and thus close the estate as she may wish to make a claim against the estate  
17 at some time in the future for acts related to her performance of her duties as  
18 administrator of the estate. The Report states:

19 The Personal Representative has not issued the final checks  
20 to Short, Cressman & Kathryn A. Ellis, Estate of William  
21 Wilbert Benson & McLaughlin, the Estate of William  
22 Wilbert, or transferred the real property located at 9999  
23 Bumpy Rd, Port Angeles, WA to Benson & McLaughlin  
due to the appeal from that order dated July 27, 2007; there  
would be no funds to pay the annual bond fee nor the  
Personal Administrator's [sic] counsel to defend the order  
on appeal if these final funds are dissipated.

24 On April 8, Ms. Ellis was again requested to close the estate as ordered. [Exhibit  
25 E] R.C.W. 11.76.190 was also called to her attention, which statute addresses these very  
26 circumstances by providing that the estate representative may pay over to the registry of  
27 the court funds to as to which there may be contingent or contested claims.

1           When no response was received to my request she was requested to accept service  
2 of the Order to Show Cause by mail, but did not respond. [Exhibit F]

3           To date, Ms. Ellis has offered no justification or evidence of her intent to obey the  
4 lawful Orders of this Court.

5           Plaintiff now moves for Order of Contempt including suitable sanctions against  
6 Ms Ellis until such time as she fully complies with the orders of the court.

7           Dated this April 14, 2008.

8

9

\_\_\_\_\_  
Charles Cruikshank

10

11

SUBJOINED DECLARATION OF CRUIKSHANK

12

13

14

I am of the age of majority and otherwise fully competent to testify and I make  
this declaration of my personal knowledge where stated to be made on information and  
belief and as to that testimony, I believe it to be true.

15

16

17

1. Attached hereto are Exhibits A and B, which are true and accurate copies of  
orders of this court which were entered respectively on March 21, 2008 and July  
27, 2007.

18

19

2. Attached hereto is Exhibit C, a true and accurate copy of a letter that I wrote and  
mailed to Kathryn Ellis on March 26, 2008.

20

21

3. Attached hereto is Exhibit D, a true and accurate copy of the unsworn "Annual  
Report Re: Sale of Assets" received from Ms Ellis on April 1, 2008.

22

23

24

4. Attached hereto is Exhibit E, a true and accurate copy of a letter that I wrote to Ms  
Ellis on April 8, 2008 and that I sent by 1<sup>st</sup> class and electronic mail to her on that  
date.

25

26

27

5. Attached hereto is Exhibit F, a true and accurate copy of a letter that I wrote to Ms  
Ellis on April 8, 2008 and that I sent by 1<sup>st</sup> class and electronic mail to her on that  
date.

28

1 6. I have spent approximately 2 ½ hours in research, arranging for this Motion to be  
2 heard, dictating and preparing the motion, writing letters to Ms Ellis and I  
3 anticipate another hour, at the very least, will be required to prepare and attend for  
4 the hearing at my regular hourly rate for litigation matters of \$300.00 per hour.

5 Dated and signed at Seattle, Washington under penalty of perjury on this April 14,  
6 2008.

7   
Charles Cruikshank

9 **ORDER TO SHOW CAUSE:**

10 THIS MATTER having come on for hearing on Plaintiff's Motion for Order to  
11 Show Cause, ex parte, and for good cause shown,

12 IT IS HEREBY ORDERED that Kathryn A. Ellis, Administrator of the estate of  
13 Jack Delguzzi, is hereby Ordered to appear before this Court on May 2, 2008, at the hour  
14 of 1:00 p.m., and then and there show cause, if any she has, why she should not be  
15 adjudicated in contempt of Court and sanctioned accordingly until she complies with the  
16 Orders of the Court regarding closure of the estate.

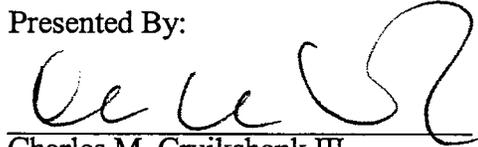
17 IT IS FURTHER that Ms Ellis is also then and there to show cause, if any she has,  
18 why she should not be ordered to pay sanctions to the Plaintiff herein in the amount of  
19 \$1,000 for costs and attorney fees incurred in bringing on this Motion and Order to Show  
20 Cause.

21 Dated this . . . of April 2008.

*denied 4/22/08 car*

22  
23 ~~JUDGE CRADDOCK VERSER~~

24  
25 Presented By:

26   
27 Charles M. Cruikshank III  
Attorney for the Plaintiff

28 MOTION, SUBJOINED  
DECLARATION & ORDER  
TO SHOW CAUSE

Charles M. Cruikshank III  
108 So. Washington St. #306  
Seattle, Washington 98104  
206 624-6761 WSB #6682

FILED  
CLALLAM CO CLERK  
2008 MAR 21 A 11: 38  
BARBARA CHRISTENSEN

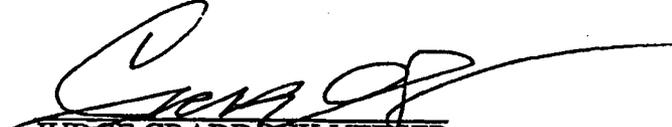
CLALLAM COUNTY WASHINGTON SUPERIOR COURT

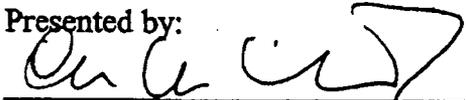
In re the Estate of Jack Delguzzi, Deceased	No. 8087
Estate of Gary Delguzzi, Plaintiff/Petitioner	ORDER DIRECTING FILING OF ANNUAL REPORT OR FILING OF RECEIPTS
v.	
Estate of William E. Wilbert, et al, et ux.	

Plaintiff having regularly moved for order requiring that Administrator Ellis file and serve proof of the sales of assets and/or file her annual report and with this motion having come on regularly for hearing on this 21<sup>st</sup> of March 2008,

IT IS ORDERED that Administrator Ellis shall file and serve the ~~above~~ receipts, vouchers, checks and/or accounting no later than \_\_\_\_\_, or that she shall file *showing disbursements and distribution of* and serve her annual report by that date detailing such of her incomplete duties as were *the remaining property of this estate as* required by this court's order of July 27, 2007, *including parcels listed in exhibit "U" as referenced by that order, as soon as possible.*

*ack  
3/21/08*

  
JUDGE CRADDOCK VERSER

Presented by:  
  
Charles M. Cruikshank III, attorney for  
R. Sidney Shaw, Personal Representative of Gary Delguzzi

ORDER DIRECTING FILING OF  
ANNUAL REPORT OR FILING  
OF RECEIPTS- 1 -

Charles M. Cruikshank III  
108 So. Washington St. #306  
Seattle, Washington 98104  
206 624-6761 WSB #6682

SCANNED -1

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  
27  
28

RECEIVED

JUL 31 2007

Cruikshank Law Offices, P.S.

The Honorable Leonard W. Costello  
Hearing Date: June 29, 2007  
Hearing Time: 1:30 p.m.

EXHIBIT B

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

In the matter of the estate of

No. 8087

JACK DELGUZZI,

ORDER ON FINAL SUPPLEMENTAL TO  
FINAL REPORT AND PETITION FOR  
DECREE OF DISTRIBUTION

Deceased.

THIS MATTER having come on before the Honorable Leonard W. Costello of Kitsap County Superior Court upon the Final Supplemental to Final Report and Petition for Decree of Distribution filed by the successor Personal Representative, Kathryn A. Ellis, the Court having reviewed any response thereto or objection, now therefore

IT IS HEREBY ORDERED that the Personal Representative's final supplemental to the Final Report shall be and is hereby approved.\*

IT IS FURTHER ORDERED that the Personal Representative shall be and is hereby authorized to distribute the remaining property and proceeds in accordance with the final supplemental to Final Report.

IT IS FURTHER ORDERED that the Personal Representative shall be and is hereby discharged and her bond released.

IT IS FURTHER ORDERED that this estate shall be closed upon the filing of receipts

//

//

//

KATHRYN A. ELLIS, ESQ.  
600 Stewart St  
Suite 620  
Seattle, WA 98101  
(206) 682-5002

1 showing disbursement and distribution of the remaining property of this estate.

2 DONE IN OPEN COURT this 27 day of July, 2007.

3  
4   
5 Hon. Leonard Costello

6 Presented by:

7   
8 Kathryn A. Ellis, WSBA#14333  
9 Personal Representative  
C:\Shared\KA\Doc\DelGuzzi\FinalReport\_supp\_ord.wpd

10 *KAZ* \*It is further ordered that the personal  
11 representative is authorized, in her sole  
12 discretion, to sell the parcels listed in  
13 exhibit "u" to the Plaintiff's Objections to  
14 Final Supplemental to Timberland Holdings  
15 LLC, on the terms set forth in Exhibit "u".  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Cruikshank Law Offices**  
108 So. Washington Street #306  
Seattle, Washington 98104  
206 624-6761  
[cruiklaw@olympus.net](mailto:cruiklaw@olympus.net)

EXHIBIT 

March 26, 2008

Ms Kathryn A. Ellis  
600 Stewart Street. #620  
Seattle, WA 98101

Re: Estate of Jack Delguzzi

Dear Ms Ellis:

On March 21, 2008, Judge Verser entered the enclosed order that directs you to comply with Judge Costello's Order of July 27, 2007 "as soon as possible."

I believe that "as soon as possible" is no later than Friday, April 4, 2008.

If you have not complied with the above orders by that date, I will move to compel such compliance and for appropriate sanctions for your contumacious refusal to obey the court's orders.

Please be governed accordingly.

Sincerely,

Charles M. Cruikshank III

CMC:os

Enclosure - Judge Verser's Order of March 21, 2008.

Certified RRR and by 1<sup>st</sup> Class Mail

"We make a living by what we get, we make a life by what we give."

-Winston Churchill

RECEIVED

APR - 1 2007

EXHIBIT

D

Cruikshank Law Offices, P.S.

The Honorable Leonard W. Costello

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

In the matter of the estate of  
JACK DELGUZZI,  
Deceased.

No. 8087

ANNUAL REPORT RE: SALE OF ASSETS

KATHRYN A. ELLIS, the successor Personal Administrator in the above-mentioned case, has previously reported the sale of all real properties of this estate and is in full compliance with RCW 11.76. Further, as a final report was approved nearly ten years ago, an "annual report" is no longer necessary according to the express provisions of RCW 11.76.010. Notwithstanding the above, the Personal Administrator reports the sale of properties identified on Exhibit A hereto since the prior report.

No claims have been allowed or disallowed during administration as the estate is administratively insolvent. The estate has on hand the approximate sum of \$5,432.00. Since the previous report the Personal Representative has paid the following claims approved by the Court in accordance with the accounting attached hereto as Exhibit B:

Kathryn A. Ellis	\$26,277.02
Short, Cressman & Burgess	\$53,194.00
Estate of William Wilbert	\$39,834.00
Benson & McLaughlin	\$6,972.00

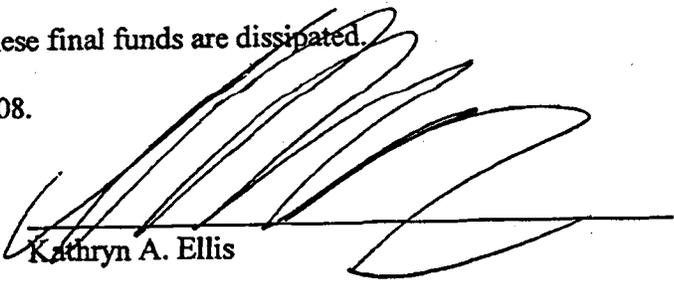
The Personal Representative has not issued the final checks to Short, Cressman & Burgess, the Estate of William Wilbert, or transferred the real property located at 9999 Bumpy Rd, Port Angeles, WA to Benson & McLaughlin due to the appeal from that order dated July 27, 2007; there would be no funds to pay the annual bond fee nor the Personal Administrator's

KATHRYN A. ELLIS, ESQ.  
600 Stewart St  
Suite 620  
Seattle, WA 98101  
(206) 682-5002

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  
27  
28

counsel to defend the order on appeal if these final funds are dissipated.

DATED this 21 day of March, 2008.



Kathryn A. Ellis

C:\Shared\KAE\Doc\DelGuzzi\Property\_Report\_033108.wpd

# EXHIBIT A

#	Parcel #	Location	Description	Status
1	0530105408300000	9999 Bumpy Rd PA	Liebes Addition Lts 19-24 Bl 8	transfer to Benson & McLaughlin re: final distribution
2	530085107100000	9999 Buchanan Dr PA	Auckland Addition Lts 13&14 Bl G	sold 8/9/07
3	530075171000000	9999 Orvis St PA	Bayview 2 <sup>nd</sup> Addition Lts 1-8 LT Bl 7	sold 9/7/05
4	630085608000000	9999 W Devanny Ln PA	Cain 1 <sup>st</sup> SubDiv of Lts 1-5 Bl 8 Survey V15 P4	sold 12/30/05
5	0630085611150000	9999 W Courtney Rd PA	Cain 1 <sup>st</sup> SubDiv of Lts 4-8 Bl 11 ½ Int Survey V12 P4	sold
6	630085611500000	9999 W Courtney Rd PA	Cain 1 <sup>st</sup> SubDiv of Lts 13-15 Bl 11 Survey V15 P4	sold 12/30/05
7	1330343100250000	9999 Lk Creek Rd Beaver	NESW Ly N of Lk Creek & EASE 18.87A	sold 6/22/05
8	729084108700000	9999 Olympic Hot Spgs Rd	TX# 3800 E2NESE 0.08A	sold 8/9/07
9	729081400200000	9999 Olympic Hot Spgs Rd	#5096 EASES SESENE .07A	sold 8/9/07
10	530053002502001	9999 Morse Hmstd Rd PA	½ Int W300' of Lot 4 EXC R/W .30A	sold 8/9/07
11	530053002501000	9999 Morse Hmstd Rd PA	W300' of Lot 4 EXC R/W ½ Int .30A	sold 8/9/07
12	630145205300000	9999 S Mt Angeles Rd PA	Grand View Addition Lots 26&27 Bl 5	sold 8/9/07
13	630125406200000	9999 E Hwy 101 PA	NOB Hill Addition Lots 8&9 Bl 6	sold 8/9/07
14	630235103640000	9999 S Doss Rd PA	Washington Ave Addition Lot 33 Bl 3	sold 8/9/07
15	0731353400100000	9999 Three Sisters Way PA	Parcel 1 Survey V12 P114 5.33A	sold
16	0731355000102001	9999 Elwha Bluffs Rd PA	Elwha Bluffs ½ Int Parcel 1	sold
17	731355001300000	9999 Elwha Bluffs Rd PA	Elwha Bluffs Parcel 13	sold 4/29/05
18	731355001700000	9999 Elwha Bluffs Rd PA	Elwha Bluffs Parcel 17	sold 4/29/05
19	731355001800000	9999 Elwha Bluffs Rd PA	Elwha Bluffs Parcel 18	sold 5/19/05

## **EXHIBIT B**

## Estate of Jack Delguzzi

3/31/2008 4:00 PM

Register: Trust

From 01/01/2006 through 03/31/2008

Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment	C	Deposit	Balance
01/03/2006	6046	Advantage Escrow C...	Other Income	Deposit		X	14,107.71	58,575.34
01/03/2006	6054	Advantage Escrow C...	Other Income	Deposit		X	21,339.46	79,914.80
01/03/2006	73394	Clallam County Title...	Other Income	Deposit		X	34,618.22	114,533.02
01/09/2006	228192	Weststar	Other Income	Deposit		X	128.00	114,661.02
02/03/2006	1010	Johnston Land Surve...	survey costs	Bumpy Rd surv...	1,650.00	X		113,011.02
02/07/2006		Weststar	Other Income	Deposit		X	128.00	113,139.02
02/08/2006		Bank of America	Miscellaneous	check supply	13.00	X		113,126.02
02/21/2006	1012	Clallam County Trea...	Miscellaneous	real property ta...	205.84	X		112,920.18
02/21/2006	1013	Jefferson County Tre...	Miscellaneous	real property ta...	32.05	X		112,888.13
03/06/2006	230113	Weststar	Other Income	Deposit		X	128.00	113,016.13
03/13/2006	1014	Clallam County	Miscellaneous	recording fee	113.00	X		112,903.13
03/20/2006	1015	Johnston Land Surve...	Miscellaneous	Land surveying...	1,650.00	X		111,253.13
04/06/2006	230704	Weststar	Other Income	Deposit		X	128.00	111,381.13
05/08/2006	231280	Weststar	Other Income	Deposit		X	128.00	111,509.13
06/02/2006		Estate of Gary DelGu...	Other Income	Deposit		X	15,000.00	126,509.13
06/02/2006	1011	William E. Wilbert P...	Attorney Fees	VOID:		X		126,509.13
06/02/2006	1016	Short, Cressman & B...	Attorney Fees		53,194.00	X		73,315.13
06/02/2006	1017	Benson & McLaughlin	Attorney Fees		6,972.00	X		66,343.13
06/02/2006	1018	Kathryn A. Ellis	Attorney Fees		16,107.67	X		50,235.46
06/02/2006	1019	William E. Wilbert P...	Attorney Fees		39,834.00	X		10,401.46
06/07/2006	231922	Weststar	Other Income	Deposit		X	128.00	10,529.46
07/05/2006	002360	Weststar	Other Income	Deposit		X	5,114.00	15,643.46
07/31/2007	1040	Kathryn A. Ellis	Other Expenses	Final Plan Ad...	10,169.35	X		5,474.11
08/03/2007	355640643	Timberland Holdings...	Other Income	Deposit		X	1,200.00	6,674.11
08/27/2007	1020	G. Michael Zeno	Professional Fees:Leg...	VOID: Final pa...		X		6,674.11
08/27/2007	1021	Short, Cressman & B...	Attorney Fees	VOID: Final pa...		X		6,674.11
02/27/2008	1022	International Sureties	International Sureties	bond payment	1,242.00			5,432.11

The Honorable Leonard W. Costello

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

In the matter of the estate of

No. 8087

JACK DELGUZZI,

PROOF OF SERVICE

Deceased.

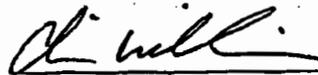
I, Christopher Williams, declare under penalty of perjury as follows:

1. I am over the age of eighteen years, a citizen of United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on the 31<sup>st</sup> day of March, 2008 a copy of the Annual Report Re: Sale of Assets was delivered via first class mail, postage prepaid, to: Andrew Maron, Short Cressman & Burgess PLLC, 999 Third Ave, Suite 3000, Seattle, WA 98104; G. Michael Zeno, Jr., Zeno, Drake & Hively, PS, 4020 Lk Washington Blvd NE, Suite 100, Kirkland, WA 99033; Charles Cruikshank, III, 108 S Washington St, Suite 306, Seattle, WA 98104; and Carl L. Gay, Greenaway, Gay & Tulloch, 829 E 8<sup>th</sup> St, Suite A, Port Angeles, WA 98362.

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

Dated this 31<sup>st</sup> day of March, 2008 at Seattle, Washington.



Christopher Williams  
Assistant to Kathryn A. Ellis

C:\Shared\KA\EDox\DelGuzzi\Property\_Report\_033108\_mail\_dec.wpd

KATHRYN A. ELLIS, ESQ.  
600 Stewart Street  
Suite 620  
Seattle, WA 98101  
(206) 682-5002

**Cruikshank Law Offices**  
108 So. Washington Street #306  
Seattle, Washington 98104  
206 624-6761  
[cruiklaw@olympus.net](mailto:cruiklaw@olympus.net)

EXHIBIT      E

April 8, 2008

First Class and electronic mail: [kae@seanet.com](mailto:kae@seanet.com)

Ms Kathryn A. Ellis  
600 Stewart Street. #620  
Seattle, WA 98101

Re: Estate of Jack Delguzzi

Dear Ms Ellis:

As all of the events are of fairly recent occurrence, I am not attaching copies of the relevant documents, but to refresh our mutual memories, I recall that on July 27, 2007, Judge Costello ordered that you file proof of the sales proceeds for the putative remaining 8 (or so) properties remaining in the name of the Estate of Jack Delguzzi and the proof of the disbursements of all remaining estate funds to the administrative claimant and the transfer of the real estate known as 9999 Bumpy Road, Port Angeles to Benson & McLaughlin and that upon that happening, the estate would be closed.

Judge Verser ordered that you complete those tasks as soon as possible. Your response was that even though you had sold the putative properties, you were not going to disburse the funds or make the Bumpy Road property transfer as ordered because you may wish to make a claim against these estate assets at some time in the future.

R.C.W. 11.76.190 provides for just such circumstances, requiring that an estate representative pay funds over at closing to the court where it shall remain to paid over to the contingent or disputed claimant when he or she shall be entitled thereto, or, if he or she shall fail to establish the claim the funds are to be "distributed as the circumstances of the case may require."

In order to comply with the above 2 court orders, you will need to immediately follow the procedure set out in R.C.W. 11.76.190. As to the real property, that does not reflect a liquidated amount or "funds" and as it is not going anywhere and as it has been unmarketable for many years, it can either remain in the name of the estate or transferred as ordered without adverse consequences.

"We make a living by what we get, we make a life by what we give."

-Winston Churchill

You will need to give me notice of your intentions no later than Friday, April 11 or I will move to compel your compliance and seek attorney fees as sanctions for your disobedience of the above two court orders. I am comfortable that the court will not permit you to use the estate's funds for your time and expenses in defense of sanctions for defiance of the court's clear and unmistakable orders to close the estate which should have been accomplished many months ago.

Please be governed accordingly.

Sincerely,

Charles M. Cruikshank III

CMC:os

"We make a living by what we get, we make a life by what we give."

*-Winston Churchill*

# RESPONDENT'S APPENDIX 2

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  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

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

In re the Estate of Jack Delguzzi,

Case No.: 8087

Deceased,

ORDER DENYING MOTION FOR  
ORDER TO SHOW CAUSE

Estate of Gary Delguzzi,

Plaintiff,

vs.

Estate of William E. Wilbert,

Defendant.

THIS MATTER, came by ex-parte motion of Charles M. Cruikshank, III on behalf of the Estate of Gary Delguzzi, for an Order requiring Kathryn Ellis, estate administrator, to Show Cause why she should not be held in contempt and ordered to pay sanctions for allegedly failing to comply with previous orders of the court entered on July 27, 2007 and March 21, 2008.

ANALYSIS

Plaintiff contends that Ms. Ellis failed to comply with the July 27, 2007 Order and the March 21, 2008 Order which collectively required her to file "receipts" showing what happened to the property described in exhibit "U" as referenced in the handwritten portion of the July 27, 2007 Order. In response to the March 21, 2008 Order Ms. Ellis filed an "Annual Report Re: Sale of Assets" dated March 31, 2008. The exhibits annexed to the report show that the estate account has a balance of \$5,432.11, and details disbursements made from the estate account. In addition Ms. Ellis explains

CRADDOCK D. VERSER  
JUDGE

Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

1 that she has not transferred the 9999 Bumpy Rd. property, which apparently  
2 has been "...unmarketable for many years..." [Exhibit E to motion] because there  
3 has been an appeal of the July 27, 2007 Order.  
4

5 Plaintiff contends that RCW 11.76.190 requires Ms. Ellis to deposit  
6 the \$5,432.11 with the court. Plaintiff also contends that Ms. Ellis should  
7 transfer the 9999 Bumpy Rd. property to Benson & McLaughlin and that she is  
8 in contempt for not doing so.  
9

10 The procedure in RCW 11.76.190 is to be followed when there is "...any  
11 contingent or disputed claim..." Plaintiff does not identify any "contingent  
12 or disputed" claim to the \$5,432.11 in the motion and the court will not  
13 search this file for such a claim. In addition Ms. Ellis indicates that the  
14 funds could be necessary to pay administrative expenses resulting from the  
15 appeal of the July 27, 2007 Order. No purpose would be served by depositing  
16 the funds with the court, rather than leaving the funds where they are.  
17

18 The July 27, 2007 Order gives Ms. Ellis "sole discretion" as to the  
19 liquidation of the real property at 9999 Bumpy Rd. and thus she could not be  
20 held in contempt for failing to transfer that property to Benson &  
21 McLaughlin while the appeal is pending.  
22

23 ORDER

24  
25 For the foregoing reasons plaintiff's Motion is DENIED.  
26

27 Dated this 22<sup>nd</sup> day of April, 2008.  
28

29  
30   
31  
32 CRADDOCK D. VERSER, JUDGE  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

CRADDOCK D. VERSER  
JUDGE  
Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

# RESPONDENT'S APPENDIX 3

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  
27  
28

CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>In re the Estate of Jack Delguzzi,  Deceased</p> <p>Estate of Gary Delguzzi,  Plaintiff</p> <p>v.</p> <p>Estate of William E. Wilbert,  Defendant</p>	<p>No. 8087</p> <p>MOTION FOR RECONSIDERATION OF THE DENIAL OF PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE</p>
--	---

COMES NOW the Plaintiff, who moves for reconsideration of this Court's Order of April 22, 2008, which order denied the Plaintiff's Motion for Order to Show Cause.

The Plaintiff so moves for the reasons set forth below.

The undersigned apologizes for any vagueness or lack of explanations in the Motion for Order to Show Cause.

For background and history, attached hereto is a copy of the unpublished Opinion of Division 2 of the Court of Appeals dated August 31, 2001. The "Facts" portion of that Opinion reads as follows:

FACTS

I. THE FIRST APPEAL

MOTION: RECONSIDER  
ORDER DENYING PLAINTIFF'S  
MOTION FOR ORDER  
TO SHOW CAUSE

Charles M. Cruikshank III  
108 So. Washington St. #306  
Seattle, Washington 98104  
206 624-6761 WSB #6682

1 A. PRECIPITATING EVENTS

2 Jack DelGuzzi died in 1978, leaving his son and sole heir, Gary DelGuzzi  
3 (DelGuzzi) as personal representative of his estate. DelGuzzi served as  
4 representative until August 13, 1982, when he resigned in favor of the current  
5 Administrator, William Wilbert.

6 Under Wilbert's administration, DelGuzzi has received no distributions  
7 from the multi-million dollar estate. Wilbert, however, has billed the estate for  
8 125% of its net value; of this billed amount, he has been paid fees and costs  
9 totaling about 90% of the net estate. Moreover, the estate's net assets have  
10 diminished from \$ 7.36 million in 1989 to less than the \$ 1.6 million Wilbert  
11 billed in 1997. Although the estate was ready to be closed at least by 1997, it still  
12 remains open.

13 In July 1996, DelGuzzi filed an amended complaint, (1) requesting  
14 removal of Wilbert as Administrator, requiring an accounting, appointing a  
15 successor, and granting other relief; and (2) alleging that Wilbert caused tort  
16 damages by breaching his fiduciary duty as Administrator, violating a court order  
17 requiring reporting and fee approval, using alter-ego corporations to conceal estate  
18 transactions, improperly using Delguzzi's trust fund to pay estate debts, and  
19 failing to close the estate in a timely fashion. In October 1996, Wilbert filed his  
20 answer to Delguzzi's petitions, adding affirmative allegations and defenses,  
21 including estoppel a day later.

22 The court set an evidentiary hearing on the removal petition for January  
23 21-22, 1997.<sup>1</sup> During fall 1996, the parties served interrogatories and requests for  
24 production on each other. DelGuzzi responded to Wilbert's interrogatories with a  
25 four-page list of objections.<sup>2</sup> Wilbert filed a motion to compel responses to his  
26 interrogatories. DelGuzzi submitted 36 pages of answers and objections,  
27 providing some response to all 85 of Wilbert's interrogatories; many of  
28 Delguzzi's responses did not provide the requested information. DelGuzzi  
asserted that he could not produce all requested information and documents  
because Wilbert had the information and Wilbert had failed to provide requested  
discovery to DelGuzzi.

Judge Costello, in his June 5, 1998 Order, directed that the assets of this estate be  
liquidated and distributed forthwith at that time. The language that he used for that and  
associated Orders was that this estate had, ten years ago, already been open for too long  
because at that time it had been open for 20 years, which has now been stretched to 30  
years. When Mr. Wilbert died in office on March 24, 2004, Judge Costello's Order had

---

<sup>1</sup> Wilbert later moved for a hearing on his Final Report and Petition for Decree of Distribution  
After Order of Solvency, Inventory of Appraisalment of the assets of the Estate, and  
Comprehensive Accounting of the Estate. The court entered a stipulated order setting this  
hearing for the same dates as the previously set hearing on the removal petition.

<sup>2</sup> It was this document -- not the subsequent 36-page document of answers and objections  
-- that Wilbert submitted to the trial court to support his original motion to dismiss Delguzzi's claims  
as a discovery sanctions.

1 been in place eight years and had been substantially disregarded and ignored by Mr  
2 Wilbert. This further delay in closing the estate was a further breach of the fiduciary  
3 duties of the administrator.

4 Prior to this period (June 5, 1998 to March 24, 2004), secret agreements had been  
5 reached between Mr. Wilbert and his attorneys, where they agreed to conceal conversion  
6 of estate assets by Mr. Wilbert in exchange for his agreement to forego bringing legal  
7 malpractice claims against the attorneys for their activities while acting as his counsel as  
8 administrator of the estate and as the trustee of the Trust of Gary DelGuzzi. This evidence  
9 was only discovered in related litigation in King County during 1997 and is detailed in  
10 some degree in the Appellant Brief.

11 During this period, Mr. Wilbert distributed hundreds of thousands of dollars to  
12 himself, his family, his solely owned corporations and to his current and former attorneys  
13 some of which had been approved and much of which had not. At his death, hundreds of  
14 thousands of dollars were unaccounted for and hundreds of thousands of dollars worth of  
15 assets remained in the estate.

16 Ms. Ellis seems to want to repeat and continue this debacle, although R.C.W.  
17 11.48.010 requires that the personal representative settle the estate "as rapidly and quickly  
18 as possible." And Judge Costello's Order of July 27, 2007, to that end, directed the  
19 transfer to Benson & McLaughlin of the property known as 9999 Bumpy Road in Port  
20 Angeles. This property was not part of the sale of the lots listed on Exhibit U for which  
21 the Order permitted "sole discretion" as how Ms. Ellis transferred those properties.) This  
22 "Bumpy Road" property was ordered transferred to the accountants in satisfaction of their  
23 unpaid claims against the estate.

24 To continue the ownership of that property in the estate continues the estates  
25 obligations and liability for taxes and other ownership expenses, including assessments,  
26 maintenance and any other exposure without benefit to the estate.

27 Nor was that part of the July 27, 2007 Order for the transfer included as one of the  
28

MOTION: RECONSIDER  
ORDER DENYING PLAINTIFF'S  
MOTION FOR ORDER  
TO SHOW CAUSE

Charles M. Cruikshank III  
108 So. Washington St. #306  
Seattle, Washington 98104  
206 624-6761 WSB #6682

1 Assignments of Error or Issues Related Thereto in the Appellant's Brief.

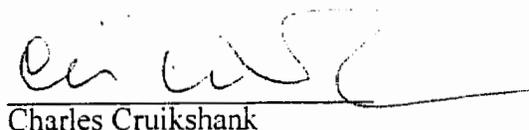
2 The contingent claims in relation to and referenced by RCW 11.76.190, to which  
3 thus Court referred, are the claims of Ms. Ellis which she mentions in her last unsworn  
4 accounting. She claims to have possible exposure for attorney's fees although she has  
5 appeared "pro se" without an attorney in the Appeal. Nonetheless, if the small amount of  
6 funds left in the estate are placed in the custody of Court, subject to further Orders of the  
7 Court, the estate will benefit by being able to finally close and to thus incur no further  
8 administrative expenses or liabilities that will be chargeable to it, and at least one  
9 creditor's claim, that of the CPAs Benson & McLaughlin, will have been satisfied. There  
10 would then be no more assets under administration and the estate could at last finally be  
11 closed.

12 It is hard to imagine that Ms. Ellis would not wish to be freed of the burden and  
13 liabilities of administration, especially when there will be no funds to pay her future fees.  
14 If the remaining funds are held by the registry of the Court, any claim for her contingent  
15 claims, or any others, arising in the future could still be paid from those funds.

16 In short, the estate has no assets to administer, has been open now for some  
17 30 years, and by every measure needs to be closed. The \$5,432.11 it now holds are not  
18 good reason to continue administration of this estate any longer.

19 It is respectfully requested that the Court order that the funds be transferred into  
20 the registry of the Court, and that the Bumpy Road property be transferred to Benson &  
21 McLaughlin and that the administrator of the estate, Katherine Ellis, file a verified final  
22 accounting to at last close the estate.

23 Dated this April 25, 2008.

24   
25  
26 Charles Cruikshank

27  
28 MOTION: RECONSIDER  
ORDER DENYING PLAINTIFF'S  
MOTION FOR ORDER  
TO SHOW CAUSE

Charles M. Cruikshank III  
108 So. Washington St. #306  
Seattle, Washington 98104  
206 624-6761 WSB #6682

1  
2 (PROPOSED)  
3 ORDER TO SHOW CAUSE:

4 THIS MATTER having come on for consideration on Plaintiff's Motion for  
5 Reconsideration of Denial of his Motion for Order to Show Cause and for good cause  
6 shown.

7 IT IS HEREBY ORDERED that Kathryn A. Ellis, Administrator of the estate of  
8 Jack Delguzzi, is hereby Ordered to appear before this Court on \_\_\_\_\_ 2008, at  
9 the hour of \_\_\_:00 \_\_.m., and then and there show cause, if any she has, why she should  
10 not be adjudicated in contempt of Court and sanctioned accordingly until she complies  
11 with the Orders of the Court regarding closure of the estate.

12 Dated this \_\_\_ of \_\_\_\_\_ 2008.

13  
14 JUDGE CRADDOCK VERSER

15 Presented By:

16  
17 \_\_\_\_\_  
18 Charles M. Cruikshank III  
19 Attorney for the Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28

MOTION: RECONSIDER  
ORDER DENYING PLAINTIFF'S  
MOTION FOR ORDER  
TO SHOW CAUSE

# RESPONDENT'S APPENDIX 4

1 SUPERIOR COURT OF THE STATE OF WASHINGTON  
2 IN AND FOR THE COUNTY OF CLALLAM  
3  
4

5  
6 In re the Estate of Jack Delguzzi,

Case No.: 8087

7  
8 Deceased,

ORDER DENYING MOTION FOR  
RECONSIDERATION

9  
10 Estate of Gary Delguzzi,

11  
12 Plaintiff,

13  
14 vs.

15  
16 Estate of William E. Wilbert,

17  
18 Defendant.  
19  
20

21 Charles M. Cruikshank, III on behalf of the Estate of Gary Delguzzi,  
22 moves the court to reconsider its previous Order Denying the Motion for an  
23 Order requiring Kathryn Ellis, estate administrator, to Show Cause why she  
24 should not be held in contempt and ordered to pay sanctions for allegedly  
25 failing to comply with previous orders of the court entered on July 27, 2007  
26 and March 21, 2008.  
27

28 It is this court's understanding that there is an appeal of the July  
29 27, 2007 Order pending before Division II of the Court of Appeals. That  
30 appeal was filed by the Estate of Gary Delguzzi. It would not be  
31 appropriate to attempt to hold the administrator in contempt for allegedly  
32 failing to comply with an order which has been appealed, nor would it be  
33 appropriate for this court to order actions to close the estate which there  
34 is an appeal pending.  
35  
36  
37

38 CRADDOCK D. VERSER  
39 JUDGE

40 Jefferson County Superior Court  
41 P.O. Box 1220  
42 Port Townsend, WA 98368  
43

1 For the reasons stated in the original Order denying the Motion for  
2 Order to Show Cause the Motion for Reconsideration is DENIED.

3  
4 Dated this 13<sup>TH</sup> day of May, 2008.

5   
6 \_\_\_\_\_  
7 CRADDOCK D. VERSER, JUDGE

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  

CRADDOCK D. VERSER  
JUDGE  
Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

FILED  
COURT OF APPEALS  
DIVISION II

08 JUN 10 AM 10:09

STATE OF WASHINGTON

Appeal No. 36682-7-II

BY \_\_\_\_\_  
COURT OF APPEALS, DIVISION II OF THE STATE OF  
WASHINGTON

In the matter of the estate of  JACK DELGUZZI,  Deceased.	No. 8087  DECLARATION OF MAILING
DAVID L. MARTIN, Personal Representative of Gary Delguzzi estate,  Appellant,	
KATHRYN A. ELLIS, Personal Administrator of Jack DelGuzzi estate,  Respondent.	

I, Christopher Williams, declare under penalty of perjury as follows:

1. I am over the age of eighteen years, a citizen of United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on the 9<sup>th</sup> day of June, 2008 a copy of the Brief of

**DECLARATION OF MAILING - 1**

Respondent Kathryn A. Ellis was delivered via first class mail, postage prepaid, to the following parties: **Charles Cruikshank, III, 108 S Washington St, Suite 306, Seattle, WA 98104;** and **G. Michael Zeno, Jr., Zeno, Drake and Hively, P.S., 4020 Lk Washington Blvd NE, Suite 100, Kirkland, WA 99033.**

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

Dated this 9<sup>th</sup> day of June, 2008 at Seattle, Washington.



---

Christopher Williams  
Assistant to Kathryn A. Ellis  
600 Stewart Street, Suite 620  
Seattle, WA 98101  
(206) 682-5002

C:\Shared\KAE\Doc\De\Guzzi\Closing Appeal\brief\_mail\_dec.wpd