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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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No. 43683-3-II

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

JOHN E. COOK, a married man,
Appellants/Cross-Respondents

v.

A. DIANE BRATENG, a widow concerning her interest in realty subject
to partition action, and A. DIANE BRATENG, as Successor Sole Trustee
of the Elmer J. Cook Living Trust, .
Respondents/Cross-Appellants

BRIEF OF APPELLANTS

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I. INTRODUCTION/SECOND APPEAL. This is the second appeal by Appellant in this case. In the first appeal, the Court of Appeals, Division Two held in her favor in cause number 39463-4 (CP 123). The decision was ordered unpublished until a request by King County Court Commissioner, Carlos Velategui requested it be published.

II. SUMMARY OF ISSUES ON SECOND APPEAL. Whether the trial court on remand, properly denied the Trustee's request for attorney fees under RCW 11.96A.150, 11.96A.310(9)(a) and 11.96A.310.

The application to the foregoing are purely questions of law, as were the issues presented in the first appeal.

III. BACKGROUND OF CASE. John Cook (hereinafter "Mr. Cook"), the Respondent, sued his sister, A. Diane Brateng (hereinafter "Ms. Brateng"), for partition of a house on a lot they inherited from their uncle, Charles Cook (Hereinafter "Uncle Charles"), and for an accounting by Ms. Brateng who was the trustee of their father's modest inter vivos trust (cash and receipts from social security and interest totaling only \$70,000 over 2 ½ years) and a 60 year old 1,232 square foot house in Ilwaco, Washington (CP 2 and CP 7). Ms. Brateng provided a complete accounting, which the trial court later approved as a proper and full accounting which accounting Mr. Cook never accepted and therefore sued.

Ms. Brateng cared for her 90 year old father, Elmer Cook, in her home single handedly for the last 27 months of his life, never paying herself for his care or advances made by her own funds for her father. The trust estate would have been depleted long before his death has she paid herself during her father's lifetime.

Mr. Cook objected to deferral of payment to Ms. Brateng and surprisingly, the trial court held as a matter of law that Ms. Brateng breached her duty to the two remainder beneficiaries (Mr. Cook and herself) by not disclosing two matters: (1) deferral of payment for her services and cash advances; and (2) intention not to sell or encumber the \$90,000 house in Ilwaco, Washington to pay for her services. Their father built the house in the 1940s and where Ms. Brateng took him at least 32 times during the last 27 months of this life.

The trust agreement drafted for Elmer Cook, the parties father, is extremely detailed in its purpose and procedures which Ms. Brateng followed to the letter, including the exercise of discretionary powers, which were consistent with RCW 11.98.070 – Trust Powers.

The Trial Court concluded that Ms. Brateng's failure to disclose deferral of payment to herself and her decision not to sell or encumber her father's house in Ilwaco, Washington: (1) defeated Ms. Brateng's claim for services and cash advance; (2) defeated Ms. Brateng's claim for attorney

fees, and (3) allowed attorney fees against Ms. Brateng in favor of Mr. Cook. Mr. Cook was aware the Ilwaco house was not sold because on weekends he occupied the adjoining house inherited by the parties from Uncle Charles and subject to the instant partition suit.

Neither the Trust Agreement nor state statute required an annual accounting to a remainder beneficiary during the life of the life beneficiary, nor did Mr. Cook ever request an accounting.

The matter on the first appeal only concerned questions of law, which were based on the facts as found by trial court which were not appealed.

The court of Appeals held the Trustee did not breach any duties.

IV. ASSIGNMENTS OF ERROR ON APPEAL

RESOLVED IN FIRST APPEAL **ASSIGNMENTS OF ERROR**

A. ASSIGNMENTS OF ERROR ON FIRST APPEAL

Deferral of Payment for Service

1. The Court of Appeals, Division II, #39,463-4 held a Trustee does not have an affirmative duty to disclose to a remainder beneficiary whether payments for Trustee's services is being deferred until the death of the Life Beneficiary, and as such, no duty was breached.

Duty to Sell/Encumber-Non-Disclosure

2. The Court of Appeals, Division II, #39,463-4, held that during the life of the Life Beneficiary, it was not a breach of fiduciary duty for a Trustee not to disclose to the remainder beneficiary the Trustee's decision not to encumber or sell the trust property to pay current expenses and for the services to the Life Beneficiary?

Non-Disclosure of Deferred Payment for Services.

3. The Court of Appeals held during the life of the Life Beneficiary, the Trustee does not have a duty to disclose to a Remainder Beneficiary the deferral of payment for services provided by Trustee to the Trust and Life Beneficiary.

Repairs to Trust Property.

4. Considering the authority granted by the Trust Agreement and RCW 11.98.070(19) which allow repairs by a Trustee as a right, the Trustee did not breach her fiduciary duty by repairing and maintaining trust property.

Award of Attorney Fees.

5. The Court of Appeals required the trial court to determine the appropriate attorney fees for mandated mediation, arbitration, trial and on appeal.

Where Mr. Cook, who sought a trial de novo of a mandatory arbitration proceedings did not improve his position at trial, or before the Court of Appeals. Does the Trial Court have any discretion in denying the prevailing party her attorney fees, considering that Mr. Cook worsened his position in the first Court of Appeals case with respect to breach of trust, the cost of remodeling the house, trustee's fees, care fees and attorney fees? RCW 11.96A.310(10).

B. ASSIGNMENT OF ERROR ON SECOND APPEAL.

1. On Remand, the Trial Court erred in entering its Decision, (CP 148) Findings of Fact and Conclusions of Law (CP 156), and Judgment (CP 164), in denying the Trustee's attorney fees she personally incurred in mediation, arbitration, trial and appeal, in violation of RCW 11.96A.310(10).

V. STATEMENTS OF THE CASE.

A. LITIGATION PROCEDURES.

Mr. Cook joined two separate causes of action: (1) accounting o receipts and disbursements of the inter vivos trust created by the parties father for his lifetime are, and (2) partition of real property (small house on one lot) which the parties inherited from their uncle. (CP 2 and CP 7)

Pursuant to the Trust and Estate Dispute Resolution Act (TEDA), the Trial Court ordered mediation followed by arbitration as provide in

RCW 11.96A.310. Both of these processes netted no success and caused all of the parties great added and unavoidable expense. The arbitrator's decision was entered in this matter on October 31, 2006, holding the Trustee had breached her duties to Mr. Cook (CP 43, 44 and 45), but from which Mr. Cook appealed and filed a request for trial de novo pursuant to RCW 11.96A.310(9)(a). (CP 46). This matter came for trial 15 months after the arbitration award. The following page is a true copy of the request leaving no doubt the appeal of the arbitration award was pursuant to RCW 11.96A.310(9)(a), requiring application of RCW 11.96A.310(10), which reads as follows:

Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision after an arbitration result must be awarded costs, including expert witness fees and attorneys' fees, in connection with the judicial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of RCW 11.96A.150 or any other similar provision.

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On Nov. 22, 2006, I deposited in the mail of the US a properly stamped addressed envelope directed to Lisa J. Crawford, Defendant's Attorney, containing a copy of the document to which this declaration is affixed. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

[Signature]

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PACIFIC COUNTY, WA
BY *[Signature]* DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PACIFIC COUNTY

JOHN E. COOK, a married man,)
Plaintiff,) No. 01-2-00330-7
v.)
A. DIANE BRATENG, as successor) REQUEST FOR TRIAL
Sole Trustee of the Elmer J. Cook) DE NOVO
Living Trust,) (RCW 11.96A.310(9)(a))
Defendant.)

To: Defendant, A. Diane Brateng, and her attorney, Lisa J. Crawford
Pursuant to RCW 11.96A.310(9)(a), Plaintiff John E. Cook hereby requests a Trial
De Novo of all issues of fact and law in the above-entitled matter.

DATED this 22nd day of November, 2006.

NELSON LAW FIRM, PLLC
[Signature]
David A. Nelson WSB#19145
Attorney for Plaintiff

REQUEST FOR TRIAL DE NOVO 1

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B. DEFENDANT CARED FOR ELMER COOK FROM NOVEMBER 1997 THROUGH JANUARY 2000.

In November of 1995, Elmer J. Cook executed a "Living Trust" naming himself and his daughter, Diane Brateng, as co-trustees. After failing health, Elmer Cook was admitted to a nursing home for several months in 1997 at an expense of \$4,200 per month. After his condition was stabilized Elmer Cook wished to return to his home in Ilwaco, which

he did with the assistance of a caregiver at a cost of \$1,800 per month. After Elmer Cook was financially abused by the caregiver and it became apparent that he was no longer able to manage his own affairs, Ms. Brateng became the sole trustee of the Living Trust, responsible for overseeing her father's support, maintenance and his personal day-to-day care.

Therefore, Ms. Brateng moved their father into her home where she provided care for him from November 1997 until his death in January of 2000 to reduce costs, which included bathing him and dealing with his incontinence. Ms. Brateng's husband died on April 4, 1998, midway through her care of her father.

VI. SUMMARY OF ARGUMENT.

Essentially, the Trial Court found and the Court of Appeals upheld that: (1) Ms. Brateng, as Co-Trustee prior to suit, after their father's death, accurately had accounted to Mr. Cook for all receipts, and the Court of Appeals held the Trustee had not breached her fiduciary duties to Mr. Cook.

The Court of Appeals held non-disclosures were erroneously held to be breaches of fiduciary duty, by which the Trustee was denied recovery for her services, money advanced and legal expenses, and legal fees were granted to Mr. Cook, a remainder beneficiary, and by which that Trustee

was forced to bear the cost of repairs to the trust property she undertook to correct water damage, and pay her own fees.

VII. ARGUMENT.

A. STANDARD OF REVIEW.

Whether a statute authorizes an award of attorney fees is likewise a question of law reviewed de novo. McGuire v. Bates, 169 Wash.2d 185, 189, 234 P.3d 205 (2010).

B. ACCOUNTINGS WERE TIMELY AND COMPLETE.

- i. Accountings were timely and complete.

No provision of Elmer Cook's Trust required the trustee (either himself as Trustee or his daughter as Co-Trustee) to give an accounting to a remainder beneficiary during the life of the life beneficiary.

The Trustees' Accounting Act, first enacted in 1951, and amended in 1984, permits a settlor or "any beneficiary" to petition the superior court, to direct a trustee to file in the court an accounting. RCW 11.106.040 Petition for Statement of Account. Mr. Cook never sought an accounting from Elmer Cook or Ms. Brateng while Elmer Cook was alive, nor did Mr. Cook file a petition under RCW 11.96A.080 as authorized by RCW 11.106.040.

Where no duty to account was created by the trust agreement or by statute, no duty otherwise arose to be breached. In re Estate of Marie Ehlers, 80 Wn.App. 751, 911 P.2d 1017 (Div. III, 1996).

According to In re Estate of Ehlers, 80 Wash.App. 751, 911 P.2d 1017, (Div. III, 1996), “even though trustee provided beneficiary with untimely accounting, trustee did not breach duties, since accounting satisfied statutory requirements and its untimeliness did not cause loss to any beneficiary,” referring to RCW 11.106.040, Petition for Statement of Accounting. In support of the holding that there was no breach of duty, the court in Ehlers, stated that, where a trustee is required by statute to make an annual itemized statement of receipts and disbursements of trust principal and income (which Ms. Brateng was not required to make), there is no mention in the statute nor any case law that there is a duty on the trustee to disclose the method and timing of charges against the trust estate.

In Ehlers, following several requests for an accounting, and filing a complaint for accounting, the trustee eventually provided an accounting over 16 months after the death of Trustor, the court found that the accounting satisfied the requirements of RCW 11.106.030, Intermediate and Final Accounts-Contents-Filing, and that the untimeliness did not cause loss to the beneficiaries and denied the beneficiaries request for attorney’s fees, discussed herein more fully below.

According to In Re Parks' Trust (Seattle First National Bank v. Parks et al.), 39 Wn.2d 763, 238 P.2d 1205 (1951), under the Uniform Trustee's Accounting Act RCW 11.106 et. seq., when a trustee fails to perform any of the duties imposed upon him by the act, he may be removed, compensation reduced or forfeited, or other civil penalty inflicted in the discretion of the court. When a trustee of a spendthrift trust fails to file an inventory or yearly intermediate report as required by the Act, but such procedure has never been objected to by the beneficiaries and objections thereto were not included in written objections to the Trustees final accounting and there is no suggestion that the beneficiaries were prejudiced by the absence of intermediate reports, the court did not impose penalty on the trustee for failing to file an inventory intermediate report.

According to First Interstate Bank of Washington v. Lindberg, 29 Wn.App. 788, 746 P.2d 333 (1987), if a trustee to provide trust beneficiaries with annual accounting, as required by the trust agreement, was harmless error because beneficiary did not and could not show that receipt by him of annual accountings during the lifetime of the Co-Trustor, who was entitled to the benefit of the trust during her lifetime, would have made any difference. The beneficiary, who received no accounts, had no right to distribution until the Co-Trustor's death, and if the beneficiary

would have asserted a claim against the trustee for mismanagement, he would have achieved only modest success.

The conduct of Ms. Brateng, as trustee, in deferring payment to herself was not classic trustee mismanagement. Trustee mismanagement claims which come before the court usually arise because the trustee has claimed and remitted to itself questionable amounts of money in the course of its administration of the trust. Deferral of payments for services to preserve trust principal, a fact found by this court, simply did not support a conclusion of law that such deferral was a breach of fiduciary duty.

Considering the root word for fiduciary (*fiducia*, Latin for trust), the conduct of Ms. Brateng was laudable and exemplary, and not a breach of fiduciary duty to a remainder beneficiary who has shown no harm or prejudice.

C. **TRUSTEE'S DUTY TO ACCOUNT – ONLY LIFE BENEFICIARIES ARE ENTITLED TO NOTICE.**

The trustee's duty to provide annual accountings, which would reveal deferral of payment of trust obligations, applies to the income beneficiaries of a trust, and not to remainder beneficiaries. RCW 11.106.020, Trustee's Annual Statement, states as follows:

*The trustee or trustees appointed by any will, deed, or agreement executed shall mail or deliver at least annually to each **adult income trust beneficiary** a written itemized statement of all*

current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary shall furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides.

[Emphasis Added].

The statute specifically states, “each adult income trust beneficiary.” Mr. Cook was not an “income trust beneficiary.” Since Ms. Brateng was not requiring payment from the trust estate at the time the work was performed, under the statute, Ms. Brateng did not need to provide an accounting of her deferred charges. The statute requires reporting or receipts and disbursements only.

D. ATTORNEYS FEES OF BENEFICIARY – NO HARM OR BENEFIT SHOWN.

The Trial Court denied Ms. Brateng, as trustee, most of her attorneys fees incurred in defending a suit for accounting which the trial court found was complete and accurate when given, 15 months before the suit was started, and allowed an award against Ms. Brateng for fees in favor of Mr. Cook. That ruling was reversed in the first appeal.

This action is a TEDRA proceeding brought under RCW 11.96A, in which mediation was held pursuant to RCW 11.96A.300- Mediation

Procedure- and arbitration pursuant to RCW 11.96A.310- Arbitration Procedure.

E. DIANE BRATENG WAS PREVAILING PARTY.

Mr. Cook filed an appeal of the October, 2006, arbitration award seeking a trial de novo pursuant to RCW 11.96A.310(9)(a) which reads:

“The final decision of the arbitrator may be appealed by filing a notice of appeal with the superior court requesting a trial de novo on all issues of law and fact.”

TEDRA and MAR control awards of attorney’s fees and costs following the trial de novo as follows:

Pacific County has no local Mandatory Arbitration Rules (MAR), therefore, state MAR rules apply. MAR 7.3- Attorney’s Fees and Costs- states,

“The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess against a party who voluntarily withdraws a request for a trial de novo. "Costs" means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.”

RCW 11.96A.310(10) reads as follows:

“Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision after an arbitration result must be awarded

costs, including expert witness fees and attorneys' fees, in connection with the judicial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of RCW 11.96A.150 or any other similar provision."

Under RCW 11.96A.310(10), Ms. Brateng was the prevailing party in the de novo superior court action brought by Mr. Cook in the appeal of the arbitrator's decision. Therefore, according to statute, Ms. Brateng "must be awarded costs, including expert witness fees and attorney's fees, in connection with the judicial resolution of this matter," which includes all attorney's fees and costs incurred with Julin & McBride, P.S. since its appearance in February, 2007, following the appeal de novo in November, 2006.

On the other hand, Mr. Cook argues that a decision on appeal reversing the trial court cannot be considered in apply RCW 11.96A.310(10).

Mr. Cook was the party who appealed the arbitrator's award and failed to improve his position on trial de novo. (CP 46). Under MAR 7.3-Attorney's Fees and Costs- this court shall assess against Mr. Cook costs and reasonable attorney's fees incurred by Ms. Brateng. All costs and attorney's fees incurred by Ms. Brateng with Julin & McBride, P.S. were

incurred after the request for trial de novo, and therefore all attorney's fees and costs incurred by Ms. Brateng at Julin & McBride, P.S. must be assessed against Mr. Cook.

Ms. Brateng is entitled to her attorney fees incurred with Tom Malone, as presented in the April 2008 trial brief citing RCW 11.96A.150 and the other legal authority.

Ms. Brateng is entitled to interest on the costs and fees she has paid and the awards she is entitled to receive for trustee and care activities in the form of prejudgment interest. Seattle First National Bank v. Washington Insurance Guaranty Insurance Association 94 Wn.App. 744, 972 P.2d 1282 (1999). The award of such interest is based on theory when one held the money and another justice requires compensation, and it is a matter of right, such to courts discretion which is subject to review for abuse. Forbes v. American Bldg. Maintenance Co. West, 148 Wn.App. 273, 297, 198 P.3d 1042 (2009).

A trustee may be required to pay fees and costs only if the superior court or court of appeals finds, pursuant to RCW 11.96A.150, that justice requires it. Ehlers, 80 Wn.App at 764. There are no facts in this case to support the Conclusions of Law denying attorneys fees to Ms. Brateng.

RCW 11.96A.150(1) states,

Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

The award of attorneys fees is left to the discretion of the court and will not be overturned absent a clear showing of abuse of discretion. *Id.*, citing In re Estate of Niehenke, 117 Wash.2d 631, 647, 818 P.2d 1324 (1991).

Yet, the court in Niehenke goes on to state, “Recent Washington cases suggest that it is inappropriate to assess fees against an estate when the litigation could result in no substantial benefit to the estate; we agree. One authority, 4 W. Bowe & D. Parker, *Page on Wills* § 31.13, at 218 (1961), notes that it has been held that where the serves of the attorneys are rendered solely for the benefit of certain parties and are not for the benefit of the estate, attorneys’ fees should not be awarded out of the estate, even though the estate is incidentally benefited by having adverse claims decided.” *Id.* at 648.

The Trial Court has denied a substantial portion of the Trustee's fees becoming a charge against the Trust estate and loss to the Trustee as beneficiary. The effect of such decision is that Ms. Brateng will be charged with all fees by reason of reduction of funds or assets distributable to her.

Here, Mr. Cook has not plead nor proven any manner in which the trust or he personally was harmed by Ms. Brateng deferring payments to herself or by his not knowing the payments were deferred.

In TEDRA proceedings, RCW 11.96A.150, Costs-Attorney's Fees gives a Trial court and Appeals Court broad discretion to award attorneys fees to any party from any party to the proceedings. However, where the basis of the award and denial of fees, as in this case is untenable, there is reversible abuse of discretion in awarding or denying attorneys fees, Estate of Black, 116 Wn.App. 476, 66 P.3d 670 (Div. III, 2003), a will contest between two genuine wills executed by the decedent. Only where there is a substantial benefit to the trust estate is a challenging party entitled to an award of fees against the trust estate.

In April 2008, Division Two, upheld an award of attorneys fees against a party to a TEDRA proceeding, citing RCW 11.96A.150(a) from any party to a proceeding. Irrevocable Trust of McKean, 144 Wn.App. 333, 345. Furthermore, in an unpublished opinion, Division Three upheld a Trial Courts denial of a request by a trust remainderman for an award of

attorneys fees against the trust, where the Trial Court found that the trustee has properly apportioned only \$87,084 of a \$882,742 settlement to trust principal, even though the trustee had failed to notify the beneficiaries of the settlement and lawsuit (brought in the name of the trustee only in his individual capacity) in which the trustee personally received \$434,619.50. The failure to notify the remainderman was characterized by the Court as “harmless.” The claim was against Burlington Northern Rail Road for fire damage to farm land owned by separate adjoining parcels by the trustee and the trust. Hennings v. Hennings, 132 Wn.App. 1010, 2006 WL 701946, review denied in 158 Wash.2d 1020 P.3d 378 (2006).

VIII. CONCLUSION.

Where the Court of Appeals held in the first appeal there was no breach of fiduciary duty by the Trustee, and remanded the case for further proceeding before the trial court on fees, and where the record shows John Cook requested a trial de novo (CP 46) invoking RCW 11.96A.310(9)(a) and RCW 11.96A.310(10), does the trial court have discretion to deny attorney fees to the trustee which she has personally incurred in excess of \$155,000, where she is the prevailing party at the Court of Appeals?

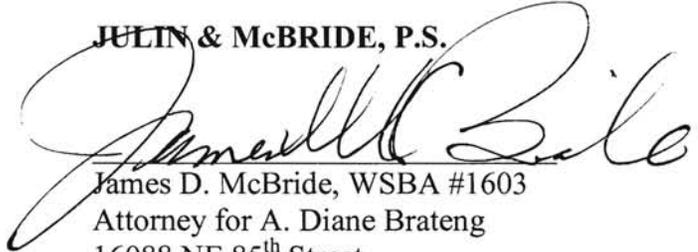
Charging an allowance of \$16,439.92 against the trust for fees causes Ms. Brateng to pay one half of her own fees (CP 156 and CP 159), an ironic and cruel application of RCW 11.96A.310(10).

RELIEF REQUESTED

Ms. Brateng requests remand to the trial court to enter findings and judgment consistent with the following: (1) allowing attorney fees to the Trustee as a prevailing party under Mandatory Arbitration Rules, RCW 11.96A.150, and RCW 11.96A.310(10).

Respectfully submitted this 16th day of November 2012.

JULIN & McBRIDE, P.S.



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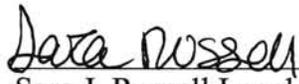
Fax: (425) 885-4442

CERTIFICATE OF SERVICE

I, Sara J. Russell certify under penalty of perjury and the laws of the State of Washington that on November 16, 2012, I caused to be served a copy of the above document entitled "BRIEF OF APPELLANTS" on the interested parties in this action, by United States, First Class Mail, Postage Pre-Paid and email, addressed to the following:

David Allen Nelson
Nelson Law Firm PLLC
1717 Olympia Way, Suite 204
Longview, WA 98632-3929

DATED this 16th day of November 2012, at Redmond, Washington.


Sara J. Russell Legal Assistant

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STATE OF WASHINGTON

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No. 43683-3-II

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

JOHN E. COOK, a married man,
Appellants/Cross-Respondents

v.

A. DIANE BRATENG, a widow concerning her interest in realty subject to
partition action, and A. DIANE BRATENG, as Successor Sole Trustee of
the Elmer J. Cook Living Trust,
Respondents/Cross-Appellants

CERTIFICATE OF SERVICE

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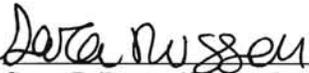
STATE OF WASHINGTON

CERTIFICATE OF SERVICE

I, Sara J. Russell certify under penalty of perjury and the laws of the State of Washington that on January 9, 2013, I caused to be served a copy of the document entitled "BRIEF OF APPELLANTS" on the interested parties in this action, by United States, First Class Mail, Postage Pre-Paid and email, addressed to the following:

Nicholas Franz
818 Yakima Avenue, Suite 201
Tacoma, WA 98405-4865

DATED this 11th day of January 2013, at Redmond, Washington.



Sara J. Russell Legal Assistant