FILED

AUG 08 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

NO. 29363-7-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
Division III

STATE OF WASHINGTON, Respondent

v.

THE ESTATE OF CHRISTOPHER H. DEVLIN, Appellant

BRIEF OF AMICUS CURIAE
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

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I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State. The elected prosecuting attorneys persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. They are also required to carefully tax cost bills in criminal cases and to ensure that public funds are not squandered. *See* RCW 36.27.020(7) and (8). WAPA has filed this brief at the request of the Court.

II. INTRODUCTION

This Court has requested assistance in resolving a question of first impression in Washington, to wit: Whether a deceased appellant's estate may prosecute an appeal from the deceased's conviction at public expense. This question has been touched upon by only a few courts. *See State v. Carlin*, 249 P.3d 752 (Alaska 2011); *Surland v. State*, 392 Md. 17, 895 A.2d 1034, 1045 (2006). In each of these cases, the record had been perfected and briefs had generally been filed prior to the appellant's death. Accordingly, the courts saw no reason not to allow the public defender to continue the representation. *See Carlin*, 249 P.3d at 754-56, 765-66[1] (defendant Dale died

[1]The Alaska Supreme Court also found authority for allowing the public defender to represent a deceased person's estate in AS 18.85.100(a). *Carlin*, 249 P.3d at 765-66. As discussed *infra*, Washington's statutes do not authorize the appointment of counsel to an

after he filed his opening brief in the supreme court following the appellate court's affirmance of his conviction; defendant Carlin was murdered in prison before the filing of his opening brief); *Surland*, 895 A.2d at 1036-1037, 1945 (one defendant died after his appeal as a matter of right was decided, while just prior to scheduled oral argument and one defendant died "prior to resolution of the appeal").

In this case, however, the appellant died prior to the preparation of the record, prior to the filing of briefs, and prior to this Court appointing counsel. Whether public funds should be expended in this case requires a review of basic constitutional principles. Such a review, which was not performed in the *Surland* or *Carlin* cases, can lead to only one conclusion – there is no constitutional right or statutory authority for the use of public funds to underwrite the estate's moot appeal.

III. ISSUES PRESENTED

1. Whether a person's entitlement to an order of indigency to pursue an appeal from his murder conviction expires with his death?

2. Whether a deceased person's estate has a constitutional or statutory right to pursue an appeal from the deceased person's murder conviction at public expense?

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estate.

3. Whether an estate's appeal from the decedent's murder conviction is moot when the estate is insolvent and is immune from any efforts the State may make to collect the $800 of non-restitution legal financial obligations ("LFOs")?

IV. FACTS

Christopher Devlin was convicted of aggravated first degree murder in Spokane County. Mr. Devlin was sentenced on September 16, 2010, to life in prison without the possibility of parole and non-restitution legal financial obligations in the amount of $800.00 was assessed.[2] Mr. Devlin filed a notice of appeal when the judgment was signed, and subsequently obtained an order of indigency.[3]

Four days later, Mr. Devlin took his own life. Subsequent to his death, this Court appointed counsel to represent Mr. Devlin. Thirty-five days after Mr. Devlin's death, counsel filed a statement of arrangements and designation of clerk's papers.[4]

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[2]The $800.00 included the mandatory $500.00 victim assessment, RCW 7.68.035, the statutory $100.00 DNA collection fee, RCW 43.43.7541, and $200.00 in court costs.

[3]The State filed a notice of cross-appeal, but the cross-appeal is clearly moot as Mr. Devlin's can no longer be subjected to a special sentencing proceeding.

[4]These actions by counsel were without authority. Once a client dies, an attorney has no power to continue or terminate an action on his or her own initiative. *See, e.g., In re Chin*, 848 F.2d 55, 57 (4th Cir. 1988) (quoting *Farris v. Lynchburg Foundry*, 769 F.2d 958, 962 (4th Cir. 1985)); *Restatement (Second) of Agency* § 120(1) (1958). An attorney for a defendant in a criminal case must, however, obtain the appellate court's permission to withdraw. *See* RAP 18.3.

Subsequent to the ordering of the trial court record, Mr. Devlin's sister, Leslee Devlin,[5] filed a notice of substitution of party. This notice was rejected as no estate had been opened and Leslee had not been appointed personal representative of the estate.

On December 30, 2010, Leslee petitioned the Spokane County Superior Court for letters of administration and for authority to participate in a criminal appeal. The petition indicates that

> The assets of the Decedent's estate are nominal. The Decedent had an interest in real property, but the secured indebtedness against the real property is in excess of the value of such real property, and the Decedent's estate has no assets to continue to pay such indebtedness. The Decedent's personal effects and clothing have no fair market value.

In re the Estate of Christopher H. Devlin, Spokane County Superior Court Cause No. 10-4-01659-9, Petition for Letters of Administration and for Authority to Participate in a Criminal Appeal (Dec. 30, 2010) (hereinafter "Petition for Letters").[6]

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[5]To avoid confusion, Leslee Devlin will be identified solely by her first name. No disrespect is intended.

[6]Although Leslee filed an oath of personal representative that promised to "perform, according to law, the duties of my trust as personal representative of this estate", Leslee has not published the notice to creditors, sent notices of death to the reasonably ascertainable creditors, and has not filed an inventory of the estate. *See generally* RCW 11.40.020; RCW 11.44.015. Leslee's failure to prepare and file the inventory can result in her removal as personal representative. *See* RCW 11.44.050.

V. ARGUMENT

Courts have no power over public funds collected for public purposes absent legislative authorization. *Honore v. State Board of Prison Terms*, 77 Wn.2d 660, 678, 466 P.2d 485 (1970). With respect to appellate costs, the Washington Legislature has expressly authorized the expenditure of public funds for adult offenders and juvenile offenders, who are unable by reason of poverty to pay the costs of an appeal, when the payment of said cost is a constitutional right or for certain other appeals or collateral attacks. *See generally* RCW 10.101.005; RCW 10.73.150.

No statute authorizes a court to expend public funds for counsel to represent either a deceased person or the deceased person's estate in an appeal from a criminal conviction. No statute authorizes a court to expend public funds for transcripts or clerk's papers to allow an estate to challenge the decedent's conviction. Until such statutes are adopted by the Legislature, public funds may not be expended upon this appeal. *See, e.g., In re Marriage of King*, 162 Wn.2d 378, 398, 174 P.3d 659 (2007) (only the legislature can authorize the expenditure of public funds to assist an indigent person in a dissolution proceeding); *In re Dependency of Grove*, 127 Wn.2d 221, 240-41, 897 P.2d 1252 (1995) (absent a legislative appropriation, the court cannot appoint counsel or pay costs for an appeal solely because a litigant is indigent); *Honore*, 77 Wn.2d at 680 (counsel appointed to represent an

indigent state prisoner on nonfrivolous appeal from a superior court disposition of a writ of habeas corpus must obtain compensation by filing a claim with the legislature until such time as the legislature enacts a statute authorizing payment of such compensation).

A. THE CONSTITUTION ONLY PROTECTS THE LIVING

Washington Constitution art. I, § 22, secures numerous rights to persons accused of committing a crime. Included in the list of rights, is the "right to appeal in all cases." This historic right, however, was limited and did not include the right to filing fees, transcripts and other tools for appeal at public. *See, e.g., Stowe v. State*, 2 Wash. 124, 25 Pac. 1085 (1891); *State Ex Rel. Marr v. Superior Court*, 163 Wash. 459, 1 P.2d 331 (1931). Instead, payment of appellate costs for indigent criminal defendants was controlled by statute. *Marr*, 163 Wash. at 462-64. This situation changed after the Supreme Court issued its opinion in *Griffin v. Illinois*, 351 U.S. 12, 100 L. Ed. 891, 76 S. Ct. 585 (1956). *See, e.g., State v. Ashbaugh*, 90 Wn.2d 432, 435, 583 P.2d 1206 (1978). The rule announced in *Griffin* was subsequently codified in RCW 10.73.150 and RCW 10.101.005.

While alive, Mr. Devlin was a "person" entitled to all of the rights contained in Const. art. I, § 22. After death, however, he ceased to be a "person" who is entitled to constitutional rights. *See, e.g., Whitehurst v.*

Wright, 592 F.2d 834, 840 (5th Cir. 1979) ("After death, one is no longer a person within our constitutional and statutory framework, and has no rights of which he may be deprived."; "a corpse, having no potential for life is not a person within the protection of our constitution"); *Guyton v. Phillips*, 606 F.2d 248, 250 (9th Cir. 1979), *cert. denied*, 445 U.S. 916 (1980) (constitutional rights only protect "persons" and the term "person", as used in this legal context, defines a living human being and excludes a corpse or a human being who has died). In particular, the right to counsel does not survive death as a corpse may not create or maintain an attorney/client relationship. *See, e.g., In re Chin*, 848 F.2d 55, 57 (4th Cir. 1988) (quoting *Farris v. Lynchburg Foundry*, 769 F.2d 958, 962 (4th Cir. 1985)); *Restatement (Second) of Agency* § 120(1) (1958).

Mr. Devlin's death has permanently removed him from this Court's jurisdiction. When, as here, death was the result of Mr. Devlin's intentional and voluntary act,[7] the constitutional right of appeal has been waived. *Cf. State v. Rice*, 110 Wn.2d 577, 619-20, 757 P.2d 889 (1988), *cert. denied*, 491 U.S. 910 (1989) (defendant's voluntary suicide attempt constituted a waiver

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[7]Where death is from natural causes, an accident, or the criminal act of another, the constitutional right of appeal cannot be considered waived. *Cf. State v. Ortiz*, 113 Wn.2d 32, 774 P.2d 1229 (1989) (a defendant's deportation by the Immigration and Naturalization Service does not warrant dismissal of his appeal pursuant to the "fugitive from justice doctrine").

of the defendant's constitutional right to be present at trial); *State v. Handy*, 27 Wash. 469, 67 P. 1094 (1902) (when a defendant withdraws himself from the power of the court after he is sentenced and files a notice of appeal is deemed to have waived his right of appeal).

B. THE ESTATE HAS NO CONSTITUTIONAL OR STATUTORY RIGHT TO PUBLIC FUNDS FOR COUNSEL OR TO PREPARE A RECORD

The estate has replaced Mr. Devlin as the appellant in this matter. Regardless of the outcome of the appeal, the estate cannot face incarceration or other loss of liberty. The only stake the estate has in the instant appeal is the $800 in non-restitution LFOs.

The general rules is that when only money or property is at stake, there is no constitutional right to counsel at public expense. *Grove*, 127 Wn.2d at 240. This rule applies equally to criminal cases as to civil matters. *See generally United States v. Unimex, Inc.*, 991 F.2d 546, 549-550 (9th Cir. 1993) (a corporation does not have a constitutional right to appointed counsel because a corporation that is charged with a crime cannot face a loss of liberty); *United States v. Rocky Mt. Corp.*, 746 F. Supp. 2d 790, 800 (W.D. Va. 2010) (same); *State v. Long*, 104 Wn.2d 285, 705 P.2d 245 (1985) (a defendant charged with negligent driving under former RCW 46.61.525 had no right to court-appointed counsel as there was no possibility of incarceration).

Even when there is no constitutional right to counsel at public expense, the legislature can still extend a statutory right to counsel. When a statutory right to counsel is extended to an indigent person, the person is also entitled to public funds for the preparation of the appellate court record. *Grove*, 127 Wn.2d at 233-34.

Statutes governing appointment of counsel in criminal appeals apply to "indigent persons", "persons who are indigent and able to contribute", to indigent "adult offender[s]", and to indigent "juvenile offender[s]". RCW 10.101.005; RCW 10.73.150. No statute authorizes the appointment of counsel to the estate of a deceased person who was convicted of a crime.

An estate, moreover, cannot be "indigent." An estate can be "insolvent", but an artificial entity cannot be "indigent." The statutory definition of "indigent" and the other definitions in RCW 10.101.010 are clearly limited to natural persons.[8] Only a natural person may receive "[t]emporary assistance for needy families, disability lifeline benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income." RCW 10.101.010(1)(a). Only a natural

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[8]Chapter 10.101 RCW contains no definition of the word "person." RCW 1.16.080(1) states that "[t]he term 'person' may be construed to include the United States, this state, or any state or territory, or any public or private corporation or limited liability company, as well as an individual." Neither RCW 1.16.080 nor any other statute includes a decedent's estate in the word "person."

person can be involuntarily committed to a public mental health facility. RCW 10.101.010(1)(b). An artificial person, such as a corporation or estate, does not incur expenses for "basic living costs", such as "shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations." RCW 10.101.010(d).

The concept of "indigency" in Chapter 10.101 RCW is directed to determining whether a person is impoverished. *Cf.* RCW 10.101.010(1)(c) (defining indigent in relationship to the federally established poverty level). *Accord* RAP 15.2(c)(2) ("unable by reason of poverty to pay for all or some of the expenses of appellate review").

> Poverty, in its primary sense, is a human condition, to be "wanting in material riches or goods; lacking in the comforts of life; needy," *Webster's New International Dictionary* 1919 (2d ed. 1942), and it was in just such distinctly human terms that this Court had established the standard of eligibility long before Congress considered extending in forma pauperis treatment from "citizens" to "persons." As we first said in 1948, "we think an affidavit is sufficient which states that one cannot because of his poverty 'pay or give security for the costs . . . and still be able to provide' himself and dependents 'with the necessities of life.'" *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331, 339, 93 L. Ed. 43, 69 S. Ct. 85. But artificial entities do not fit this description. So eccentric a description is not lightly to be imputed to Congress.

Rowland v. California Men's Colony, 506 U.S. 194, 203, 113 S. Ct. 716, 121 L. Ed. 2d 656 (1993) (holding that Congress has not authorized courts to allow non-natural persons to proceed *in forma pauperis* under 28 U.S.C. §

1915(a)).

Another clue that an estate is not entitled to an order of indigency for appellate matters is the requirement in RAP 15.2(a) that a "party shall submit a Motion for Order of Indigency, in the form prescribed by the Office of Public Defense." The form prescribed by the Office of Public Defense ("OPD") requires the defendant, respondent, or petitioner to "certify under penalty of perjury under that laws of the State of Washington that the foregoing is true and correct." RAP Form 13. This certification is the equivalent to the taking of an oath . *See* GR 13.

The perjury sanction identified in the OPD form serves to protect the public against misuse of public funds by a litigant with adequate funds of his or her own. *Rowland*, 506 U.S. at 205. The perjury sanction however is unavailing against an artificial entity, such as an estate, because an estate cannot take an oath, or make an affidavit or declaration. *Id.*, at 204.

Since no statute enacted by the Washington Legislature authorizes the appointment of counsel or the preparation of an appellate record at public expense for an artificial person, Mr. Devlin's estate must find a different source of funds.

C. THIS APPEAL IS MOOT AS THE ESTATE IS INSOLVENT AND THUS HAS NO FINANCIAL INTEREST IN THE RESOLUTION OF THIS MATTER

An estate may continue an appeal if it has a financial interest because the non-restitution financial penalties imposed on the decedent would result in an unfair burden on the heirs. *State v. Webb*, 167 Wn.2d 470, 477, 219 P.3d 695 (2009). This is a factual question that will generally require remand to the trial court. *Id.* In this case, however, the undisputed facts establish that the non-restitution penalties pose no hardship on the heirs.

Leslee's petition for letters of administration establishes that Mr. Devlin's estate has no assets. In the absence of assets, there is no estate from which the State can collect the crime victim compensation fund assessment, the DNA collection fee, or the other court costs. This means that the fines will simply remain uncollected, without the need to formally "abate" the obligation.

Mr. Devlin's heirs at law are two adult children. *See* Petition for Letters at 2. The State has not requested that these heirs pay the LFOs, and the heirs have not identified any legal basis by which the State could enforce the fine against them in a court of law.

Public policy favors the dismissal of moot cases[9] that do not involve

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[9]A case is moot when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief. *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994).

issues of continuing and substantial public interest. *See Hart v. Department of Social & Health Servs.*, 111 Wn.2d 445, 447, 759 P.2d 1206 (1988). Public policy disfavors the expenditure of public funds to enable an indigent litigant to pursue a case that is frivolous, that the indigent litigant is not likely to win, that is brought for purposes of harassment,[10] or when other persons may be adversely affected by the waiver. *Carter v. University*, 87 Wn.2d 483, 554 P.2d 338 (1976); *O'Connor v. Matzdorff*, 76 Wn.2d 589, 603, 458 P.2d 154 (1969); *Bowman v. Waldt*, 9 Wn. App. 562, 571-72, 513 P.2d 559 (1973). These two principles establish that public policy would be offended by the expenditure of thousands of dollars of public money in the pursuit of an opinion that relieves the estate of paying the $800.00 in LFOs that the estate will never have to pay because of its insolvency.

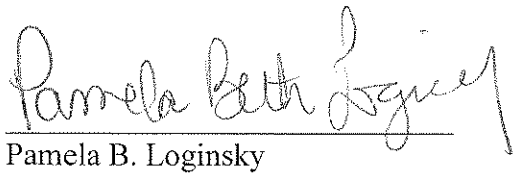
VI. CONCLUSION

The instant appeal should be dismissed as moot in an order that indicates that the fact of the defendant's conviction removed the presumption of the defendant's innocence, but that the conviction was appealed and the conviction was neither affirmed nor reversed on appeal because the defendant died while the appeal of the conviction was pending. *See Wheat v. State*, 907

[10]One is left to wonder about the motivation for this appeal. No rational person would expend thousands of dollars of their own money solely to avoid an $800.00 debt. Appellate counsel benefits, of course, but that is hardly a reason to maintain a moot appeal. And, the estate has not asked that the conviction be abated.

So.2d 461, 464 (Ala. 2005). If, however, the estate wishes to pursue this matter further, the estate will have to pay the expenses of the appeal, including that of counsel, with private funds.

Respectfully submitted this 5th day of August, 2011



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APPENDIX A

Alaska Stat. 18.85.100 (2011) provides as follows:

> (a) An indigent person who is under formal charge of having committed a serious crime and the crime has been the subject of an initial appearance or subsequent proceeding, or is being detained under a conviction of a serious crime, or is on probation or parole, or is entitled to representation under the Supreme Court Delinquency or Child in Need of Aid Rules, or is isolated, quarantined, or required to be tested under an order issued under AS 18.15.355 -- 18.15.395, or against whom commitment proceedings for mental illness have been initiated, is entitled
>
> (1) to be represented, in connection with the crime or proceeding, by an attorney to the same extent as a person retaining an attorney is entitled; and
>
> (2) to be provided with the necessary services and facilities of this representation, including investigation and other preparation.
>
> (b) Subject to the provisions of AS 18.85.155, the attorney services and facilities and the court costs shall be provided at public expense to the extent that the person, at the time the court determines indigency, is unable to provide for payment without undue hardship. Appointment of any guardian ad litem or attorney shall be made under the terms of AS 25.24.310, to the extent that that section is not inconsistent with the requirements of this chapter.
>
> (c) An indigent person is entitled to representation under (a) and (b) of this section for purposes of bringing a timely application for post-conviction relief under AS 12.72. An indigent person is not entitled to representation under (a) and (b) of this section for purposes of bringing
>
> (1) an untimely or successive application for post-conviction relief under AS 12.72 or an untimely or successive motion for reduction or modification of sentence;
>
> (2) a petition for review or certiorari from an appellate court ruling on an application for post-conviction relief; or

(3) an action or claim for habeas corpus in federal court attacking a state conviction.

(d) Notwithstanding (a) of this section, an indigent person is entitled to the representation and necessary services and facilities of representation as provided in (a) of this section when the prosecuting attorney or a law enforcement officer requests the court to provide representation to an indigent person under this section and the court finds that the provision of representation is necessary in the interests of justice.

(e) Subject to other provisions of this subsection, a person who is the natural parent, adoptive parent, or guardian of a child who is taken into emergency custody of the state under AS 47.10.142 may be represented at public expense and without a court order by an attorney employed by the Public Defender Agency in connection with the hearing held under AS 47.10.142(d). Representation in connection with the hearing may include investigation and other preparation before the hearing is held as well as representation at the hearing. Continued representation of the person by the Public Defender Agency after the hearing is held under AS 47.10.142(d) is contingent on satisfaction of the eligibility requirements of (a) -- (d) of this section, the issuance of an appropriate court order, and compliance with the applicable laws and court rules relating to court-appointed counsel employed at the public's expense. If a person who was represented by the Public Defender Agency at public expense without a court order in connection with a hearing held under AS 47.10.142(d) is not later determined to be eligible for court-appointed counsel at public expense under applicable laws and court rules, the court shall assess against the represented person the cost to the Public Defender Agency of providing the representation. In this subsection, "guardian" means a natural person who is legally appointed guardian of the person of a child.

(f) Notwithstanding (a) of this section, an indigent person is entitled to the representation and necessary services and facilities of representation as provided in (a) of this section when the person is a witness who refuses or there is

reason to believe will refuse to testify or provide other information based on the privilege against self-incrimination.

(g) An indigent person is entitled to representation under (a) and (b) of this section for purposes of bringing an application for post-conviction DNA testing under AS 12.73.

Generic

I certify that this document is a true and correct copy
of the original on file and of record in my office

ATTEST JUL 14 2011

THOMAS R. FALLQUIST, COUNTY CLERK
COUNTY OF SPOKANE, STATE OF WASHINGTON
BY V. Hochstedler DEPUTY

FILED
DEC 30 2010
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

In re the Estate of: CHRISTOPHER H. DEVLIN, Deceased.	No. 10401659-9 PETITION FOR LETTERS OF ADMINISTRATION AND FOR AUTHORITY TO PARTICIPATE IN A CRIMINAL APPEAL

The Petitioner, Leslee Devlin, by counsel, respectfully represents:

1. **Jurisdiction.** Christopher H. Devlin (the "Decedent") died on either September 19, 2010, or September 20, 2010, and on such date was a resident of Spokane County, Washington, and left minimal property subject to probate administration.

2. **Reason for the appointment.** The Petitioner is advised that in order to conduct an appeal of the criminal conviction of the Decedent, shortly after his death, she needs to be appointed as personal representative and substituted for the Decedent as the appellant.

3. **Venue.** The Petitioner elects Spokane County, Washington, as the venue to conduct an administration of the Decedent's Estate.

4. **Petitioner.** The Petitioner is a sister of the Decedent. The Decedent was not survived by either parent or a spouse. The Decedent's heirs at law are two children who have declined to request their appointment as personal representative within 40 days from the date of the Decedent's death as required by RCW 11.28.120.

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The Petitioner is of legal age and a resident of the State of New York. The Petitioner has nominated her Washington counsel, Robert H. Lamp, as resident agent for the acceptance of service of process.

5. **Will.** The Petitioner has not conducted a thorough search for a will of the Decedent, but believes the Decedent died intestate. Since the Decedent was incarcerated in the Spokane County Jail at the time of his death, the Petitioner's search for a will has been quite restricted.

If a will of the Decedent is discovered, the Petitioner will promptly petition for its admission to probate.

6. **Heirs.** The Decedent was survived by the following heirs:

Name	Relationship	Age
Jennifer Devlin	Daughter	Legal
Scott M. Devlin	Son	Legal

Since the Decedent was estranged from his children at the time of his death, the Petitioner requests authority to delete any reference to the children's addresses.

7. **Criminal Appeal.** After her appointment, the Petitioner requests authority to continue the Decedent's criminal appeal as personal representative and to sign all documents necessary to conduct and perfect such appeal.

8. **Bond.** The assets of the Decedent's estate are nominal. The Decedent had an interest in real property, but the secured indebtedness against the real property is in excess of the value of such real property, and the Decedent's estate has no assets to continue to pay such indebtedness. The Decedent's personal effects and clothing have no fair market value. Therefore, the Petitioner requests that a cash bond ~~not be~~ required.

9. **Advance Notice.** The Decedent was not survived by a spouse.

WHEREFORE, the Petitioner requests that the court enter an order as follows:

A. Appointing the Petitioner as administrator of the Decedent's Estate and that Letters of Administration be issued to the Petitioner upon her filing of an oath; and

B. That a cash bond be waived: and

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A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

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(509) 624-5265

C. That the petitioner be authorized to be substituted for the Decedent on his criminal appeal.

DATED this 23rd day of December, 2010.

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.

BY [signature]
ROBERT H. LAMP, WSBA #1197
Attorneys for Petitioner

STATE OF NEW YORK)
) ss.
County of SUFFOLK)

LESLEE DEVLIN, being first duly sworn on oath, deposes and says:

That she is the petitioner herein, has read the foregoing petition, knows the contents thereof, and believes the same to be true.

[signature]
LESLEE DEVLIN

SUBSCRIBED AND SWORN to before me ~~on~~ this 23rd day of DEC., 2010.

[signature]
NOTARY PUBLIC in and for the State of New York, residing at EAST QUOGUE
My appointment expires: JULY 31, 2014

LEE PRESTON
Notary Public, State of New York
No. 4685410
Qualified in Suffolk County
Commission Expires July 31, 2014

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ATTEST JUL 14 2011

THOMAS R. FALLQUIST, COUNTY CLERK
COUNTY OF SPOKANE, STATE OF WASHINGTON
BY J. Hochsteller DEPUTY

FILED
DEC 30 2010
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

In the Matter of the Estate of CHRISTOPHER H. DEVLIN, Deceased.	No. 10401659-9 ORDER GRANTING LETTERS OF ADMINISTRATION AND FOR AUTHORITY TO PARTICIPATE IN THE CRIMINAL APPEAL

The verified Petition of Leslee Devlin requesting her appointment as administrator of the estate of Christopher H. Devlin, Deceased, and also requesting authority after appointment to participate in a criminal appeal as a substituted party having come on regularly for hearing this date, and the Court having examined the verified petition requesting this Order, having heard comments of counsel and being fully advised,

FINDS:

1. Christopher H. Devlin (the "Decedent") died on either September 19 or September 20, 2010, and on such date was a resident of Spokane County, Washington, and left minimal property subject to administration.

2. The Petitioner is a sister of the Decedent. The Decedent was not survived by either parent or a spouse. The Decedent's heirs at law are his two children from whom he was estranged and who have declined to request their appointment as administrator within 40 days of the date of the Decedent's death.

3. The Petitioner is of legal age and a resident of the State of New York. The Petitioner has

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nominated her Washington counsel, Robert H. Lamp, as resident agent for the acceptance of service of process.

4. The Petitioner has conducted a search for a Will of the Decedent, but believes that the Decedent died intestate. Since the Decedent was incarcerated in the Spokane County Jail at the time of his death, the Petitioner's search for a Will has been quite restricted.

5. After her appointment, the Petitioner, as Administrator, requests authority to continue the Decedent's criminal appeal as personal representative and requests authority to sign all documents necessary to conduct and perfect such appeal.

6. Since the assets of the Decedent's estate are minimal and the only asset of the estate has secured indebtedness in excess of its market value, cash bond should be waived.

NOW THEREFORE, IT IS ORDERED:

A. Leslee Devlin is appointed Administrator of the Estate of Christopher H. Devlin, Deceased; and

B. As Administrator, the Petitioner is authorized to conduct an appeal of the Decedent's recent criminal conviction; and

C. Letters of Administration shall be issued to the Petitioner upon her filing an Oath. Cash bond is waived.

DONE IN OPEN COURT this 30th day of Dec, 2011.

JUDGE/COURT COMMISSIONER

Presented By:

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.

BY

ROBERT H. LAMP, WSBA #1197
Attorneys for Petitioner

WITHERSPOON, KELLEY, DAVENPORT & TOOLE
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ATTEST JUL 14 2011

THOMAS R. FALLQUIST, COUNTY CLERK
COUNTY OF SPOKANE, STATE OF WASHINGTON
BY V. Hochstedler DEPUTY

FILED
DEC 30 2010
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

In the Matter of the Estate of: CHRISTOPHER H. DEVLIN, Deceased.	No. 10 4 01659 9 OATH OF PERSONAL REPRESENTATIVE

STATE OF NEW YORK)
) ss.
County of SUFFOLK)

LESLEE DEVLIN, being first duly sworn on oath, deposes and says:
I will be appointed personal representative of the Estate of Christopher H. Devlin, Deceased, by this Court, and I solemnly swear that after my appointment as personal representative I will perform, according to law, the duties of my trust as personal representative of this estate, SO HELP ME GOD.

Leslee A. Devlin
LESLEE DEVLIN

SUBSCRIBED AND SWORN to before me on this 23rd day of DEC., 2010.

Lee Preston
NOTARY PUBLIC in and for the State of New York, residing at EAST QUOGUE
My appointment expires: JULY 31, 2014

LEE PRESTON
Notary Public, State of New York
No. 4685410
Qualified in Suffolk County
Commission Expires July 31, 20 14

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.
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ATTEST JUL 14 2011

THOMAS R. FALLQUIST, COUNTY CLERK
COUNTY OF SPOKANE, STATE OF WASHINGTON
BY V. Hochstedler DEPUTY

FILED
DEC 30 2010
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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

In re the Estate of: CHRISTOPHER H. DEVLIN, Deceased.	No. APPOINTMENT OF RESIDENT AGENT

Leslee Devlin, who will be appointed personal representative in the above-referenced Estate, appoints her Washington attorney, Robert H. Lamp, as resident agent for the acceptance of service of process pursuant to RCW 11.36.010.

Leslee A. Devlin
LESLEE DEVLIN

ACCEPTANCE

The undersigned attorney accepts the appointment of resident agent.

DATED this 23 day of Dec., 2010.

Robert H. Lamp
Robert H. Lamp

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.
A PROFESSIONAL SERVICE CORPORATION
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COUNTY OF SPOKANE, STATE OF WASHINGTON
BY V. Hochstedler DEPUTY

FILED
DEC 30 2010

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

(Court's Date Stamp)

SUPERIOR COURT OF WASHINGTON, COUNTY OF SPOKANE

ESTATE OF: CHRISTOPHER H. DEVLIN, Deceased.	CASE NO. 10-4-01659-9 **LETTERS OF ADMINISTRATION** ***(NO WILL)*** ***(LTRAD)***

I. BASIS

1.1 The decedent(s), late of SPOKANE COUNTY, WASHINGTON died intestate on or about: **September 19, 2010**
leaving property in this state subject to administration.

1.2 On: **DECEMBER 30, 2010** the court appointed: **LESLEE DEVLIN**
to administer the estate of the decedent according to law.

1.3 The personal representative has qualified.

II. AUTHORIZATION

THIS CERTIFIES: **LESLEE DEVLIN** is authorized by this court to administer the estate of the above decedent according to law.

THOMAS R. FALLQUIST, SPOKANE COUNTY CLERK

Dated: December 30, 2010

By Cecily Coulter
Deputy Clerk

(Seal)

III. CERTIFICATE OF COPY

State of Washington)
County of Spokane)

As clerk of the superior court of this county, I certify that the above is a true and correct copy of the Letters of Administration (No Will) in the above-named case which was entered of record on:**December 30, 2010**

I further certify that these letters are now in full force and effect.

THOMAS R. FALLQUIST, SPOKANE COUNTY CLERK

Dated:

By _____
Deputy Clerk

(Seal)

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of the original on file and of record in my office

ATTEST JUL 14 2011

THOMAS R. FALLQUIST, COUNTY CLERK
COUNTY OF SPOKANE, STATE OF WASHINGTON
BY V. Hochstedler DEPUTY

FILED
DEC 30 2010
THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

In the Matter of the Estate of: CHRISTOPHER H. DEVLIN, Deceased.	No. 10401659-9 NOTICE TO CREDITORS

The personal representative named below has been appointed as personal representative of the estate of Christopher H. Devlin, Deceased. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative's attorney at the addresses below stated a copy of the claim and filing the original of the claim with the court. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(3); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and RCW 11.40.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First Publication: not published

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.
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ATTORNEYS & COUNSELORS

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LESLEE DEVLIN
PO BOX 809
EAST QUOGUE, NY 11942

WITHERSPOON, KELLEY, DAVENPORT
& TOOLE, P.S.

By _____
ROBERT H. LAMP, WSBA #1197
Attorneys for the Petitioner
West 422 Riverside Avenue, Suite 1100
Spokane, WA 99201-0300

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ATTEST JUL 14 2011

THOMAS R. FALLQUIST, COUNTY CLERK
COUNTY OF SPOKANE, STATE OF WASHINGTON
BY L. Hochstedler DEPUTY

FILED
JAN - 7 2011
THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

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

In re the Estate of CHRISTOPHER H. DEVLIN, Deceased.	No. 10-4-01659-9 NOTICE OF APPOINTMENT

NOTICE IS GIVEN that on December 30, 2010, Leslee Devlin was appointed personal representative of the Estate of Christopher H. Devlin, Deceased, and probate of that estate is now pending in the Spokane County Superior Court.

DATED this 6th day of January, 2011.

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.

BY Robert H. Lamp
ROBERT H. LAMP, WSBA #1197
Attorneys for the Estate

WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.
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PROOF OF SERVICE

I, Amber Haslett-Kern, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On the 5th day of August, 2011, I deposited in the mails of the United States of America, postage prepaid, the original Brief of Amicus Curiae Washington Association of Prosecuting Attorneys, in an envelop addressed to:

Renee S. Townsley, Clerk
Court of Appeals, Division III
500 N Cedar ST
Spokane, WA 99201-1905

On the 5th day of August, 2011, I deposited in the mails of the United States of America, postage prepaid, copies of the Brief of Amicus Curiae Washington Association of Prosecuting Attorneys, in envelops addressed to:

David L. Donnan
Gregory Charles Link
Washington Appellate Project
1511 3rd Ave Ste 701
Seattle, WA 98101-3635

Mark Erik Lindsey
Larry D. Steinmetz
Spokane County Prosecutors Office
1100 W Mallon Ave
Spokane, WA, 99260-2043

Sean Flynn
Joanne Irene Moore
Office of Public Defense
PO Box 40957
Olympia, WA 98504-0957

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

Signed this 5th day of August, 2011, at Olympia, Washington.

Amber Haslett-Kern

Amber Haslett-Kern