

FILED
COURT OF APPEALS
DIVISION II

2015 JUN 30 PM 1:11

STATE OF WASHINGTON

BY. 
DEPUTY

No. 46628-7-II
No. 46635-0-II
Consolidated

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

MARGUERITE SAMMANN, Individually
Appellant

v.

ANNA J. ARMSTRONG, as Personal Representative
Of the Estate of Robert M. White,
Respondent.

Appeal From The Superior Court
For Pierce County
Case No. 14-2-06641-0
Honorable Jerry T. Costello

CORRECTED REPLY BRIEF OF APPELLANT
MARGUERITE SAMMANN

Marguerite Sammann
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Appellant Pro-Se

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SUPPLEMENTAL STATEMENT OF THE CASE

Appellant Marguerite Sammann (“Marguerite”) presents her Corrected Reply Brief with Appendix. Marguerite filed her Reply Brief on June 19, 2015 with Division One. Inadvertently, the complete Appendix was not attached to her Reply. Hence, after consulting her case manager, Marguerite files this Corrected Brief. Marguerite challenges the trial court’s orders of summary judgment and award of attorney fees to Respondent Anna J. Armstrong (“Representative”).

Marguerite is an heir (CP 781) and creditor (CP 780-781) of Robert M. White’s estate. Marguerite’s lawsuit was filed on March 4, 2014. CP 768-785. The Representative’s motion for summary judgment was filed just over 3 months later, on June 30, 2014. CP 819-820.

What this Court should know is: the above orders were obtained when Marguerite, a 91 year old Disabled Veteran, could not be present at the hearings when the above orders were entered. RP August 1, 2015.

Further, Marguerite was without legal counsel. Marguerite (through her daughter Nadene) made a General Rule 33 Request for Accommodation for Legal counsel to be appointed. The trial court refused to grant Marguerite’s Motion and refused to allow Marguerite’s daughter, Nadene to argue on her mother’s behalf. The trial court stated that even if Nadene had a power of attorney for her mother, the Judge would still not allow Nadene to argue on behalf of her mother. RP dated August 1, 2014 Pgs. 14-17.

At the same time as the Personal Representative's motions for summary judgment and attorney fee award were filed, the Supreme Court was revising General Rule 33, which allows a disabled party to request accommodation and legal counsel.

Marguerite had sought legal advice from a number of legal organizations, but did not hear back from them until the day before the hearing on summary judgment. Marguerite's request was filed by her daughter Nadene, the day after the legal organization informed Marguerite of her right to request accommodation.

In September, 2014, the new General Rule 33 was published. Attached to this Corrected Reply Brief's Appendix is a copy of the new General Rule 33. Marguerite is also making a Request for Judicial Notice of the Instructions published by the Supreme Court for use in all Washington State superior courts. In June-July of 2014, as motions for summary judgment and attorney fees were pending, the Supreme Court was revising General Rule 33.

1. **APPELLANT MARGUERITE SAMMANN IS AN HEIR AND CREDITOR OF ROBERT M. WHITE'S ESTATE**

Appellant Marguerite is an heir and creditor of Robert M. White's Estate. CP 781, 780-781. She has standing as an heir and creditor of Robert's Estate to maintain this action and appeal, because she has a recognized interest in Robert's Estate. Robert M. White was a Veteran who lived from 2008 to 2013 at a Federal Veterans Affairs Hospital in American Lake. CP 771-772 . -2-

The Response Brief (“Response”) of the Representative failed to acknowledge that Marguerite is an heir and creditor of Robert’s Estate. A search of her entire Response brief showed no mention or acknowledgement of Marguerite’s standing as an heir of Robert’s Estate. In fact, her Response brief has no mention of the word “heir”.

This action was filed separately from the lawsuit of Appellant Nadene Sammann because Marguerite is an heir of Robert’s Estate. Marguerite’s claims are different from the claims of Nadene Sammann.

Marguerite’s Complaint has three causes of action:

- 1) Tortious Interference Claim: As an heir of Robert’s Estate, she has standing to bring an action against the Personal Representative for the failure of the Personal Representative at the Final Accounting Hearing, to recover attorney fees from the Guardian unlawfully awarded to the Guardian. Those fees are owed to the Estate, heirs and creditors. Since Marguerite is an heir of Robert’s estate, the failure to recover those fees diminished her share of his Estate.
- 2) As a creditor of Robert’s estate, she has standing to bring a cause of action against the Personal Representative’s because had the Personal Representative recovered those fees, the judgments previously entered against Marguerite for those same attorney fees under a legal theory of equity, would have been reduced or vacated.

Failing to recover those fees and the interest owed on them inequitably increased the amounts that the Personal Representative claims that Marguerite owes to the Estate.

3) The Personal Representative states that after Robert's death, Marguerite sought a setoff against the judgments entered against her. But the fact is, until this lawsuit was filed, Marguerite did not know that the Personal Representative was planning to seize Marguerite's inheritance and use it to setoff the judgments against her. Nor did Marguerite know that the Personal Representative intended to seize Marguerite's home. It was only when the Personal Representative's admitted it in her Answer that Marguerite was certain of the intentions of the Personal Representative.

Marguerite's daughter, Nadene owes her mother more than \$13,370.72 in expenses for fulfilling Robert's contract, and discovering his missing assets.

Prior to this lawsuit, Marguerite filed and served a timely creditor's claim against the Personal Representative of Robert M. White's Estate, Anna J. Armstrong. The Representative rejected Marguerite's creditor's claim. In her lawsuit, Marguerite asked for the judgments against her to be reduced or vacated.

Marguerite's lawsuit is based on these claims:

1) damages incurred because of unlawful award of fees to

Robert's guardian (in violation of Supreme Court and Court of Appeals' Orders) that were made into judgments against Marguerite and her daughter, Nadene.

2) for damages incurred for duplicate fees paid to the guardian and made into judgments against Marguerite and her daughter, Nadene.

3) for damages incurred for fees and costs incurred because of Robert's contract with Marguerite and Nadene, and appointment of Nadene to discover his missing assets, and for costs that Marguerite paid for in order for Nadene to fulfill Robert's contract.

2. THE REPRESENTATIVE'S RESPONSE CONTAINS FACTUAL STATEMENTS NOT SUPPORTED BY THE RECORD AND ARGUMENTS NOT SUPPORTED BY STATUTORY LAW, CASE LAW AND AUTHORITIES.

The Representative's Response contains factual statements not supported by the record and arguments not supported by statutory law, case law and authorities. The Representative did not comply with the Rules of Appellate Procedure, and violated RAP 10 in filing her brief. See **Washburn v. Beatt. Equip. Co.**, 120 Wn.2d 246, 840 P.2d 860 (1992).

3. THE REPRESENTATIVE'S RESPONSE FAILED TO CITE TO THE RECORD AT LEAST 17 TIMES.

The Representative failed to cite to the record at least 17 times.

On page 1 of her Response, the Representative failed to cite to the record 5 times.

On page 2 of her Response, the Representative failed to cite to the record 2 times.

On page 3 of her Response, the Representative failed to cite to the record 3 times including a quotation from Robert's Contract.

On page 4 of Response, the Representative failed to cite to the record 7 times.

The Representative's Response failed to comply with the Rules of Appellate Procedure, RAP 10.3(a)(5). Her arguments are meritless, baseless, and should be disregarded.

Appellant requests the Court strike the Response Brief of the Representative based on her failure to follow the Rules of Appellate Procedure RAP 10.3(a) (5). Striking a Brief is appropriate where a party has failed to follow the appellate rules, with frequent errors and lack of candor.

Washburn v. Beatt. Equip.Co. 120 Wn. 2d 246, 840 P.2d 860 (1992)

As further good cause, when quoting a case, the Representative mis-represents the legal cases she cites, their facts, and holdings, as well as their applicability to this case.

ARGUMENT

The Representative's Response and arguments regarding her failure to collect and recover the unlawfully awarded legal fees are legally and factually frivolous, because she fails to cite any legal

authority or case law in support of her first five arguments.

In addition, her assertions and references as to the actual written records are incorrect and designed to mislead this Court.

To summarize the Personal Representative's arguments, First, she asserts that there were no fees awarded to the Guardian in defiance of two Appellate Court Orders, and Second, if there were fees unlawfully awarded to the Guardian, then the Personal Representative had no duty to recover those fees, and Third, there is no evidence that those fees were actually paid to the Guardian from the ward's funds, and Fourth, that the attorney fees that were denied to the Guardian by The Supreme Court were actually related to a petition for review, And, Fifth, that those fees denied to the Guardian by the Supreme Court and this Court of Appeals were a legitimate Guardianship expense and if those fees were ever awarded to the Guardian, that award was not improper.

The Personal Representative does not provide any statutory Legal Authority for her arguments, or case law. Her arguments are meritless, baseless, and do not support the trial court's award of summary judgment and fees to the Personal Representative.

REVIEW OF THE RECORD

The facts regarding the Supreme Court's March 1, 2011 and Court of Appeals April 4, 2011 Orders are as follows:

On March 1, 2011, the Supreme Court denied attorney fees in general, to Commencement Bay Guardianship Services, Inc. (Robert's Guardian). The March 1st Order did not specify that the denial of fees was for the petition for review. The Supreme Court did not provide any explanation for their denial of attorney fees to the guardian. A careful reading of the March 1st Order proves that.

On April 4, 2011, the Court of Appeals also denied attorney fees to the Guardian. After this time period, Appellant Marguerite and her daughter, Nadene were restrained from filing any documents. Marguerite and Nadene complied with those restraining orders. They did not communicate with the Guardian. There were no attorney fees generated by Marguerite and her daughter.

Nevertheless, during the time when there was no court activity on the part of Marguerite and her daughter, the Guardian went down to the Trial Court, asked for and got signed orders giving her attorney fees that were previously denied to her by both appellate courts. And, because of those restraining orders, Marguerite and Nadene could not object or speak in court against the fees imposed on them.

Starting with her first argument on page 7, the Personal Representative ignores the March 1, 2011 Supreme Court Order that denied fees to the Guardian. Instead, the Personal Representative relegates her discussion of the Supreme Court March 1st Order to page 9 of her Response. Presumably, this is because this is one of her

weaker arguments, and she does not wish this Court to look more closely at the Supreme Court Order.

On page 9 of her Response, the Personal Representative states “the (Supreme Court) Order denies the request of the Guardian for an award of attorney fees against Nadene Sammann and Marguerite Sammann in connection with the Petition for Review to the Supreme Court Marguerite and Nadene had filed”.

THE SUPREME COURT ORDER DENYING FEES TO THE GUARDIAN DOES NOT SAY WHAT FEES WERE DENIED OR WHY THE FEES WERE DENIED. THE SUPREME COURT DENIED FEES IN GENERAL TO THE GUARDIAN.

The Supreme Court Order denying fees to the Guardian does not say what fees were denied, what they were related to, or why the fees were denied. The Supreme Court denied fees in general to the Guardian.

EVEN IF THE DENIAL OF FEES WAS RELATED TO THE PETITION FOR REVIEW, THE GUARDIAN VIOLATED THE SUPREME COURT ORDER BY ASKING FOR THOSE FEES FROM THE TRIAL COURT.

Even if the denial of fees is related to the Petition for Review, the Guardian violated the Supreme Court Order by going down to the trial court, requesting those fees from the trial court, and having Judgments signed which contained those attorney fees.

The Supreme Court does not specify or state the purpose

of those fees. There is no explanation for the denial of attorney fees to the Guardian. There is nothing in that order that says the denial of attorney fees was for the Petition for Review.

On page 7 of her Response, the Representative asserts “a Review of the record before this Court regarding the April 4, 2011 Court of Appeals ruling regarding attorneys fees demonstrates (1) that the judgment entered by the trial court on remand from the Court of Appeals was identical to the ruling of the Court of Appeals.

However, that is not true.

Contrary to the Representative’s misleading assertions, there were three (3) judgments entered on April 27, 2012 in the trial court. The \$12,001.25 judgment contained attorney fees previously denied by both appellate courts to the guardian. Those fees were never part of the March 1, 2011 Supreme Court and April 4, 2011 Court of Appeals Orders.

The fees and Judgment of \$12, 001.25 plus interest should have been recovered by the Representative. The judgment against Marguerite of \$12,001.25 plus interest should have been vacated.

THE REPRESENTATIVE’S ARGUMENTS RE: PAYMENT OF THE \$38, 601. 25 ATTORNEY FEES AWARD TO THE GUARDIAN ARE FRIVOLOUS.

The Representative’s arguments re: payment of the \$38,601.25 attorney fees award to the Guardian are frivolous.

The Representative next argues that there is “no evidence in the record that the court in the guardianship proceeding approved payment to the Guardian of the \$38, 601.25 in fees incurred by the guardian that resulted in a judgment in that amount against Marguerite Sammann and her daughter”.

Contrary to the Representative’s assertions above, the record indicates that on April 27, 2012, three judgments were entered against Marguerite and her daughter, Nadene.

Marguerite’s Opening Brief contains copies of the three judgments.

The Orders and Judgments signed on April 27, 2012 did approve and allow for payment of all the Guardian’s request for fees to pay herself out of Robert’s Guardianship estate.

THE GUARDIAN DID PROVIDE EVIDENCE OF HER FEES AND PAYMENTS TO HERSELF IN THE FORM OF BANK RECORDS FILED IN THE GUARDIANSHIP CASE.

The Guardian did provide evidence of her fees and payments to herself in the form of bank records filed in the Guardianship case.

4. THE REPRESENTATIVE HAD TIMELY NOTICE OF THE GUARDIAN’S ANNUAL FEE REQUESTS AND THE OPPORTUNITY TO OBJECT TO ALL THE FEE REQUESTS, BUT SHE FAILED TO TAKE ANY ACTION AFTER ROBERT’S DEATH.

The Representative in her individual capacity and as Representative had notice of the Guardian’s annual fee requests and the opportunity to object to all of the fee requests, but she failed to take any action, before and after Robert’s death.

It is worth noting here, that the only person allowed to subpoena documents or ask for discovery of the guardian's records, including checkbooks, is the Personal Representative herself.

Even within this lawsuit, Marguerite cannot subpoena the checkbooks from the Guardian. And, the Guardian never provided copies of her checks to the trial court or appellate courts.

Appellant Marguerite and her daughter, in a separate Motion before this Court, have asked to supplement the record with those fee requests records, including the bank records.

This Court will allow additional evidence to be added to the record if there is a question of proof involved.

The Personal Representative's assertions(above) are baseless meritless and factually frivolous. The Orders granting Summary Judgment and an attorney fee award to the Personal Representative should be reversed.

5. THE REPRESENTATIVE'S ARGUMENTS RE: THE JUDGMENT ENTERED ON REMAND BEING IDENTICAL AGAINST MARGUERITE AND HER DAUGHTER IS FRIVOLOUS AND MISLEADING BECAUSE IT IGNORES THE ADDITIONAL JUDGMENT OF \$12,001.25 THAT THIS COURT NEVER ORDERED.

The Representative's arguments re: the Judgment entered on remand being identical against Marguerite and her daughter is frivolous and misleading because it ignores the additional judgment of \$12, 001.25 that this Court never ordered.

On Page 8 of her Response, the Representative asserts that “the Judgment entered on remand in the guardianship proceeding against Marguerite Sammann and her daughter is identical to the amounts set by the Court of Appeals in that order”. CP 999).

This Court will notice that the Representative’s assertions are factually incorrect and frivolous. The fees awarded to the Guardian included attorney fees of \$12,001.25 that were denied to her by the Supreme Court’s March 1, 2011 and Court of Appeals April 4, 2011 Orders. The Supreme Court and Court of Appeals’ Orders did not award attorney fees of \$12,001.25 to the Guardian.

Next, On Page 8 of her Response, the Personal Representative states that “Marguerite’s argument that a judgment was entered against herself and her mother that was contrary to the ruling of the Court of Appeals and that Anna Armstrong (the Representative) should have objected to that judgment at the time of the final accounting in the guardianship is factually frivolous.

These arguments are meritless for two reasons:

Contrary to the Personal Representative’s assertions, the Judgments entered against Marguerite and her daughter included a Judgment of \$12,001.25 regarding attorney fees specifically denied to the Guardian by the Supreme Court and Court of Appeals.

Next, the Personal Representative’s Response on page 8 disputes that Anna Armstrong as Personal Representative should

have objected to those attorney fee awards and Judgments at the time of the Final Accounting of the Guardian

RCW 11.48.010 specifically sets out the duties and obligations of the Personal Representative or Administrator of an Estate.

The Personal Representative stands in the shoes of the deceased person. If the deceased ward were alive, and was asking his guardian for an accounting, the guardian would have to provide a Final Accounting, the ward would have the right to contest and recover any fees unlawfully or fraudulently awarded to the guardian. Here, the Personal Representative stands in the shoes of the deceased ward, and she similarly has the duty and obligation to collect any unlawfully and fraudulently awarded fees from the Guardian.

The Court should note that at no time in this case, did the Representative or her attorney raise as a defense the issue of lack of timely notice of 1) the Guardian's Final Accounting Hearing, 2) the request for a Guardian ad litem to review the Guardian's accountings, and 3) the objections and evidence served on the Representative by Marguerite.

Under the Washington State statute RCW 11.48.010, the Personal Representative has a Legal duty to recover any assets and fees that legally belong to the deceased. By asserting her frivolous and baseless arguments to the contrary, she is acting in bad faith with the court and opposing parties.

The Personal Representative cannot, now, argue that she does not have a duty to collect those fees from the Guardian, nor do her arguments stand up when she argues that the Personal Representative cannot recover unlawfully or fraudulently obtained fees at the Final Accounting Hearing, before the Guardian is discharged. The Washington State Legislature deliberately set up a process for recovering fees and assets before the Guardian is discharged, to allow the Personal Representative (who stands in the shoes of the deceased person and who is answerable to the heirs and creditors of the Estate), to recover the assets that are properly the property of the heirs and creditors.

This Court should reverse the orders granting summary judgment and award of attorney fees to the Personal Representative.

On page 5 of the Personal Representative's Response, she alleges that the trial court's refusal to enter findings of fact in the summary judgment order was not error.

But, the Rules of Appellate Procedure require an appellant to assign error to all findings of fact, or conclusions of law. RAP 10.4.

In this Division Two, the judges have even created a special Rule GR 98-2 that simplifies the process of assigning error to findings of fact and conclusions of law. Interestingly, the Personal Representative states in her Response, that Marguerite did not assign error to the order dismissing her claims, while on page 5, she alleges that on an order of

summary judgment, findings of fact and conclusions of law are superfluous. Marguerite appealed the entire orders of summary judgment and award of attorney fees, as well as the orders denying her motions to reconsider both the summary judgment and award of attorney fees.

The Representative's Response on pages 6-11, does not cite any statutory or legal authority or case law in support of her assertions.

The Orders Granting Summary Judgment and Award of Attorney Fees should be reversed. Marguerite Sammann should be awarded her inheritance free and clear. The judgments against Marguerite should be reduced or vacated. The Representative should pay fees (if any) and costs.

6. MARGUERITE'S CLAIM FOR DAMAGES DUE TO THE PERSONAL REPRESENTATIVE'S FAILURE TO RECOVER FEES IS NOT FRIVOLOUS.

Marguerite's claim for damages due to the Personal Representative's failure to recover fees is not frivolous.

On page 6, the Personal Representative alleges a number of theories as to why Marguerite's claim for damages due to the Personal Representative's failure to recover fees is frivolous, but

1. The Personal Representative's argument cites no authority or legal support for her argument.

2. Contrary to the Personal Representative's assertions on Page 6- 8, that Marguerite argued two bases for her claims for damages:

1. That the Representative had a Duty to recover attorney attorney fees that were unlawfully awarded to the Guardian, and 2) that a specific statute was created by the State Legislature, RCW 11.48.010, that gives the Personal Representative that Duty to recover and collect any debts owed to the Estate.

The Representative 's assertions on page 6-7 are without any merit because she fails to provide any statutory or case law authority to support her assertions. The Representative merely states that Marguerite's arguments are factually and legally frivolous, without providing any substantive legal authority.

The Rules of Appellate Procedure, RAP 10 state that assertions without any legal support or authority should be ignored or disregarded by the Appellate court.

The fact that the Personal Representative breached her duty to recover the attorney fees owed to the Estate does not relieve the Representative of the duty to recover those fees.

Most of the Personal Representative's Arguments are incoherent or rely on unsupported argument.

Other arguments have no logical route from a premise to a conclusion. Just because the personal representative disagrees with

a statutory law, or the responsibilities and duties of a Personal Representative does not mean that she gets to re-write the law to suit herself and her attorney.

7. CONTRARY TO THE ARGUMENTS OF THE PERSONAL REPRESENTATIVE, SHE FAILED TO COLLECT MOST OF THE DEBTS OWED TO ROBERT'S ESTATE

Contrary to the arguments of the personal representative, she failed to collect most of the debts owed to Robert's estate.

Those debts included the attorney fees unlawfully awarded to the Guardian, in direct violation of the Supreme Court and Court of Appeals Orders denying those fees to the Guardian.

And, the Personal Representative fails to provide any legal authority to support her arguments. She cites no legal cases that support her position that she did not have a duty to recover those fees.

According to the Personal Representative, the statutory law regarding her duty to collect debts, does not say she has a duty to collect debts owed to the estate, especially from a guardian at the Final Accounting.

8. THE REPRESENTATIVE'S ARGUMENTS ARE EITHER UNSUPPORTED BECAUSE THEY ARE WITHOUT AUTHORITY OR BECAUSE THE CASES SHE CITES HAVE NO BEARING ON THE ISSUES IN THIS CASE.

The Personal Representative's arguments are either unsupported because they are without authority or because the cases she cites have no bearing on the issues in this case.

The other debts owed to the estate included overcharged funeral expenses and the VA Burial Allowance. Appellant Nadene worked to collect the overcharged funeral expenses. Without Nadene's work, those overcharges would never have been returned to the Estate.

The VA Burial Allowance remains unpaid to the Estate, because the Representative is the only person allowed to collect it, since Robert had no spouse or children.

9. **APPELLANT MARGUERITE HAS STANDING TO BRING THIS LAWSUIT AGAINST THE REPRESENTATIVE BECAUSE MARGUERITE IS AN HEIR AND CREDITOR OF ROBERT'S ESTATE.**

Appellant Marguerite has standing to bring this lawsuit against the Representative because Marguerite is an heir and creditor of Robert's Estate. Marguerite is a sister of Robert M. White. CP 768.

Standing is defined as having a recognized interest in the outcome of a lawsuit. A listed heir of an estate has a recognized interest in an estate because she will inherit from the estate.

The Representative was unable to find a will executed by Robert. Under Washington State law, this means that Robert died intestate, and his estate, after recovering debts owed to him, is divided up between his living sisters, and children of his deceased siblings.

The Personal Representative in her Statement of the Case, failed to acknowledge Marguerite's standing as an heir and creditor of Robert's estate.

**THIS ACTION AGAINST THE REPRESENTATIVE
WAS NEVER FILED UNDER
THE DECLARATORY JUDGMENT ACT**

This action against the Representative was never filed under the Declaratory Judgment Act. In Marguerite's complaint, There is no mention or indication of applying the Declaratory Judgment Act to her lawsuit. CP 768-785.

**NOWHERE IN MARGUERITE'S COMPLAINT OR THE
REPRESENTATIVE'S MOTION FOR SUMMARY JUDGMENT OR
MEMORANDUM OF AUTHORITIES
WAS THERE ANY CLAIM OR ARGUMENT MADE UNDER
THE DECLARATORY JUDGMENT ACT.**

Nowhere in Marguerite's complaint or the Representative's Motion for Summary Judgment or Memorandum of Authorities was there any claim or argument made under the Declaratory Judgment Act. The Representative now brings in a case regarding the Act, when she never argued this issue in the trial court, nor was it part of Marguerite's complaint. The Representative misleads this Court by citing a case in her Response which mentions the Declaratory Judgment Act. The Representative's failure to argue the issue of Declaratory Judgment Act in her Motion for Summary Judgment and Memorandum of Authorities is fatal to her case. Reversal of the Order of Summary Judgment is appropriate here.

**THE REPRESENTATIVE NEVER ARGUED THE ISSUE OF THE
DECLARATORY JUDGMENT ACT OR CITED A CASE OR
STATUTE IN SUPPORT OF THE ACT**

In her motion for summary judgment and memorandum of authorities, the Representative never argued the issue of the Declaratory Judgment Act nor did she cite any case or statute re: the Declaratory Judgment Act or in support of the act. There is absolutely no mention of the Act in her motion for summary judgment and memorandum of authorities. Marguerite never got a chance to argue this issue at the trial court level. This Court should disregard the Representative's arguments re: the Declaratory Judgment Act

The orders granting summary judgment and award of attorney fees to the Representative should be reversed. The underlying judgments against Marguerite should be should be reduced or vacated.

The Representative's arguments are baseless, meritless and frivolous. This Court should ignore her arguments.

This Court should reverse the orders granting summary judgment and award of attorney fees to the Representative.

10. TORTIOUS INTERFERENCE WITH AN INHERITANCE WAS A VALID CLAIM THAT MARGUERITE PLEADED IN HER COMPLAINT

Tortious interference with an inheritance was a valid claim that Marguerite pleaded in her complaint. Marguerite stated the above cause of action on page of her complaint. CP 781. Although she did not call it tortuous interference, Marguerite stated that she believed the Representative intended to take Marguerite's inheritance. After the complaint was filed, the Representative admitted in her Answer, that she did intend to take Marguerite's inheritance, -21-

in order to satisfy the judgments against Marguerite and Nadene.

On Page 13 of the Representative's Response, she states that the claim of tortuous interference with an inheritance was not a part of Marguerite's claim in her complaint.

Marguerite's lawsuit was filed as a tort.

As an heir of Robert's estate, Marguerite's claim of tortuous interference with her inheritance is a valid claim. Because it is a fact that Marguerite is an heir, she has standing to raise the issue of tortuous interference with her inheritance.

The Representative has admitted in her Answer to Marguerite's Complaint, that she intended to seize and execute on Marguerite's inheritance. The Representative's admissions provide a valid basis that Marguerite's allegations in her claim and complaint as an heir are true. The Representative has no basis to deny Marguerite's claim of tortuous interference with Marguerite's inheritance.

The Personal Representative again misleads the court with untrue statements and invalid arguments.

This Court should reverse the order of summary judgment and award of attorneys fees to the Representative. The underlying judgments against Marguerite should be reduced or vacated.

11. **MARGUERITE CONTACTED PRESIDENT OBAMA
WHEN ROBERT WAS BEING STARVED AND DEPRIVED
OF WATER AT THE FEDERAL VA WARD.**

Marguerite contacted President Obama when Robert was being starved and deprived of water at the Federal VA ward. See Appendix A-1, Letter to President Obama Re: Robert dying of starvation and lack of water. Marguerite worked on Robert's behalf to save his life.

12. **MARGUERITE A 91 YEAR OLD DISABLED PLAINTIFF,
HAD NO LEGAL COUNSEL WHEN THE ORDERS
GRANTING SUMMARY JUDGMENT AND
ATTORNEY FEE AWARD WERE SIGNED.**

Marguerite, a 91 year old disabled plaintiff, had no legal counsel when the Summary Judgment and Attorney fee award orders were granted.

Due to her disability, Marguerite Sammann was not present when the motions for summary judgment and attorney fee award were argued and granted. Nor did she have any legal counsel present during argument for the above motions. On Page 20-21 of her Response, the Representative admits that Nadene, Marguerite's daughter, was not allowed to present any argument re: Marguerite's request for legal counsel.

13. **MARGUERITE WAS ENTITLED TO APPOINTED
LEGAL COUNSEL.**

Marguerite Sammann was entitled to appointed legal counsel. The trial court committed reversible error when it refused to appoint legal counsel for her. On Page 20-21 of her Response, the Representative incorrectly argues that there was no authority for appointment of legal counsel.

14. **THE AMERICANS WITH DISABILITIES ACT OF 1990
THE WASHINGTON LAW AGAINST DISCRIMINATION,
42 U. S. C. SECTIONS 12101-1221, RCW 49.60 ET seq.
SPECIFICALLY ALLOWS ACCOMMODATION
REQUESTS, INCLUDING APPOINTMENT OF LEGAL
COUNSEL TO BE GRANTED WHEN NECESSARY.**

The Americans with Disabilities Act of 1990, 42 U.S. C. Sections 12101-12213, the Washington Law Against Discrimination, RCW 49.60 et seq. specifically allows accommodation requests, including appointment of legal counsel to be granted when necessary.

15. **REQUEST FOR JUDICIAL NOTICE RE: INSTRUCTIONS
BY THE WASHINGTON STATE ADMINISTRATIVE
OFFICE OF THE COURTS RE:
NOTIFICATION OF PARTIES IN A CASE.**

Marguerite requests judicial notice re: instructions by the Washington State Administrative Office of the Courts re: notification to Parties in a case.

Contrary to the Personal Representative's arguments on page 20-21 of her Response, the Washington State Administrative Office of the Courts has stated in its instructions, that the applicant for legal counsel accommodation does not have to notify other parties in the case.

See Appendix A-3 Page 2: Instructions for Requesting Legal Counsel.

The Representative and her attorney have no right to Notice of the Request for Accommodation because giving them the right to argue for denial of legal counsel to a party, such as a 91 year old Disabled person, would give the opposing party an unfair advantage over the disabled person and violate a basic tenet, due process, of our legal system.

The 14th amendment protects the right of a party to due process, and the right to be represented in court by the injured party or counsel.

16. THE SUPREME COURT REVISED ITS GENERAL RULE 33 RE: REQUEST FOR FOR LEGAL COUNSEL AT THE SAME TIME THE REPRESENTATIVE'S HEARING ON MOTIONS FOR SUMMARY JUDGMENT AND FEE AWARD WERE HEARD.

At the same time of the Personal Representative's hearing (August 1st, 2014) on her Motion for summary judgment, the Supreme Court revised its rules re: requests for accommodation for legal counsel. The Rule change was confusing to Marguerite. This Court should ignore the Representative's arguments regarding notice of the request for legal counsel.

17. MARGUERITE HAS NO LEGAL DUTY OR OBLIGATION TO ASSIST THE REPRESENTATIVE IN EXECUTING ON HER INHERITANCE OR HER HOME.

Marguerite has no legal duty or "obligation" to assist the Representative in executing on Marguerite's inheritance or her home. The Representative cannot point to any legal authority or statute to back up her argument. There is no authority the Representative can cite for her assertions. Nor did she cite any authority for this "theory". There is no evidence of any delay in this case at the trial court level. Marguerite filed this case on March 4, 2014. The Representative filed her motion for summary judgment a little over 3 months later. If anything, the trial court orders were a rush to judgment. The Representative's arguments for a sanction award are frivolous and meritless.

In this case, neither Marguerite nor Nadene have any “obligation” to assist anyone, including the Representative, in taking Marguerite’s inheritance or foreclosing on their home. Neither of them has an obligation for any of the fees in this case. The Representative’s citation of Sterling Business Forms, Inc. v. Thorpe, 82 Wash. App. 446, 918 P.2d 531 (1996) (employees used confidential information to start up a new company) is a baseless and meritless attempt to use improper means to impose a sanction award on a disabled party with no legal counsel. Further, the Representative is trying to transfer a sanction fee award from one party (Nadene) to another, Marguerite, under a theory of civil conspiracy. The Representative would have us believe that filing a lawsuit meets the definition of “unlawful means”. This attempt to make an award of fees joint and several is baseless and frivolous.

ATTORNEYS FEES ON APPEAL

18. **THE REPRESENTATIVE CANNOT BE AWARDED ATTORNEY FEES SANCTIONS AGAINST APPELLANT BECAUSE SHE FAILED TO COMPLY WITH THE APPELLATE RULES RAP 18.1 AND RAP 18.9. CIVIL RULE 11 NO LONGER APPLIES IN APPEALS.**

The Representative cannot be awarded attorney fees sanctions against Appellant because she failed to comply with Appellate Rules RAP 18.1 and 18.9. On page 21 of her Response, the Representative cited Civil Rule 11 in her request for appellate fees. Civil Rule 11 no longer applies to appeals.

The Personal Representative did not cite any Rule of Appellate Procedure as the basis for a sanction fee award against Marguerite. Instead, she cited Civil Rule 11, which no longer applies to an appeal. Washington State Appellate Courts changed the rules a few years ago.

The Washington State Appellate Practice Deskbook, Chapter 26-1 Supplement Rev 2011 states the correct rules for requesting sanctions:

Ch. 26.3 WHEN AN APPELLATE COURT MAY AWARD ATTORNEY FEES AS A SANCTION

RAP 18.7 no longer authorizes the appellate court to impose sanctions for violations of CR 11 on appeal. Instead, the award of fees as a sanction is governed by RAP 18.9.

The Representative Has No Grounds or Basis For An Award Of Fees As A Sanction Against Marguerite.

The Representative has no grounds or basis for an award of fees as a sanction against Marguerite. And, in any event, in her Response, she failed to cite the correct, applicable Rules RAP 18.1 and RAP 18.9.

19. In This Appeal, The Personal Representative Has No Grounds or Basis for An Award Of Reasonable Attorney Fees Under Any Other Rule or Authority. She Did Not Request or Provide Argument for An Award of Reasonable Attorney Fees Under Any Other Legal Theory, Statute or Authority.

In this Appeal, the Personal Representative has no grounds or basis for an award of reasonable attorney fees under any other rule or authority. She did not request or provide argument for an award under any other legal theory, statute or authority.

The Appellate Courts require that any request for fees by respondent or appellant must cite a statute, rule or authority, and provide argument in support of a fee request.

In this appeal, the Personal Respondent did not cite the correct statute or rule in requesting an attorney fee award as a sanction, and she did not ask for or argue that reasonable attorney fees be awarded to her under any other rule, statute, or authority.

The Personal Representative's request for an attorney fee award as a sanction or under any other legal rule or authority should be denied because they are baseless and meritless, and failed to comply with the correct Rules of Appellate Procedure.

If this court decides to award fees as a sanction or as an award of reasonable attorney fees and costs, we would ask the court to consider that this case is one of first impression.

20. THIS CASE IS ONE OF FIRST IMPRESSION

“Cases of first impression are not frivolous if they present debateable issues of substantial public importance”. **Olson v. City of Bellevue**, 968 P.2d 894, Washington Court of Appeals, Division One. (1998).

The Representative has admitted in her Answer to Marguerite's complaint that she intends to seize Marguerite's inheritance, and execute on the judgments.

The Personal Representative argues that there is no **“proof”** that Robert’s Guardian actually paid herself attorney fees out of Robert’s Estate. To get that proof requires the Personal Representative to subpoena the guardian’s checks. And only the Personal Representative can do that. And, that is clearly something the Personal Representative does not want to do.

Why is that? Because, clearly, the personal representative is afraid of what she would find.

The facts are, that Robert’s Guardian paid herself more than \$100,000 in attorney fees, and the court signed judgments against appellant Marguerite and her daughter, Nadene.

Appellant Marguerite does not know if this Court had trouble following the Personal Representative’s arguments on pages but the appellant certainly did.

If this court were to buy this argument, then the Guardian would have been working for nothing. And, no Guardian is going to do that.

If the guardian did not pay herself any fees out of Robert’s Estate while he was alive, then there would have been no judgments against appellants Marguerite and her daughter, Nadene.

But the Personal Representative asks us to believe that no fees were paid to the Guardian, just Judgments without any basis created against Marguerite and Nadene.

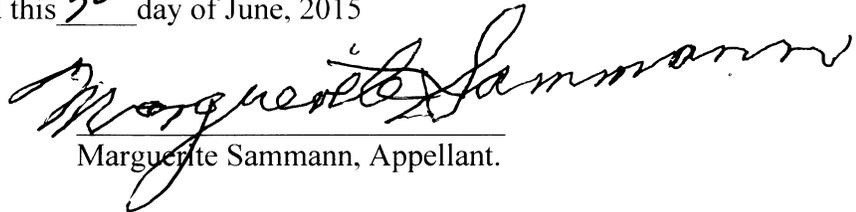
If that is true, then there is no legal or factual basis for any
Judgments to be executed on Marguerite and Nadene.

CONCLUSION

Based on the above arguments, this Court should grant the Motion to Supplement
the Record, reverse the Orders granting summary judgment and award of fees to
the Representative entered by the Trial Court. If the court remands this case down
to the trial court, appellant requests legal counsel be appointed for her. Marguerite
should receive her full inheritance and distribution of Robert's Estate.

The Representative should pay fees (if any) and costs.

Respectfully Submitted this 30th day of June, 2015


Marguerite Sammann, Appellant.

APPENDIX

Marguerite Sammann v.
Anna J. Armstrong, as
Personal Representative
Of the Estate of Robert
M. White. No. 46635-0-II
Consolidated

Marguerite Sammann
17058 37th Avenue N.E.
Seattle, Washington 98155
(206) 365-8019
Appendix

APPENDIX A-1

Marguerite Sammann's
Letter to President Obama
Requesting the President's
Assistance re: the starvation
and deprivation of water for
Robert M. White, dated
April 17, 2013.

Marguerite Sammann
v. Anna J. Armstrong
No. 46628-7-II
Consolidated

Marguerite Sammann
17058 37th Avenue N.E.
Seattle, Washington 98155
(206) 365-8019
Appendix A-1

Marguerite Sammann
Nadene M. Sammann
17058 37th Avenue N.E.
Seattle, Washington 98155
(206) 365-8019

By FAX: 202-456-2461

President Barack Obama
1600 Pennsylvania Avenue
Washington D C

April 17, 2013

Re: Robert M. White, U.S. Army Veteran, at VA American Lake Nursing Home,
Building 200, Room 108, 9600 Veterans Drive, Tacoma, Wash. Phone: 253- 583-2077.
SS # 6571(last 4 digits)

Dear Mr. President,

I write concerning my brother Robert, who has been deprived of food and water for 9 days and will die shortly as a consequence. I called today and discovered my brother is in great discomfort. His doctors and nurses refuse to give him any hydration or food through an IV. They stick a sponge into his mouth

Since Monday, April 8, 2013, Doctors Falzgraf and Hammond at American Lake have deprived my brother of food and water. He has been put into a hospice ward. My brother suffered a stroke but was stabilized at Madigan Army Hospital and then sent back to the VA American Lake Nursing Home.

Rob breathes on his own, he is conscious, and he responded to a visiting relative by raising his left arm in greeting.

Robert wants to be "Full Code", i.e. to be resuscitated and to have food and water. A legal document, a POLST form was filed 2009 in State Court. The doctors at American Lake and Madigan Army Hospital had Robert's POLST form on file.

A court appointed guardian obtained a court order reversing Robert's previous POLST form in a very short time frame without serving the documents on family members or Rob in time for the hearing. There is a real issue of due process here.

My daughter and I discovered that many Veterans are being treated like this.

This also appears to be a cost cutting move by the VA, as part of the Sequester, with Veterans paying the ultimate price.

Is there anything you can do to help my brother get the food and water he should be getting?


Marguerite Sammann

APPENDIX A-2

Robert M. White's
Contract signed by
Robert on June 19, 2009
At the Federal VA Ward

Marguerite Sammann
v. Anna J. Armstrong
No. 46628-7-II
Consolidated

Marguerite Sammann
17058 37th Avenue N.E.
Seattle, Washington 98155
(203) 365-8019
Appendix A-2



STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The law authorizes us to request the information we are asking you to provide on this form (38 U.S.C. 501(a) and (b)). The responses you submit are considered confidential (38 U.S.C. 5701). They may be disclosed outside the Department of Veterans Affairs (VA) only if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-827-1000 for mailing information on where to send your comments.

FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print)	SOCIAL SECURITY NO.	VA FILE NO.
ROBERT M. WHITE	[REDACTED]	[REDACTED]
<i>DAMAGES</i>		
C/CSS -		

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I, Robert M. White, make the following claim. On Nov. 19, 2008, I was taken from my

home(613 S. 19th St., Tacoma, Wash.) by Julie Carey, a court appointed GAL. Ms. Carey

took me to St. Joseph's Medical Center, where I was stripped of my clothing and I had to

surrender all my money. The amount of cash that I brought with me from my home was

more than \$30,000. A financial record of my cash was made by St. Joe's on a form. I

believe the financial record is part of my medical history. On or about Dec. 8th - 9th, 2008,

Julie Carey met with me and promised to safeguard my cash. On or about Dec. 8th - 9th, 2008

I was taken to the VA Nursing home at American Lake, Tacoma, Wash. I later learned

Julie Carey filed a report to the Court stating two VA social workers, Deanna Carron and

Theresa Christian found less than \$10,000 on my person when I was admitted to the VA

Nursing Home. All of my cash assets come from substantial VA and Social Security

Disability benefits. The total value of all my cash valuables was more than \$400,000

before I was taken from my home. Now, a court appointed guardian claims my assets are

less than \$6,000. I am requesting that my niece, Nadene Sammann ask the VA to conduct

an investigation into the disappearance of my cash. I make this claim for the return of all

my cash. I want my valuables returned to me and I want to get out of here.

(CONTINUE ON REVERSE)

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

SIGNATURE	DATE SIGNED
[REDACTED SIGNATURE]	June 19 09
ADDRESS	TELEPHONE NUMBERS (Include Area Code)
AMERICAN LAKE VA MEDICAL CENTER BUILDING 28 NORTH 9000 VETERANS DRIVE TACOMA, WASH. 98493	DAYTIME EVENING

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

0004 1730 7/2/2014

APPENDIX A-3

3 Page Copy of Instructions
and Information about Requests
for Accommodation for Persons
with Disabilities(ADA Requests)
pursuant to General Rule 33
Also, copy of General Rule 33
Revised Rule and Current Rule.

Marguerite Sammann
v. Anna J. Armstrong,
No. 46628-7-II
Consolidated

Marguerite Sammann
17058 37th Avenue N.E.
Seattle, Washington 98155
(206) 365-8019
Appendix A-3

Instructions and Information about Requests for Accommodation for Persons with Disabilities (ADA Requests)

Court Contact:

(Name)

(Title)

(Email)

(Telephone)

(Address)

If no one is listed above, contact the presiding judge of the court.

Generally.

- Courts provide reasonable accommodation for persons with disabilities who require assistance to participate fully in a court proceeding or activity.
- Accommodation requests can be granted to any person with a disability for whom such accommodation is necessary under the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101-12213), the Washington Law Against Discrimination (RCW 49.60 et seq.), or other local, state, or federal laws.
- The court will make its decision in each case individually after considering the nature of the person's disability and the ability of the court to provide the requested accommodation.
- The court will give primary consideration to the type of accommodation the person requests.

Process.

- The formal procedure is in Washington State General Rule (GR) 33.
- Request for Accommodation: The court will promptly address requests for aids, modifications, and services to ensure access to courts, court programs, and court proceedings.
- Timing: Requests should be made as far in advance as possible.

- Local procedures allowed: A court may provide some simple accommodations, such as an assisted listening device, without requiring the Request for Accommodation form. (For more information, ask the court contact).

Procedure for Requesting Accommodation. To request an accommodation:

- Complete the **Request for Accommodation** form. If you cannot fill out the form or have questions, talk to the court contact listed above.
- Return your request form and any documents you want the court to consider to the court contact.
- The Court may contact you for more information.

[You do not need to notify anyone in the case about your request for accommodation.]

If you provide medical and other health information, it must be filed under seal so that only you and the court can read it.

Attach it to the form called the:

**Sealed Medical and Health Information Cover Sheet
under GR 33**

form number WPF All Cases 01.0300. No one else can have access to your information unless they get a court order that allows access.

Decision. The court will inform you of its decision to grant or deny the request for accommodation. Your request will be granted unless the court finds:

- You have failed to satisfy the substantive requirements of GR 33; or
- The court is unable to provide the requested accommodation on the date of the proceeding and the proceeding cannot be continued without significant prejudice to a party; or
- Permitting you to participate in the proceeding with the requested accommodation would create a direct threat to the health or safety or wellbeing of you or others.

- The requested accommodation would create an undue financial or administrative burden for the court; or would fundamentally alter the nature of the court service, program, or activity.
 - An accommodation may be denied based on a fundamental alteration or undue burden only after considering all resources available for the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.
 - If a fundamental alteration or undue burden would result from fulfilling the request, the Court must still ensure that, to the maximum extent possible, you receive the benefits or services provided by the court.

Denial. If your requested accommodation is denied, the court must specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court must also ensure that you are informed of your right to file an ADA complaint with the United States Department of Justice Civil Rights Division.

Sealing Decision. The court will determine whether or not to seal the written decision. The court will enter the decision in the proceedings file, if there is one. If there is no proceedings file, the decision will be entered in the court's administrative file.

Requested accommodation granted:

- In whole In part (*specify*) Alternative (*specify*)

Dates accommodation will be provided:

Requested accommodation denied because:

- The person requesting the accommodation failed to satisfy the requirements of GR 33 (*specify*)
- Court is unable to provide the requested accommodation on the proceeding date and cannot continue the proceeding without significant prejudice to a party (*explain, including why proceeding cannot be continued*)
- Permitting the person to participate in the proceeding with the requested accommodation creates a direct threat to the safety or well-being of the person requesting accommodation or others (*explain*)
- The requested accommodation creates an undue financial or administrative burden for the court or fundamentally alters the nature of the court service, program, or activity (*explain*)

Basis for finding:

- Additional Findings:
-

Notice of the right to file a complaint:

- Does not apply.
- Your request for accommodation was denied in whole or in part as indicated above.

You have a right to file an ADA complaint with the U.S. Department of Justice Civil Rights Division.

Decision about sealing:

This decision is not sealed.

This decision is sealed.

Reason for this decision:

The request for accommodation was granted or denied on _____ *(Date)*

Person requesting accommodation was notified on _____ *(Date)* **by:**

letter email

on the record by phone other

Date signed: _____

➤ _____
(Signature of Court Official)

(Type or Print Name of Court Official)

NETSCAN

2014 WA REG TEXT 365000 (NS)

Washington Regulation Text - Netscan
Uncodified
Miscellaneous
July 02, 2014
Supreme Court, State

Rules of Court

The Access to Justice Board having recommended the adoption of the proposed amendments to GR 33, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice.

WSR 14-13-023

RULES OF COURT

STATE SUPREME COURT

[June 6, 2014]

IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO GR 33—**REQUESTS FOR ACCOMMODATION BY PERSONS WITH DISABILITIES**

ORDER NO. 25700-A-1065

The Access to Justice Board having recommended the adoption of the proposed amendments to GR 33, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the amendment[s] as shown below are adopted.
- (b) That the amendment[s] will be published in the Washington Reports and will become effective September 1, 2014.

DATED at Olympia, Washington this 6th day of June, 2014.

Madsen, C.J.

C. Johnson, J. Wiggins, J.

Owens, J. Gordon McCloud, J.

Fairhurst, J. Gonzalez, J.

Stephens, J. Yu, J

GR 33

Requests for Accommodation by Persons with Disabilities

(a) Definitions. The following definitions shall apply under this rule:

(1) - (2) [Unchanged.]

~~(3) "Proceedings Applicant" means any lawyer, party, witness, juror, or any other individual who is participating in any proceeding before any court.~~

~~(4) "Public Applicant" means any other person seeking accommodation.~~

(b) Process for Requesting Accommodation.

~~(1) Persons seeking accommodation may proceed under this rule. Local procedures not inconsistent with this rule may be adopted by courts to supplement the requirements of this rule. A disputed or denied request for accommodation is automatically subject to review under the procedures set out in subsections (d) and (e) of this rule.~~ Requests for aids, modifications and services will be addressed promptly and in accordance with the ADA and the Washington State Law Against Discrimination, with the objective of ensuring equal access to courts, court programs, and court proceedings.

(2) Timing. Requests should be made in advance whenever possible, to better enable the Court to address the needs of the individual.

(3) Local Procedures Allowed. Local procedures not inconsistent with this rule are encouraged. Informal practices are appropriate when an accommodation is clearly needed and can be easily provided.

~~(2)~~ (4) Procedure. An application requesting accommodation should be made on ~~may be presented ex parte in writing, or orally and reduced to writing, on~~ a form approved by the Administrative Office of the Courts, and may be presented ex parte in writing, or orally and reduced to writing, to the presiding judge or officer of the court or his or her designee.

~~(3)~~ (5) Content. ~~An application for accommodation~~ The request shall include a description of the accommodation sought, along with a statement of the disability necessitating the accommodation. The court may require the ~~applicant~~ person requesting accommodation to provide additional information about the qualifying disability to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be ~~sealed automatically~~ accessible only to the court and the person requesting accommodation unless otherwise expressly ordered. The ~~court may order that such information be sealed if it has not previously automatically been sealed.~~

~~(4) An application for accommodation should be made as far in advance as practical.~~

(c) Consideration and Decision. ~~A request for accommodation shall be considered and acted upon as follows:~~

(1) Considerations. In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12213), ch. RCW 49.60, and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

~~(2) If an application for accommodation by a proceedings applicant is submitted five (5) or more court days prior to the scheduled date of the proceeding for which the accommodation is sought, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:~~

~~(A) it is impossible for the court to provide the requested accommodation on the date of the proceeding; and~~

~~(B) the proceeding cannot be continued without prejudice to a party to the proceeding.~~

~~(3) If an application for accommodation by a proceedings applicant is submitted fewer than five (5) court days prior to the scheduled date of the proceeding for which the accommodation is requested, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:~~

~~(A) it is impractical for the court to provide the requested accommodation on the date of the proceeding; and~~

~~(B) the proceeding cannot be continued without prejudice to a party to the proceeding.~~

~~(4) If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court must offer the applicant an alternative accommodation.~~

(2) Determination. A **request for accommodation** may be denied only if:

(d) ~~Denial: Proceedings Applicants.~~ Except as otherwise set forth in subsection (c)(2) or (c)(3) of this rule, an application for accommodation by a proceedings applicant may be denied only if the court finds that:

(1) (A) the applicant person requesting application has failed to satisfy the substantive requirements of this rule; or

~~(2) the requested accommodation would create an undue financial or administrative burden;~~

(B) the court is unable to provide the requested accommodation on the date of the proceeding and the proceeding cannot be continued without significant prejudice to a party; or

(C) permitting the applicant to participate in the proceedings with the requested accommodation would create a direct threat to the health or well being of the applicant or others.

~~(3) the requested accommodation would fundamentally alter the nature of the court service, program, or activity; or~~

~~(4) permitting the applicant to participate in the proceeding with the requested accommodation would create a direct threat to the health or safety or well being of the applicant or others.~~

(D) the requested accommodation would create an undue financial or administrative burden for the court; or would fundamentally alter the nature of the court service, program or activity under (i) or (ii):

(i) An accommodation may be denied based on a fundamental alteration or undue burden only after considering all resources available for the funding and operation of the service, program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(ii) If a fundamental alteration or undue burden would result from fulfilling the request, the Court shall nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the Court.

~~(e) (d) Decision: Proceedings—Applicants . The court shall, in writing or on the record, inform the applicant person requesting an accommodation and the court personnel responsible for implementing accommodations that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. The A written decision shall be entered in the proceedings file, if any, in which case the court shall determine whether or not the decision should be sealed. If there be no proceedings filed the decision shall be entered or in the court's administrative files, with the same determination about filing under seal. If the court denies a requested accommodation pursuant to subsection (d) of this rule, the decision shall specify the reasons for the denial. If a requested accommodation is not provided by the court under subsection (e)(2) or (e)(3) of this rule, the court shall state:~~

~~(1) the facts and/or circumstances that make the accommodation impossible under subsection (e)(2) or impractical under subsection (e)(3); and~~

~~(2) the reasons why the proceeding cannot be continued without prejudicing a party to the proceeding.~~

~~(f) Decision: Public Applicants. A public applicant should be accommodated consistent with the Americans with Disabilities Act of 1990 (42 USC §§12101-12213) and the Washington Law Against Discrimination (RCW 49.60 et seq). The applicant shall, orally or in writing, be informed that the request for accommodation has been granted or denied. If requested, a written statement of reasons for denial shall be provided.~~

(e) Denial. If a requested accommodation is denied, the court shall specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court shall also ensure the person requesting the accommodation is informed of his or her right to file an ADA complaint with the United States Department of Justice Civil Rights Division.

Comment [Unchanged.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.

GR RULE 33

Requests for Accommodation by Persons with Disabilities

(a) Definitions. The following definitions shall apply under this rule:

(1) "Accommodation" means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by an applicant who is a qualified person with a disability, and may include but is not limited to:

(A) making reasonable modifications in policies, practices, and procedures;

(B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment,

devices, materials in alternative formats, qualified interpreters, or readers; and

(C) as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate

or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible

to and usable by a person with a disability.

(2) "Person with a disability" means a person with a sensory, mental, or physical disability as defined

by the American with Disabilities Act of 1990 (§ 42 U.S.C. 12101 et seq.)

The Washington State Law Against

Discrimination (RCW 49.60 et eq.), or other similar local, state or federal laws.

(b) Process for Requesting Accommodation.

(1) Requests. Requests for aids, modifications and services will be addressed promptly and in

accordance with the ADA and the Washington State Law Against Discrimination, with the objective of ensuring

equal access to courts, court programs, and court proceedings.

(2) Timing. Requests should be made in advance whenever possible, to better enable the Court to address

the needs of the individual.

(3) Local Procedures Allowed. Local procedures not inconsistent with this rule are encouraged. Informal

practices are appropriate when an accommodation is clearly needed and can be easily provided.

(4) Procedure. An application requesting accommodation should be made on a form approved by the

Administrative Office of the Courts and may be presented ex parte in writing, or orally and reduced to writing, to the presiding judge or officer of the court or his or her designee.

(5) Content. The request shall include a description of the accommodation sought, along with a statement of the disability necessitating the accommodation. The court may require the person requesting accommodation to provide additional information about the qualifying disability to help assess the appropriate accommodation.

Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be accessible only to the court and the person requesting accommodation unless otherwise expressly ordered.

(c) Consideration and Decision.

(1) Considerations. In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990

(§ 42 U.S.C. 12101 et seq.), RCW 49.60 et seq., and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

(2) Determination. A request for accommodation may be denied only if:

(A) the person requesting application has failed to satisfy the substantive requirements of this rule; or

(B) the court is unable to provide the requested accommodation on the date of the proceeding and the proceeding cannot be continued without significant prejudice to a party ; or

(C) permitting the applicant to participate in the proceedings with the requested accommodation would create a direct threat to the safety or well-being of the applicant or others.

(D) the requested accommodation would create an undue financial or administrative burden for the court

or would fundamentally alter the nature of the court service, program or activity under (i) or (ii):

(i) An accommodation may be denied based on a fundamental alteration or undue burden only after considering all resources available for the funding and operation of the service, program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(ii) If a fundamental alteration or undue burden would result from fulfilling the request, the Court shall nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the Court.

(d) Decision: The court shall, in writing, or on the record, inform the person requesting an accommodation that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. A written decision shall be entered in the proceedings file, if any, in which case the court shall determine whether or not the decision should be sealed. If there be no proceedings filed the decision shall be entered in the court's administrative files, with the same determination about filing under seal.

(e) Denial. If a requested accommodation is denied, the court shall specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court shall also ensure the person requesting the accommodation is informed of his or her right to file an ADA complaint with the United States Department of Justice Civil Rights Division.

Comment

[1] Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

[2] Supplemental informal procedures for handling accommodation requests may be less onerous for both applicants and court administration. Courts are strongly encouraged to adopt an informal grievance process for public applicants whose requested accommodation is denied. [Adopted effective September 1, 2007, amended effective December 28, 2010; September 1, 2014.]

APPENDIX A-4

Hernandez v. Banks,
65 A.3d 56, 66, 75.
(D.C. 2013) (July 18, 2014)

Marguerite Sammann
v. Anna J. Armstrong,
No. 46628-7-II
Consolidated

Marguerite Sammann
17058 37th Avenue N.E.
Seattle, Washington 98155
(206) 365-8019
Appendix A-4

65 A.3d 59

District of Columbia Court of Appeals.

Ricardo HERNANDEZ, Appellant,

v.

Bryant BANKS and Sheillia Banks, Appellees.

Nos. 08-CV-1571, 09-CV-744. | Argued
En Banc June 19, 2012. | Decided May 2, 2013.

Synopsis

Background: Property owner brought action against tenants who had entered into lease with property's former owner, seeking a non-redeemable judgment for possession of the property on grounds that former owner lacked mental capacity to enter into lease. The Superior Court, Stephanie Duncan-Peters, J., determined that owner was not entitled to possession. Owner appealed. The Court of Appeals, 21 A.3d 977, reversed. Tenants filed petition for rehearing en banc, which was granted.

[Holding:] The Court of Appeals, Blackburne-Rigsby, Associate Judge, held that lease was voidable, not void, overruling *Sullivan v. Flynn*, 20 D.C. (9 Mackey) 396.

Remanded.

West Headnotes (9)

[1] Courts

⇒ Number of judges concurring in opinion, and opinion by divided court

The District of Columbia Court of Appeals, sitting en banc, may overrule its predecessor courts' decisions, including common law decisions.

Cases that cite this headnote

[2] Courts

⇒ Nature of judicial determination

Courts

⇒ Previous Decisions as Controlling or as Precedents

In common law cases, the task of the Court of Appeals is to carefully consider its own precedents, weigh rulings from other jurisdictions for their persuasive authority, and, guided by judicial doctrines such as stare decisis and the uniquely judicial means of case-by-case adjudication, declare the common law of the District of Columbia.

Cases that cite this headnote

[3] Courts

⇒ Previous Decisions as Controlling or as Precedents

Courts

⇒ Decisions of Same Court or Co-Ordinate Court

The doctrine of stare decisis is essential to the respect accorded to the judgments of court and to the stability of the law, but it does not compel the Court of Appeals to follow a past decision when its rationale no longer withstands careful analysis.

Cases that cite this headnote

[4] Courts

⇒ Previous Decisions as Controlling or as Precedents

The doctrine of stare decisis does not irreversibly require that the Court of Appeals follow without deviation earlier pronouncements of law which are unsuited to modern experience and which no longer adequately serve the interests of justice.

Cases that cite this headnote

[5] Contracts

⇒ Physical or mental condition of party

A voidable contract entered into by a mentally incapacitated party is presumed valid and legally binding, subject to possible avoidance by the mentally incapacitated party, who must manifest an election to do so. Restatement (Second) of Contracts § 15.

Cases that cite this headnote

[6] **Contracts**

⇒ Physical or mental condition of party

Contracts

⇒ Effect of invalidity

Unlike a void contract which has no legal effect, a voidable contract entered into by a mentally incapacitated party binds both parties unless disaffirmed or avoided by the incapacitated party. Restatement (Second) of Contracts § 15.

2 Cases that cite this headnote

[7] **Contracts**

⇒ Physical or mental condition of party

Absent fraud or knowledge of the asserted incapacity by the other contracting party, the power of avoidance of a voidable contract entered into by a mentally incapacitated party is subject to limitation based on equitable principles. Restatement (Second) of Contracts § 15.

1 Cases that cite this headnote

[8] **Contracts**

⇒ Estoppel and Ratification

The power of avoidance of a voidable contract entered into by a mentally incapacitated party terminates if the incapacitated party, upon regaining capacity, affirms or ratifies the contract. Restatement (Second) of Contracts § 15.

2 Cases that cite this headnote

[9] **Mental Health**

⇒ Contracts before adjudication or appointment of guardian

Lease entered into by mentally incapacitated property owner was voidable, not inherently void; changes in contract law and evolving understanding of mental illness warranted adoption of rule of voidability, in order to balance competing interests of ensuring the

security of transactions and enabling mentally incapacitated persons to participate in society, while protecting them from unfair imposition, overruling *Sullivan v. Flynn*, 20 D.C. (9 Mackey) 396. Restatement (Second) of Contracts § 15.

1 Cases that cite this headnote

Attorneys and Law Firms

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Daniel S. Harawa, Student Attorney (No. 12689), with whom Doreen M. Haney, Supervising Attorney, was on the brief, for appellees.

Julie H. Becker, The Legal Aid Society of the District of Columbia, with whom John C. Keeney, Jr., The Legal Aid Society of the District of Columbia, was on the brief, for The Legal Aid Society of the District of Columbia, AARP Legal Counsel for the Elderly, University Legal Services, Bread for the City, and Washington Legal Clinic for the Homeless, amici curiae, in support of appellees.

Before WASHINGTON, Chief Judge, GLICKMAN, FISHER, BLACKBURNE-RIGSBY, THOMPSON, OBERLY, BECKWITH, EASTERLY, Associate Judges, and RUIZ, Senior Judge.*

Opinion

BLACKBURNE-RIGSBY, Associate Judge:

We granted appellees' petition for rehearing en banc to consider whether we should continue to follow the rule of *Sullivan* *61 v. *Flynn*, 20 D.C. (9 Mackey) 396 (1892), that the contracts of mentally incapacitated persons are inherently void, or should instead join the majority of jurisdictions in deeming such contracts only voidable.

The background is as follows. Appellant's predecessor-in-interest, 718 Associates,¹ appealed a decision by the trial court determining that it was not entitled to a non-redeemable judgment for possession of property located at 718 Marietta Place, N.W., Washington, D.C. (the "Property"). Appellees Bryant and Sheillia Banks (the "Bankses") contend that they are legally entitled to continue living in the Property by virtue of a lease entered into with the previous owner of

the Property, Ms. Patricia Speleos. At trial, 718 Associates argued that appellees' lease was void because Ms. Speleos was mentally incapacitated when she signed the lease. The trial court upheld the validity of the lease, finding that although Ms. Speleos was mentally incapacitated when she entered into the lease agreement, her incapacity rendered the lease voidable at her election, rather than inherently void. The trial court found that the lease had not been disaffirmed by Ms. Speleos or her representatives and therefore did not award possession of the Property to 718 Associates. 718 Associates appealed, and a three-judge division of this court reversed the trial court's decision, holding that *Sullivan* controlled and the lease was inherently void.² *718 Assocs. v. Banks*, 21 A.3d 977, 984 (D.C.), *reh'g en banc granted, opinion vacated sub nom. 718 Assocs. Tr. 718 NW Trust v. Banks*, 36 A.3d 826 (D.C.2011). We conclude that the voidable standard better comports with modern contract law and modern understandings of mental illness and therefore overrule *Sullivan* and adopt the majority approach that such contracts are voidable, rather than inherently void.

I. Background

The Bankses entered into a lease agreement regarding the Property at issue in this case with Ms. Speleos in March 2001. Pursuant to that lease, appellees were obligated to pay \$500 per month in rent and were given the exclusive option to purchase the Property at any time for \$50,000. In July 1997, 718 Associates purchased a tax sale certificate to the Property for \$2,103 and was subsequently issued a tax deed in August 2001. *See* D.C.Code § 47-1304 (1997 Supp.) (providing that when a *62 property is not redeemed by the owner following the issuance of a tax sale certificate, a deed shall be given to the tax sale purchaser).

In November 2001, as part of a separate proceeding initiated by Adult Protective Services, Superior Court Judge Kaye K. Christian found Ms. Speleos, who was then eighty-four years old, to be mentally incapacitated as defined by D.C.Code § 21-2011(11) (2001).³ Pursuant to the finding of incapacity, Judge Christian appointed Stephanie Bradley as conservator of Ms. Speleos's estate and Ms. Speleos's nieces as guardians of Ms. Speleos. *See* D.C.Code §§ 21-2051, -2044 (2001) (appointment of conservators and guardians, respectively). A hearing was later held to determine the status of seven real estate transactions Ms. Speleos had entered into in March 2001, prior to her adjudication of incapacity. Ms. Bradley alleged that Ms. Speleos was already incapacitated at the

time of the transactions, in which she purportedly transferred seven properties with tax-assessed values of over half a million dollars for only \$41,000 in recited consideration. Judge Christian voided the transactions, but did not rule on the validity of the Bankses' lease, which was also entered into prior to Ms. Speleos's adjudication of incapacity. Instead, Judge Christian noted that another hearing would need to be held to address that lease. However, that additional hearing was never held.

On August 4, 2003, Judge Hiram E. Puig-Lugo found, based on the testimony of Ms. Speleos's conservator and guardians, that Ms. Speleos was mentally ill and was likely to injure herself. *See* D.C.Code § 21-545(b)(2) (2001). For that reason, Ms. Speleos was committed indefinitely to the District of Columbia Department of Mental Health for outpatient treatment. On August 5, 2003, 718 Associates filed suit against Ms. Speleos's estate to quiet title to the Property, claiming that their tax deed divested all interest and title of the Estate and vested good title to the Property in 718 Associates. *See* D.C.Code § 47-1304 (2001). While the suit to quiet title was pending, Ms. Speleos passed away, and her sister, Ann E. Pizzulo, became Personal Representative of the Estate. The suit to quiet title was resolved in October 2006, when 718 Associates and the Estate entered into a settlement agreement, which resulted in 718 Associates obtaining title to the Property. Pursuant to that settlement agreement, the Estate provided an affidavit attesting that there were no valid leases or permissive tenants on the Property.⁴

In April 2008, 718 Associates filed the present action seeking a non-redeemable judgment for possession of the Property *63 against the Bankses. The Bankses claimed that they were entitled to remain tenants when 718 Associates obtained title to the Property because they had a valid lease with the Property's former owner, Ms. Speleos. 718 Associates challenged the validity of that lease, claiming that Ms. Speleos lacked capacity at the time that she entered into the lease transaction with the Bankses and, as a result, the lease was void.⁵ The trial court, Judge Stephanie Duncan-Peters, found that Ms. Speleos was mentally incompetent when she entered into the lease agreement with appellees.⁶ The trial court concluded, however, that the lease was voidable, rather than void. Citing *Sullivan v. Flynn*, 20 D.C. (9 Mackey) 396 (1892), the trial court recognized that “[h]istorically, a conveyance or contract by an insane or *non compos mentis* individual was declared void, and not merely voidable.” The trial court observed that “the District of Columbia has not considered this particular issue,” but did

not discuss whether *Sullivan* remained binding precedent in the District of Columbia. The trial judge then examined what she described as the “modern view” that such a transaction is voidable, citing to cases from other jurisdictions⁷ and discussing the public interest in protecting incapacitated persons' personal and property rights. After concluding that contracts entered into by mentally incapacitated persons are voidable, rather than void, the trial court found that there was “no ratification or disaffirmance by Ms. Speleos or an authorized representative on her behalf...”⁸ The trial court concluded by observing that “[t]he public policy considerations that would give the [c]ourt power to void the lease agreement, namely protection of the incompetent party, are not applicable to [718 Associates, a subsequent purchaser].”

*64 On appeal to the division, although 718 Associates “largely accede[d] to the trial court's determination that the lease was voidable and not void,” they did “ask [the division] to find ‘that the lease agreement is void in accordance with’ *Sullivan*, *supra*, 20 D.C. (9 Mackey) at 401 (1892) (holding that ‘the deed of an insane person is void, and therefore cannot be ratified by acts *in pais*’).”⁹ *718 Assocs.*, *supra*, 21 A.3d at 981 n. 9. The division concluded that it was constrained to apply *Sullivan* because *Sullivan* remained binding precedent in the District of Columbia and therefore could only be overruled by this court sitting en banc.¹⁰ *718 Assocs.*, *supra*, 21 A.3d at 984 (citing *M.A.P.*, *supra* note 2, 285 A.2d at 312).

II. Discussion

We begin our discussion by outlining the relevant legal principles governing the contracts of mentally incapacitated persons. We then explain our reasons for overruling *Sullivan* and adopting the voidable rule, as stated in the Restatement (Second) of Contracts, as the law of the District of Columbia.

A. Legal Background

We granted rehearing en banc to consider whether the rule from *Sullivan*, that contracts entered into by mentally incapacitated persons are inherently void, should continue to be followed in the District of Columbia, or if we should join a majority of jurisdictions and hold that such contracts are voidable. We first address the applicable standard of review and define the void and voidable rules concerning the contracts of mentally incapacitated persons.

1. Standard of Review

[1] [2] [3] [4] Because neither this court sitting en banc nor the D.C. Circuit (prior to 1971) overturned or announced a departure from *Sullivan*, it remains the law in the District of Columbia. This court sitting en banc may overrule our predecessor courts' decisions, including common law decisions. *See, e.g., Davis v. Moore*, 772 A.2d 204, 234 (D.C.2001) (en banc) (Ruiz, J., concurring in part and dissenting in part). “[I]n common law cases our task is to carefully consider our own precedents, weigh rulings from other jurisdictions for their persuasive authority, and, guided by judicial doctrines such as *stare decisis* and the uniquely judicial means of case-by-case adjudication, declare the common law of the District of Columbia.”¹¹ *Id.* “The doctrine *65 of *stare decisis* is of course ‘essential to the respect accorded to the judgments of the [c]ourt and to the stability of the law,’ but it does not compel us to follow a past decision when its rationale no longer withstands ‘careful analysis.’ ” *Arizona v. Gant*, 556 U.S. 332, 348, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) (quoting *Lawrence v. Texas*, 539 U.S. 558, 577, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003)). Furthermore, the doctrine of *stare decisis* “‘does not irreversibly require that we follow without deviation earlier pronouncements of law which are unsuited to modern experience and which no longer adequately serve the interests of justice.’ ” *Carl v. Children's Hosp.*, 702 A.2d 159, 178–79 (D.C.1997) (Schwelb, J., concurring) (quoting *Beaulieu v. Beaulieu*, 265 A.2d 610, 613 (Me.1970)). Before discussing why *Sullivan* should be overruled, we briefly explain the void and voidable rules as they relate to the contracts of mentally incapacitated persons.

2. Void Rule

Sullivan held “that the deed of an insane person is void, and therefore cannot be ratified by acts *in pais*.”¹² 20 D.C. (9 Mackey) at 401. Although *Sullivan* did not go into such detail, it is generally understood that “[a] void bargain is not a contract at all;” a void “contract” cannot be ratified and therefore does not bind the parties. RICHARD A. LORD, 5 WILLISTON ON CONTRACTS § 10:2, at 278–79 (4th ed. 2009). Because the parties were never bound, the party with capacity can repudiate an agreement even though the incapacitated party has already performed. *Id.* A minority of jurisdictions continue to follow the rule that contracts entered into by mentally incapacitated persons are void.¹³

3. Voidable Rule

[5] [6] [7] [8] A majority of jurisdictions follow the rule that contracts entered into by mentally incapacitated persons are voidable, *66 rather than inherently void. Under that rule, the contractual act of a person later found mentally incapacitated, rather than adjudicated incapacitated or under a guardianship at the time of the contract,¹⁴ is not inherently void but at most voidable at the instance of the mentally incapacitated party, and then only if avoidance is equitable.¹⁵ A voidable contract is presumed valid and legally binding,¹⁶ subject to possible avoidance by the mentally incapacitated party,¹⁷ who must manifest an election to do so.¹⁸ The voidable rule is set forth in the Restatement as follows:

(1) A person incurs only voidable contractual duties by entering into a transaction *67 if by reason of mental illness or defect

(a) he is unable to understand in a reasonable manner the nature and consequences of the transaction, or

(b) he is unable to act in a reasonable manner in relation to the transaction and the other party has reason to know of his condition.

(2) Where the contract is made on fair terms and the other party is without knowledge of the mental illness or defect, the power of avoidance under Subsection (1) terminates to the extent that the contract has been so performed in whole or in part or the circumstances have so changed that avoidance would be unjust. In such a case a court may grant relief as justice requires.

RESTATEMENT (SECOND) OF CONTRACTS § 15 (1981). In sum, a voidable contract—unlike a void contract, which has no legal effect—binds both parties unless disaffirmed or avoided by the incapacitated party. Absent fraud or knowledge of the asserted incapacity by the other contracting party, the power of avoidance is subject to limitation based on equitable principles.¹⁹ The power of avoidance also terminates if the incapacitated party, upon regaining capacity, affirms or ratifies the contract.²⁰ Having explained the relevant legal principles, we proceed to consider whether *Sullivan* should be overruled and the voidable rule adopted in its place.

B. Overruling *Sullivan v. Flynn*

[9] In considering whether the precedent established in *Sullivan* should be overruled, we examine whether *Sullivan's* rationale still withstands careful analysis. Concluding that it does not, we first explain why the outcome in *Sullivan* was not compelled by the holding in *Dexter v. Hall*, 82 U.S. (15 Wall.) 9, 21 L.Ed. 73 (1872). Next, we examine the validity of the rationales supporting the void rule: that a mentally incapacitated person is not capable of forming a contract and that the void rule best protects the incapacitated party. Finally, we conclude that the voidable rule better balances the competing interests of protecting the incapacitated party while ensuring the security of transactions.

The court in *Sullivan* reasoned that it was bound by the United States Supreme Court's decision in *Dexter* to hold that the deed of an insane person is void. *Sullivan, supra*, 20 D.C. (9 Mackey) at 401–02. The only issue before the Court in *Dexter* was “whether a power of attorney executed by a lunatic is void, or whether it is only voidable.” 82 U.S. (15 Wall.) at 20 (emphasis added). Analogizing to contracts involving infants, the Court held that a power of attorney granted by a “lunatic” was void. *Id.* at 25–26. At the time *Dexter* and *Sullivan* were decided, it was common for courts to distinguish powers of attorney from contracts. See 5 WILLISTON ON CONTRACTS § 9:5, at 37–44 (observing that although the general rule is that an infant's contract is voidable rather than void, “[a]t one time, certain contracts made by an infant were held void, rather than voidable” and “it has often been asserted and sometimes decided that an infant's power of attorney or agreement to make another his agent is void” (citing, *inter alia*, *Dexter, supra*, 82 U.S. (15 Wall.) 9). However, the distinction between powers of attorney and contracts is no longer widely accepted. See 5 WILLISTON ON CONTRACTS § 9:5, at 46–47 (“[T]he better view has been to treat the creation of an agency by a minor like other agreements made by infants, as merely voidable....” (citing, *inter alia*, RESTATEMENT (SECOND) OF AGENCY § 20 (1958) (“A person who has capacity to affect his legal relations by the giving of consent has capacity to authorize an agent to act for him with the same effect as if he were to act in person.”))); 12 WILLISTON ON CONTRACTS § 35:1, at 202 (4th ed. 2012) (“An agency contract is formed according to the same rules that are applicable to any other contract; an agency is created in much the same manner as a contract is made, in that the agency results from an agreement between the principal and the agent to serve in that capacity.”); see also RESTATEMENT (SECOND) OF AGENCY § 32 (1958) (“Except to the extent that the fiduciary relation between principal and agent requires special rules, the rules

for the interpretation of contracts apply to the interpretation of authority.”). In the years following *Dexter*, there was disagreement over whether it should be interpreted narrowly, to apply only to powers of attorney, or broadly to encompass other contracts.²¹ That the Supreme Court did not intend to establish a sweeping rule that all contracts of mentally incapacitated persons are void is demonstrated by the Court’s decision in *Luhrs v. Hancock*, 181 U.S. 567, 21 S.Ct. 726, 45 L.Ed. 1005 (1901), where the Court observed, without even addressing *Dexter*, that “[t]he deed of an insane person is not absolutely void; it is only voidable; that is, it may be confirmed or set aside.” 181 U.S. at 574, 21 S.Ct. 726 (citation omitted). However, *Luhrs* is not binding on this court and therefore does not replace *Sullivan* as the law of the District of Columbia.²²

*69 The court in *Sullivan* acknowledged that contracts generally, as opposed to powers of attorney specifically, were not at issue in *Dexter*; nonetheless, the *Sullivan* court felt “bound to recognize, in so full and careful a discussion, a deliberate intention of the [*Dexter*] court to establish a rule.”²³ 20 D.C. (9 Mackey) at 402. Although *Dexter* did not actually hold that all contracts entered into by mentally incapacitated persons are void, and therefore did not compel the *Sullivan* court to hold such, *Dexter* did use some broad language (dictum) to explain the rationales used to support the void rule.

Next, we examine the rationales commonly used to support the void rule, as explained by the Court in *Dexter*: 1) that a mentally incapacitated person cannot enter into a valid contract because to do so “requires the assent of two minds” and a mentally incapacitated person “has nothing which the law recognizes as a mind;” and 2) that a mentally incapacitated person, unlike an infant, will never gain the mental capacity necessary to avoid a contract and therefore “has no protection if his contract is only voidable.” *Dexter*, *supra*, 82 U.S. (15 Wall.) at 20–21.²⁴ As we discuss below, these rationales no longer comport with *70 modern contract law and modern understandings of mental illness.

I. Contract Formation

Implicit in the holdings of both *Dexter* and *Sullivan* is the premise that formation of a contract requires the mental assent of the parties involved, or a “meeting of the minds.”²⁵ Under this subjective theory of contract formation, it would seem logical to conclude that if one of the parties lacked a sufficient

“mind” there could be no such mental assent or “meeting of the minds” and therefore no contract. Weihofen, *supra* note 24, at 230. The question of whether a party’s actual mental assent was necessary to the formation of a contract was the subject of a “significant doctrinal struggle in the development of contract law” between subjective theorists, who argued that a “meeting of the minds” was necessary to contract formation, and objective theorists, who took the view that “[t]he *expression* of mutual assent, and not the assent itself, was the essential element in the formation of a contract.” *Newman v. Schiff*, 778 F.2d 460, 464 (8th Cir.1985) (emphasis added). “By the end of the nineteenth century, the objective theory had become ascendant and courts universally accept it today.” 1 E. ALLAN FARNSWORTH, FARNSWORTH ON CONTRACTS § 3.6, at 210 (3d ed. 2004); see also *Hart v. Vermont Inv. Ltd. P’ship*, 667 A.2d 578, 582 (D.C.1995) (observing that the District of Columbia follows the objective law of contracts) (citation omitted). The basis for the void rule—that a mentally incapacitated person has no “mind” and is incapable of mental assent—“has given way to ... the doctrine that contractual obligation depends on *manifestation* of assent rather than on mental assent [or meeting of the minds].” RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. a (emphasis added).

To continue to adhere to the Court’s rationale in *Dexter*, and by extension *Sullivan*, one also has to accept the premise that “a lunatic, or a person *non compos mentis*, has nothing which the law recognizes as a mind...”²⁶ 82 U.S. (15 Wall.) at 20. The notion that a person either does or does not have a “mind” has given way to a more nuanced understanding of mental capacity.²⁷ Courts have recognized that a person who is declared incapacitated *71 “may be subject to varying degrees of infirmity or mental illness, not all equally incapacitating.” 5 WILLISTON ON CONTRACTS § 10.3, at 296; see also *Cundick v. Broadbent*, 383 F.2d 157, 160 (10th Cir.1967) (recognizing “different degrees of mental competency” when addressing whether a contract could be voided for lack of capacity). Furthermore, a person may have some capacity to contract and its existence in a specific case may depend on the nature of the particular transaction at issue.²⁸ Thus, the first rationale supporting the void rule—that a mentally incapacitated person “has nothing which the law recognizes as a mind” and therefore cannot form a contract—no longer withstands careful analysis in light of changes in contract law and evolving understanding of the complexities of mental illness.

2. “Protection” of the Party with a Mental Illness or Defect

The other rationale relied on by *Dexter* and incorporated in *Sullivan* is that a mentally incapacitated person, unlike an infant, will never regain the mental capacity necessary to avoid a contract and therefore “has no protection if his contract is only voidable.” *Dexter, supra*, 82 U.S. at 20–21. This rationale is based upon an outdated understanding of mental illness and of what it means to “protect” mentally incapacitated persons.

At the time *Dexter* and *Sullivan* were decided, “idiocy” and “lunacy” were primarily understood to be permanent conditions.²⁹ Therefore, the view that a mentally incapacitated person would never gain the mental capacity necessary to avoid a contract made some sense, although it overlooked the fact that the contract could also be avoided by a guardian or, after death, by a personal representative. See RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. d. Evolving understanding of mental illness and advances in medicine have shown that mental capacity can vary over *72 time and is susceptible to significant improvement with treatment. See, e.g., *Trepanier v. Bankers Life & Cas. Co.*, 167 Vt. 590, 706 A.2d 943, 944 (1997) (recognizing that certain types of incapacity are only temporary); *Street v. Street*, 211 P.3d 495, 499 (Wyo.2009) (“Mental incapacity is not always permanent and a person may have lucid moments or intervals when that person possesses the necessary capacity to convey property.”); cf. *Wallace v. United States*, 936 A.2d 757, 769 (D.C.2007) (recognizing that a defendant may regain competence to stand trial). Therefore, having the choice of whether to follow through on a contract or avoid it can be very beneficial to a person who entered into the contract during a period of incapacity. See, e.g., *Blinn v. Schwarz*, 177 N.Y. 252, 69 N.E. 542, 545 (1904) (“If the deed or contract is void, it binds neither party, and neither can derive any benefit therefrom; but, if voidable, the lunatic, upon recovering his reason, can hold onto the bargain if it is good, and let go if it is bad.”).

Dexter, upon which *Sullivan* was predicated, relies on an outdated understanding of what it means to “protect” a person with a mental illness or defect. Whereas people with mental illnesses were once stigmatized and segregated from the rest of society as a common form of “treatment,”³⁰ modern statutes focus on protecting the civil and legal rights of people with mental illnesses and on encouraging participation in society. The policy of the District of Columbia is that

residents with intellectual disabilities “shall have all the civil and legal rights enjoyed by all other citizens.” D.C.Code § 7–1301.02(a)(1) (2012 Supp.).³¹ For example, commitment to a residential facility of the Department of Health is permitted only when it is “the least restrictive alternative consistent with the best interests of the person and the public.” D.C.Code § 21–545(b)(2) (2004 Supp.). Consistent with that policy, the voidable rule better “protects” mentally incapacitated persons by facilitating meaningful participation in society. If the contracts of mentally incapacitated persons are void, rather than voidable, their legal “protection” is the opposite of what it should be—“[i]t would be a handcuff instead of a shield.” *Breckenridge’s Heirs v. Ormsby*, 24 Ky. (1 J.J. Marsh.) 236, 239 (1829). Similarly, by limiting the ability to disaffirm the contract to the mentally incapacitated party or her representative, the voidable rule protects against cases in *73 which the other contracting party seeks to take advantage of an individual’s mental incapacity to avoid an otherwise fair and enforceable contract.³² If the contracts of a mentally incapacitated person are treated as void, the competent party to the contract would not need to perform even if the incapacitated party is ready to, or already has, performed the bargain. 5 WILLISTON ON CONTRACTS § 10.2, at 279.

Determining how to treat the contracts of mentally incapacitated persons requires the reconciliation of two conflicting policies: “the protection of justifiable expectations and of the security of transactions, and the protection of persons unable to protect themselves against imposition.” RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. a. We have already discussed how the voidable rule better serves the second policy. The voidable rule also better serves the first policy of creating greater certainty for real property and other commercial transactions. Under the *Sullivan* rule, because a mentally incapacitated person’s contract is inherently void, the competent contracting party and others with rights dependent on that party cannot obtain the benefit of their bargain, regardless of the inequities (although he or she may still have some remedy based on a quasi-contract theory). See, e.g., *Nevin v. Hoffman*, 431 F.2d 43, 47 (10th Cir.1970) (“[I]f a deed is absolutely void, a subsequent bona fide purchaser obtains nothing despite his innocence.”); *Metro. Life Ins. Co. v. Bramlett*, 224 Ala. 473, 140 So. 752, 754 (1932) (explaining that because the contracts “of an insane person” are inherently void, “one who contracts with an insane person takes nothing, though ignorant of his insanity, and though he paid value, and his contract is valid for no purpose”). The Restatement rule, by contrast, instructs a

court to “grant relief as justice requires.” RESTATEMENT (SECOND) OF CONTRACTS § 15(2). Under this rule, a contract might be enforced despite one party’s incapacity where the other party had no reason to know of the incapacity and has substantially performed, cannot recover his or her consideration, or would otherwise suffer hardship. See RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. f & illustrations thereto (discussing situations in which avoidance would be inequitable).

Because we conclude that the void rule relies on an outdated theory of contract formation and outdated understandings of mental illness, we overrule the holding of *Sullivan v. Flynn*, 20 D.C. (9 Mackey) 396 (1892), that contracts entered into by mentally incapacitated persons are inherently void. In its place, we adopt the voidable rule as set forth in the Restatement (Second) of Contracts § 15, which better balances the competing interests of ensuring the security of transactions and enabling mentally incapacitated persons to participate in society, while protecting them from unfair imposition.

III. Application of the Voidable Rule to This Case

In the instant case, Ms. Speleos was found to have been incapacitated at the time she entered the lease with

appellees.³³ *74 Therefore, the contract was voidable at the election of Ms. Speleos or her representative unless avoidance of the contract would be unjust. See RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. f (“If the contract is made on fair terms and the other party has no reason to know of the incompetency, performance in whole or in part may so change the situation that the parties cannot be restored to their previous positions or may otherwise render avoidance inequitable. The contract then ceases to be voidable.”).³⁴ Here, the trial court upheld the lease based on its determination that the lease was voidable and its finding that Ms. Speleos or her representatives did not effectively avoid or disaffirm the lease. Because the division was bound by the *Sullivan* rule deeming contracts entered into by mentally incapacitated persons void, the division did not reach 718 Associates’ arguments challenging the finding that the contract had not been disaffirmed.³⁵ Now, as an en banc court we overrule *Sullivan* and join a majority of jurisdictions in holding that contracts entered into by mentally incapacitated persons are voidable, rather than inherently void. As a result, we remand to the division to consider whether the trial court erred in determining that the lease between Ms. Speleos and appellees was never disaffirmed.³⁶

So ordered.

Footnotes

- * Judge Ruiz was a Retired Associate Judge of the court at the time of argument. Her status changed to Senior Judge on July 2, 2012.
- 1 While this appeal was pending before a three-judge division of this court, 718 Associates sold the Property and assigned all rights in the Property to Ricardo Hernandez, the current appellant. While 718 Associates’ petition for rehearing en banc was pending, 718 Associates submitted a motion for leave to amend the caption to substitute parties, which we granted. See *Flack v. Laster*, 417 A.2d 393, 400 (D.C.1980) (“Once property or rights have been assigned, the assignee stands in the shoes of the assignor and can sue in his [or her] own name to enforce the rights assigned.” (citations and internal quotation marks omitted)).
- 2 As the three-judge division of this court concluded, *Sullivan v. Flynn*, 20 D.C. (9 Mackey) 396 (1892), remained binding precedent in the District of Columbia. *Sullivan* was decided by the Supreme Court of the District of Columbia sitting in General Term, which is the predecessor court to the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). See *John R. Thompson Co. v. District of Columbia*, 92 U.S.App.D.C. 34, 36, 203 F.2d 579, 581 (1953) (recognizing the Supreme Court of the District of Columbia in General Term as its predecessor), *rev’d on other grounds*, 346 U.S. 100, 73 S.Ct. 1007, 97 L.Ed. 1480 (1953). Decisions of the D.C. Circuit rendered prior to February 1, 1971, as well as the decisions of this court, “constitute the case law of the District of Columbia” and can be overruled only by this court en banc. *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C.1971).
- 3 D.C.Code § 21–2011(11) defines an “[i]ncapacitated individual” as:
[A]n adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator.

4 The affidavit was prepared by an attorney and signed by the Personal Representative of the Estate. The attorney, who also represented the Estate in the settlement agreement negotiations, later testified that she paid a brief visit to the Property and saw a broken-down vehicle in the backyard, broken top-floor windows, and overgrown grass. She did not attempt to knock on the door or deliver written notice to determine whether the Property was occupied. Although at this point Ms. Bradley, the conservator of the Estate, was aware of the Bankses' lease, the attorney representing the Estate testified that she was not aware of the Bankses' lease or occupancy of the Property.

5 718 Associates also claimed that Ms. Speleos's signature on the lease was forged. The trial court found that Ms. Speleos's signature was not forged, and 718 Associates did not challenge that finding on appeal. In addition, 718 Associates argued that Ms. Speleos lacked the authority to lease the Property to appellees because, 718 claimed, title was transferred before Ms. Speleos signed appellees' lease. The trial court rejected this argument because the deed was notarized after the lease was signed, and 718 Associates did not challenge this finding on appeal.

6 Judge Duncan–Peters based her finding on the following evidence:

(1) Judge Christian's declaration that Ms. Speleos was incompetent to handle her own affairs in November 2001; (2) Judge Christian's decision to void the March 2001 deeds in January 2002; (3) the timing of these deeds, *i.e.*, that they were [] entered into no more than a week after Ms. Speleos leased the subject property; (4) Dr. Lowy's testimony that it is highly unlikely that Ms. Speleos was competent in March 2001 (*i.e.*, the year the lease was entered into); (5) Ms. Bradley's [Ms. Speleos's conservator's] prior and current testimony regarding Ms. Speleos'[s] state of mind during the relevant time period; and (6) the fact that Mr. and Ms. Banks [appellees] are the only individuals asserting that Ms. Speleos was competent and they have a vested interest in such a finding.

7 See, *e.g.*, *United States v. Manny*, 645 F.2d 163, 166–69 (2d Cir.1981); *Cundick v. Broadbent*, 383 F.2d 157, 159–60 (10th Cir.1967); *Rubenstein v. Dr. Pepper Co.*, 228 F.2d 528, 536–37 (8th Cir.1955); *Trepanier v. Bankers Life & Cas. Co.*, 167 Vt. 590, 706 A.2d 943, 944 (1997).

8 Because the trial court found that the lease had not been disaffirmed, it did not reach the issue of whether equity would have prevented Ms. Speleos, or her representative, from avoiding the lease. See RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. f (1981) (“If the contract is made on fair terms and the other party has no reason to know of the incompetency, performance in whole or in part may so change the situation that the parties cannot be restored to their previous positions or may otherwise render avoidance inequitable. The contract then ceases to be voidable.”).

9 An “act *in pais*” is an “act performed out of court, such as a deed made between two parties on the land being transferred.” BLACK’S LAW DICTIONARY 27 (9th ed. 2009).

10 *Sullivan* was followed in *Martin v. Martin*, 270 A.2d 141, 143 (D.C.1970) (“*Martin II*”). In *Martin II*, this court refused to sustain the findings of the trial court—that requests for disability benefits made by Mr. Martin’s wife to the Veterans Administration were at the request of Mr. Martin or were ratified by him and were therefore valid—“because of [Mr. Martin]’s adjudicated incompetence at the crucial times.” 270 A.2d at 143. We explained that “[a]ppellant, while under that status, was incapable of executing contracts, deeds, powers of attorney, or other instruments requiring volition and understanding.” *Id.* (citing *Dexter v. Hall*, 82 U.S. (15 Wall.) 9, 20, 21 L.Ed. 73 (1873), and *Sullivan, supra*, 20 D.C. (9 Mackey) at 401). *Martin II* does not directly control this case because Mr. Martin, unlike Ms. Speleos, had already been adjudicated incompetent at the time of the contract at issue. However, *Martin II* demonstrates that this court relied on *Sullivan* as recently as 1970.

11 In their en banc brief appellees argue:

Because both *Sullivan* and *Martin II* concern contracts entered into by persons already adjudicated incapacitated, the precedent set in *Sullivan* and *Martin II* does not govern this case. Neither decision precludes this [c]ourt, under the principle of *stare decisis*, from ruling that contracts entered by those not previously adjudicated incapacitated should be voidable.

This argument is based on a misreading of *Sullivan*. The “inquisition *de lunatico*” (commission of lunacy) in that case occurred after, not before, the execution of the deed in question. See *Sullivan, supra*, 20 D.C. (9 Mackey) at 398. Appellees are correct that *Martin II* involved a person who had already been adjudicated incompetent. See *Martin II, supra*, 270 A.2d at 143.

12 We recognize that the use of the term “insane” and other terms used by prior decisions may be offensive to some. However, we quote the original language of cases to ensure accuracy and to highlight society’s evolving understanding of mental illness. Furthermore, while we prefer the term “incapacitated” to the term “incompetent,” see *infra* note 36, we have retained the terminology used by other courts, including the trial court in this case.

13 See, *e.g.*, *Shoals Ford, Inc. v. Clardy*, 588 So.2d 879, 881 (Ala.1991) (“The well-settled law in Alabama is that contracts of insane persons are wholly and completely void.” (citing *Williamson v. Matthews*, 379 So.2d 1245 (Ala.1980), and

ALA.CODE § 8–1–170 (1975))). In some jurisdictions, whether a contract is void or voidable depends upon the degree of incapacity. See, e.g., *Fleming v. Consol. Motor Sales Co.*, 74 Mont. 245, 240 P. 376, 378 (1925) (explaining that under Montana law, “[a] person entirely without understanding has no power to make a contract of any kind ... [and] the contract is void ab initio” whereas the contract of “a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined,” is voidable) (internal quotation marks and citations omitted); *First State Bank of Sinai v. Hyland*, 399 N.W.2d 894, 896–98 (S.D.1987); see also RESTATEMENT (SECOND) OF CONTRACTS § 12 cmt. a (1981) (“Incapacity may be total, as in cases where extreme physical or mental disability prevents manifestation of assent to the transaction.... Often, however, lack of capacity merely renders contracts voidable.”).

14 See *infra* note 36.

15 5 WILLISTON ON CONTRACTS § 10:3, at 296. See, e.g., *Pappert v. Sargent*, 847 P.2d 66, 69–70 (Alaska 1993); *Young v. Lujan*, 11 Ariz.App. 47, 461 P.2d 691, 693 (1969); *Neale v. Sterling*, 117 Cal.App. 507, 4 P.2d 250, 250 (1931) (observing that contracts made by incompetent persons before a judicial determination of incompetency are voidable by statute); *Green v. Hulse*, 57 Colo. 238, 142 P. 416, 418 (1914); *Doris v. McFarland*, 113 Conn. 594, 156 A. 52, 56 (1931); *Perper v. Edell*, 160 Fla. 477, 35 So.2d 387, 390 (1948); *Holcomb v. Garcia*, 221 Ga. 115, 143 S.E.2d 184, 187 (1965) (observing that “[t]he deed of an incompetent who has never been adjudicated to be of unsound mind is not absolutely void, but only voidable” by statute); *Jordan v. Kirkpatrick*, 251 Ill. 116, 95 N.E. 1079, 1080 (1911); *Aetna Life Ins. Co. v. Sellers*, 154 Ind. 370, 56 N.E. 97, 97–98 (1900); *Breckenridge’s Heirs v. Ormsby*, 24 Ky. (1 J.J. Marsh.) 236, 239 (1829); *Hovey v. Hobson*, 53 Me. 451, 453 (1866); *Flach v. Gottschalk Co. of Baltimore City*, 88 Md. 368, 41 A. 908, 908 (1898); *Sutcliffe v. Heatley*, 232 Mass. 231, 122 N.E. 317, 318 (1919); *Wolcott v. Conn. Gen. Life Ins. Co.*, 137 Mich. 309, 100 N.W. 569, 571–72 (1904); *Schultz v. Oldenburg*, 202 Minn. 237, 277 N.W. 918, 921 (1938); *Jamison v. Culligan*, 151 Mo. 410, 52 S.W. 224, 225 (1899); *Sawtelle v. Tatone*, 105 N.H. 398, 201 A.2d 111, 115 (1964); *Robinson v. Kind*, 25 Nev. 261, 62 P. 705, 705 (1900); *Blinn v. Schwarz*, 177 N.Y. 252, 69 N.E. 542, 544–45 (1904); *Ipock v. Atl. & N.C.R. Co.*, 158 N.C. 445, 74 S.E. 352, 353 (1912); *Charles Melbourne & Sons, Inc. v. Jesset*, 110 Ohio App. 502, 163 N.E.2d 773, 775 (1960); *National Gen. Theatres, Inc. v. Bolger*, 266 Or. 584, 514 P.2d 344, 347 (1973); *Der Hagopian v. Eskandarian*, 396 Pa. 401, 153 A.2d 897, 899 (1959); *Williams v. Sapieha*, 94 Tex. 430, 61 S.W. 115, 116–18 (1901); *Trepanier v. Bankers Life & Cas. Co.*, 167 Vt. 590, 706 A.2d 943, 944 (1997); *Upton v. Hall*, 225 Va. 168, 300 S.E.2d 777, 779 (1983); *Morris v. Hall*, 89 W.Va. 460, 109 S.E. 493, 495 (1921); *French Lumbering Co. v. Theriault*, 107 Wis. 627, 83 N.W. 927, 931–33 (1900).

16 See, e.g., 5 WILLISTON ON CONTRACTS § 10:5, at 313 (“With respect to third parties, the contract is considered valid until it has been avoided.”); see also *Aetna Life Ins. Co.*, *supra* note 15, 56 N.E. at 98 (“Until disaffirmed, the voidable executed contract, in respect to the property or benefits conveyed, passes the right or title as fully as an unimpeachable contract. By ratification, it becomes impervious; by disaffirmance, a nullity.”); *Blinn*, *supra* note 15, 69 N.E. at 545 (“The deed of a lunatic is not void, in the sense of being a nullity, but has force and effect until the option to declare it void is exercised. The right of election implies the right to ratify, and it may be to the great advantage of the insane person to have that right.”).

17 Usually the mentally incapacitated party or his or her representative is the party who will seek to disaffirm or avoid the agreement. However, “if the other party did not know of the incompetency at the time of contracting he cannot be compelled to perform unless the contract is effectively affirmed.” RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. d; see also *id.* at illus. 2 (providing an example of a contract where the competent party may insist on ratification before beginning performance).

18 RESTATEMENT (SECOND) OF CONTRACTS § 7 (1981) (“A voidable contract is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.”). Avoidance is often referred to as disaffirmance, and ratification is often referred to as affirmance; the terms are used interchangeably.

19 RESTATEMENT (SECOND) OF CONTRACTS § 15 cmt. f; see also *id.* at illus. 5 (providing an example of a contract that ceases to be voidable for equitable reasons).

20 RESTATEMENT (SECOND) OF CONTRACTS § 380 (1981).

21 Compare *Kevan v. John Hancock Mut. Life Ins. Co.*, 3 F.Supp. 288, 290 (W.D.Mo.1933) (“[T]he reference in the [Dexter] opinion to contracts generally is clearly dictum.”), and *Wolcott v. Conn. Gen. Life Ins. Co.*, 137 Mich. 309, 100 N.W. 569, 571 (1904) (“[T]he Supreme Court, in *Dexter v. Hall*, held that the power of attorney of a lunatic was void, and rested their decision on the analogy existing between the rights of infants and those of lunatics, and say, ‘In fact, we know no case of authority in which the letter of attorney of either an infant or a lunatic has been held merely voidable.’ This they could not have said respecting deeds of conveyance, as the Reports of the state court contain numerous decisions affirming

the view that the deed of a lunatic is not void, but only voidable.”), and *French Lumbering Co. v. Theriault*, 107 Wis. 627, 83 N.W. 927, 933 (1900) (holding that the deed of an “insane person” is voidable, not void, and criticizing cases that read *Dexter* to apply to more than powers of attorney), with *Daugherty v. Powe*, 127 Ala. 577, 30 So. 524, 525 (1900) (“One of the essential elements to the validity of a contract is the concurring assent of two minds. If one of the parties to a contract is insane at the time of its execution, this essential element is wanting. The principle is the same whether the contract rests in parol or be by deed. A deed executed by a person non compos mentis is absolutely void.” (citing, *inter alia*, *Dexter*, *supra*, 82 U.S. (15 Wall.) 9)), and Milton D. Green, *The Operative Effect of Mental Incompetency on Agreements and Wills*, 21 TEX. L. REV. 554, 558–59 (1943) (“The case [*Dexter v. Hall*] involved a power of attorney, and hence some authorities have interpreted it strictly and limited its application to such instruments. However, it is more generally thought to have embodied a principle applicable to all contractual or consensual acts.” (footnotes omitted)).

22 As *amici* in this case point out, had the highest court of the District of Columbia had the opportunity post-*Sullivan*, but pre-*Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), to revisit the void vs. voidable issue, there is little doubt that the court would have conformed the law in the District of Columbia to the rule set forth in *Luhrs* that contracts made by mentally incapacitated persons are voidable and not void, just as courts in other jurisdictions did in the wake of *Luhrs* (which arose in Arizona). See, e.g., *Beale v. Gibaud*, 15 F.Supp. 1020, 1027–28 (W.D.N.Y.1936); *Levine v. Whitney*, 9 F.Supp. 161, 162 (D.R.I.1934); *Christian v. Waialua Agric. Co.*, 31 Haw. 817, 877–79 (Haw.1931), *rev'd*, 93 F.2d 603 (9th Cir.1937), *rev'd*, 305 U.S. 91, 59 S.Ct. 21, 83 L.Ed. 60 (1938). But the highest court of our jurisdiction did not have that opportunity in the period between *Luhrs* and *Erie*, and thus never overruled *Sullivan* (with the result that the three-judge division of this court was bound by *Sullivan*). See *Raley v. Life and Cas. Ins. Co. of Tenn.*, 117 A.2d 110, 111 (D.C.1955) (concluding that “whatever the effect of the [pre-*Erie* Supreme Court ruling declaring substantive common law] in the [state] where the case arose, it cannot be said [after the decision in *Erie*] to have declared general common law or to be binding on State or Federal courts generally”). And, of course, post-*Erie*, our court is not obligated to follow *Luhrs*. See *Erie*, 304 U.S. at 78, 58 S.Ct. 817 (“Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.”). As an en banc court, we may revisit the question of what the law is for this jurisdiction on the void vs. voidable issue and must determine for ourselves whether to adhere to, or instead abandon, the rule of *Sullivan*. The instant case presents us with our first opportunity to do so in the specific context of a contract where the incapacitated party had not already been judicially determined to be mentally incapacitated or committed to a mental institution at the time the contract was made. See *infra* note 36.

23 The *Sullivan* court also noted that it would have adopted the void rule in any event. The court observed that the voidable rule, as articulated by some American courts in relation to deeds, was the result of “the omission of Sir William Blackstone to observe that authoritative decisions had distinguished these deeds from the ancient feoffments with the livery of seisin, and that it should have been considered, even in his time, settled that they were absolutely void, while feoffments were voidable only.” *Sullivan*, *supra*, 20 D.C. (9 Mackey) at 402. We need not address Sir William Blackstone’s supposed error here. Even if the law in England supported the *Sullivan* court’s decision, the void rule and its underlying rationales “are unsuited to modern experience” and “no longer adequately serve the interests of justice,” as we will address below, and therefore we do not feel constrained to continue following the rule, no matter how ancient its roots. *Carl*, *supra*, 702 A.2d at 178–79 (Schwelb, J., concurring) (quoting *Beaulieu*, *supra*, 265 A.2d at 613). Appellant urges us to continue to follow the void rule set forth in *Sullivan*, stressing that the void rule has been the law in the District of Columbia for the past 119 years. However, “the law cannot remain static; it must be permitted to evolve with the changing complexion of society and the developing sciences.” *Bethea v. United States*, 365 A.2d 64, 72 (D.C.1976).

24 Another possible explanation for the void rule has been posited:

One reason older cases talked of such contracts as void is that only by doing so could a court of law, as distinguished from equity, grant relief. The law courts could not administer equitable relief, such as requiring reconveyance or restoration. To protect the incompetent, the courts had to call the contract or deed void in order to hold that the incompetent had not parted with title or made a binding promise.

Henry Weihofen, *Mental Incompetency to Contract or Convey*, 39 S. CAL. L. REV. 211, 231 (1966). To the extent that this reason motivated courts to find contracts void, it is no longer necessary because law and equity have merged.

See, e.g., Green, *supra* note 21, at 574 (“There is no such impediment in our liberalized modern procedure.”).

25 See Green, *supra* note 21, at 559 (“[The subjective] theory of the basis of contract used to have widespread acceptance and at such a time it was perfectly natural that it should serve as the major premise in a syllogism dealing with the operative effect of mental incompetency.”).

- 26 In England, “[p]ersons with intellectual/mental disabilities were divided into two classes: the idiot, who had never had capacity, and the lunatic, ‘a person who hath had understanding but ... has lost the use of his reason.’” Kristin Booth Glen, *Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond*, 44 COLUM. HUM. RTS. L. REV. 93, 103 (2012) (citations omitted).
- 27 See, e.g., Green, *supra* note 21, at 560–61 (“Suffice it to say for present purposes that presence or absence of ‘mind’ is nowhere used as the test of mental incompetency at the present time. The test is the *degree* of capacity for understanding possessed by the individual. If he fails to possess this degree of capacity for understanding, we say he is incompetent, but because we are measuring his understanding in terms of degree we are assuming that, although incompetent, he has some capacity for understanding, but not enough. And from a practical standpoint, we know, and psychiatrists know, that insanity is a matter of degree, and that one may be insane and still have some understanding.” (footnotes omitted)).
- 28 See RESTATEMENT (SECOND) OF CONTRACTS § 12(1) (“Capacity to contract may be partial and its existence in respect of a particular transaction may depend upon the nature of the transaction or upon other circumstances.”); see, e.g., *Butler v. Harrison*, 578 A.2d 1098, 1100–01 (D.C.1990) (“The test of mental capacity to contract is whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature, extent, character, and effect of the particular transaction in which she is engaged ... whether or not she is competent in transacting business generally.... [T]he party asserting incompetency must show not merely that the person suffers from some mental disease or defect such as dementia, but that such mental infirmity rendered the person incompetent to execute the particular transaction....” (citations omitted)).
- 29 See David L. Braddock & Susan L. Parish, *Social Policy Toward Intellectual Disabilities in the Nineteenth and Twentieth Centuries*, in THE HUMAN RIGHTS OF PERSONS WITH INTELLECTUAL DISABILITIES 83, 86 (Stanley S. Herr, Lawrence O. Gostin & Harold Hongju Koh eds., 2003) (discussing the history of mental institutions and observing that “[i]n the later decades of the 1800s, as treatment gave way to confinement and custodial care in larger facilities, cure rates concomitantly dropped and psychiatrists reported that mental illness was largely incurable.... By the late 1800s, the earlier optimism of rehabilitating patients with mental illness and sending them back to their home communities had been replaced with a rigid pessimism that decried the possibility of cure....”); ALLISON C. CAREY, ON THE MARGINS OF CITIZENSHIP: INTELLECTUAL DISABILITY AND CIVIL RIGHTS IN TWENTIETH-CENTURY AMERICA 39 (2009) (discussing early American restrictions on “incompetents” and observing that “[t]he adjudication process assumed incompetence to be a permanent and pervasive trait of the individual....”).
- 30 One author summarized part of this history as follows:
In the nineteenth and first half of the twentieth century, however, the primary social and legal policy for persons with intellectual and psycho-social disabilities was institutionalization. Beginning with well-intentioned experimental schools, economic and other forces led quickly to custodial asylums with reduced emphasis on educating residents and returning them to community life. By the beginning of the twentieth century, poor farms or almshouses were also a significant aspect of state provision for people with intellectual disabilities.
The segregation of this population was accompanied by, and in large part generated, a particularly virulent medical model fueled by Social Darwinism. According to this model, persons with intellectual disabilities suffered from a hereditary, incurable disease that led to criminality, immorality or depraved behavior, and pauperism, all of which constituted an unacceptable drain on society.
Booth Glen, *supra* note 26, at 104 (footnotes and internal quotation marks omitted).
- 31 The D.C. Code, including this section, was recently amended by the People First Respectful Language Modernization Amendment Act of 2012, which “remove[s] offensive, dated language referring to persons with disabilities, including the term mental retardation, and replace[s] it with respectful language that puts people first.” 2012 District of Columbia Laws 19–169 (Act 19–361).
- 32 Under certain circumstances the other contracting party cannot be compelled to perform unless the contract is effectively affirmed. See *supra* note 17.
- 33 Judge Duncan–Peters based this finding partially on Judge Christian’s earlier declaration that Ms. Speleos was incompetent to handle her own affairs in November 2001. Judge Christian found Ms. Speleos to be “an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that ... she lacks the capacity to take actions necessary to obtain, administer, and dispose of real and personal property....” Thus, after Ms. Speleos entered the lease transaction with the Bankses, it was determined that at the time she entered into that transaction, she was “unable to understand in a reasonable manner the nature and consequences of the transaction”—a lease of real property with the opportunity to purchase. RESTATEMENT (SECOND) OF CONTRACTS § 15(1)(a).

- 34 The trial court did not reach the issue of whether avoidance would be inequitable in this case because it found that Ms. Speleos and her representatives did not avoid or disaffirm the lease.
- 35 On appeal to the division, 718 Associates also argued that "even assuming that the lease was not inherently void, the trial court's judgment still rests upon an error of law as well as two clearly erroneous findings of fact." *718 Assocs., supra*, 21 A.3d at 981 n. 9. 718 Associates argued "that the trial court misapprehended the law when it reasoned that the Estate needed to have specific knowledge of appellees' lease in order to disaffirm it." *Id.* Additionally, 718 Associates claimed "that the following factual findings were clearly erroneous: (1) that [Ms. Speleos's] conservator never made an unequivocal disaffirmance; and (2) that the Estate did not know about appellees' lease when the affidavit was executed." *Id.*
- 36 Importantly, Ms. Speleos had not already been adjudicated by the court as incapacitated or appointed a guardian when she entered into the lease agreement with the Bankses. Therefore, the question of what effect an adjudication of incapacity or appointment of a guardian has on a person's ability to contract is not squarely before us. *Martin II*, decided in 1970, held that a contract entered into by a person who had already been adjudicated incompetent and committed to a mental institution was void. 270 A.2d at 143. However, current statutes regarding capacity and guardianship attempt to "encourage the development of maximum self-reliance and independence of the incapacitated individual." D.C.Code § 21–2044 (2011 Supp.); D.C.Code § 21–2055 (2001). This preference for self-reliance is reflected in the Code provision, adopted in 1987, regarding the effect of a finding of incapacity, which provides:
- A finding under this chapter that an individual is incapacitated shall not constitute a finding of legal incompetence. An individual found to be incapacitated shall retain all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding, or subsequent order of the court. D.C.Code § 21–2004 (2001). The policy subsequently adopted by the District of Columbia Council is therefore arguably in tension with the holding of *Martin II* and the rule expressed in the Restatement § 13 that a person "has no capacity to incur contractual duties if his property is under guardianship by reason of an adjudication of mental illness or defect." RESTATEMENT (SECOND) OF CONTRACTS § 13 (1981). However, the effect that an adjudication of incapacity or the appointment of a guardian has on a person's ability to contract, in light of the current statutory framework, is a question that will need to be decided when the issue is properly presented.

APPENDIX A-5

Federal District of Columbia
Court Rule 32-1

Marguerite Sammann
v. Anna J. Armstrong,
No. 46628-7-II
Consolidated

Marguerite Sammann
17058 37th Avenue N.E.
Seattle, Washington 98155
(206) 365-8019
Appendix A-5

Rule 32.1. Citing Judicial Dispositions

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

Circuit Rule 32.1

Citing Judicial Dispositions

(a) Citation to Published Opinions and to Statutes. Citations to decisions of this court must be to the Federal Reporter. Dual or parallel citation of cases is not required. Citations of state court decisions included in the National Reporter System must be to that system in both the text and the table of authorities. Citations to all federal statutes, including those statutes applicable to the District of Columbia, must refer to the current official code or its supplement, or if there is no current official code, to a current unofficial code or its supplement. Citation to the official session laws is not required unless there is no code citation.

(b) Citation to Unpublished Dispositions.

(1) Unpublished Dispositions of this Court.

(A) Unpublished dispositions entered before January 1, 2002. Unpublished orders or judgments of this court, including explanatory memoranda and sealed dispositions, entered before January 1, 2002, are not to be cited as precedent. Counsel may refer to an unpublished disposition, however, when the binding (i.e., the res judicata or law of the case) or preclusive effect of the disposition, rather than its quality as precedent, is relevant.

(B) Unpublished dispositions entered on or after January 1, 2002. All unpublished orders or judgments of this court, including explanatory memoranda (but not including sealed dispositions), entered on or after January 1, 2002, may be cited as precedent. Counsel should review the criteria governing published and unpublished opinions in Circuit Rule 36, in connection with reliance upon unpublished dispositions of this court.

(2) Unpublished Opinions of Other Courts. Unpublished dispositions of other courts of appeals and district courts entered before January 1, 2007, may be cited when the binding (i.e., the res

judicata or law of the case) or preclusive effect of the disposition is relevant. Otherwise, unpublished dispositions of other courts of appeals entered before January 1, 2007, may be cited only under the circumstances and for the purposes permitted by the court issuing the disposition, and unpublished dispositions of district courts entered before that date may not be cited. Unpublished dispositions of other federal courts entered on or after January 1, 2007, may be cited in accordance with FRAP 32.1.

(3) Procedures Governing Citation to Unpublished Dispositions. A copy of each unpublished disposition cited in a brief that is not available in a publicly accessible electronic database must be included in an appropriately labeled addendum to the brief. The addendum may be bound together with the brief, but separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. Any addendum exceeding 40 pages must be bound separately from the brief. If the addendum is bound separately, it must be filed and served concurrently with, and in the same number of copies as, the brief itself.

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DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

DECLARATION OF SERVICE

I, Nadene M. Sammann, declare that I am over the age of 18 years,
a citizen of the United States, and competent to make this Declaration.

On June 30th, 2015, I mailed a true and correct copy of: "Corrected Reply Brief of Appellant Marguerite Sammann", with Appendix, and "Appellant's Motion to Allow Over-Length Brief", "Declaration of Marguerite Sammann in Support of Appellant's Motion to Allow Over-Length Brief" and this "Certificate of Service", which is identical to the original thereof, which are on file with the Clerk of this Court, and deposited the above in a sealed envelope and mailed the same with the correct pre-paid postage affixed via U.S. Postal First Class Mail, Certified Mail, Return Receipt Requested, to:

Anna J. Armstrong, as Personal Representative
Of the Estate of Robert M. White,
C/O Mr. Bart L. Adams,
Adams and Adams Law PS
2626 North Pearl Street
Tacoma, Washington 98407
(Attorney For Respondent)

I declare that the above is true and correct under penalty of perjury under the laws of the State of Washington.

DATED this 30th day of June 2015, at Seattle, Washington.


Nadene M. Sammann, Appellant.

Declaration of Service
No. 46628-7-II
Consolidated

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