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BY RONALD R. CARPENTER  
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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GEORGE KELLEY, as guardian for BB, PB, and NB, minor children,

Plaintiffs/Respondents,

vs.

CENTENNIAL CONTRACTORS ENTERPRISES, INC.,

Defendant/Petitioner.

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SUPREME COURT  
STATE OF WASHINGTON  
2009 DEC 30 A 11:20  
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SUPPLEMENTAL BRIEF OF AMICUS CURIAE  
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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## I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. These name changes were effective January 1, 2009.

WSAJ Foundation, which now operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, including an interest in the rights of minor children.

WSTLA Foundation filed an amicus curiae brief at the Court of Appeals level in this case, at the invitation of the court. See Kelley v. Centennial Contractors, 147 Wn.App. 290, 294, 194 P.3d 292 (2008), *review granted*, 165 Wn.2d 1048 (2009); "Brief of Amicus Curiae Washington State Trial Lawyers Association Foundation" (C.A. #36089-6-II, filed July 3, 2008).<sup>1</sup> This supplemental amicus curiae brief by WSAJ Foundation amplifies on the arguments presented in the WSTLA

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<sup>1</sup> The WSTLA Foundation amicus curiae brief is referred to as "WSTLA Foundation amicus brief," and cited as "WSTLA Fdn. Am. Br." The Washington Defense Trial Lawyers (WDTL) also filed an amicus curiae brief in the Court of Appeals.

Foundation amicus brief, and also analyzes the Court of Appeals opinion below.

## II. INTRODUCTION AND STATEMENT OF THE CASE

This supplemental brief incorporates by reference the introduction and statement of the case of the WSTLA Foundation amicus brief. See WSTLA Fdn. Am. Br. at 1-4.<sup>2</sup>

The basic question before the superior court was whether the Blackshear children's loss of parental consortium claims should be dismissed for failure to be joined with the parents' personal injury action. The superior court ruled joinder was feasible and dismissed the children's loss of consortium claims. See Kelley, 147 Wn.App. at 293.

Kelley appealed to the Court of Appeals, Division II. After additional post-oral argument briefing by the parties and amici curiae, the Court of Appeals reversed the dismissal of the Blackshear children's loss of consortium claims. See Kelley, 147 Wn.App. at 292. In so doing, the court concluded that joinder of the children's loss of consortium claims was legally impossible at the time of the parents' action because the children were not represented by a guardian. See Kelley at 298. The court also found factual infeasibility under the circumstances. See id. at 298-301.

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<sup>2</sup> The WSTLA Foundation amicus brief recitation of facts is incorrect in relating that the appointment of guardian Kelley occurred before the tort action was commenced against Centennial on behalf of the Blackshear children. See WSTLA Fdn. Am. Br. at 2; Kelley, 147 Wn.2d at 293 (indicating the appointment of Kelley as guardian occurred subsequent to commencement of the action); Centennial Pet. for Rev. at 12 (same).

Centennial sought review before this Court, contending that the Court of Appeals opinion conflicts with this Court's decision in Ueland v. Pengo Hydra-Pull Corp., 103 Wn.2d 131, 691 P.2d 190 (1984). See Centennial Pet. for Rev. at 1. This Court granted review.

### III. ISSUE PRESENTED

What is the proper interpretation and application of the joinder mandate and infeasibility exception in Ueland v. Pengo Hydra-Pull Corp., 103 Wn.2d 131, 140, 691 P.2d 190 (1984), when the loss of consortium claim involves minor children?

### IV. SUMMARY OF ARGUMENT

The Court of Appeals correctly found that joinder of the Blackshear children's loss of consortium claims in their parents' personal injury action was infeasible based upon legal impossibility because the children did not have a court-appointed guardian during the life of the parents' action. Consequently, the Blackshear children are entitled to proceed in this action with their loss of consortium claims. It is both unnecessary and inappropriate to engage in any factual infeasibility analysis because joinder was infeasible based upon legal impossibility alone.

Centennial, as defendant in the parents' personal injury action, was not without options, if dissatisfied that the Blackshear children's potential loss of consortium claims were not joined in the action. Under RCW 11.88.030, it had standing to seek appointment of a guardian for the

children, for the purpose of assessing joinder of the consortium claims under the Ueland feasibility standard.

Parents of minor children, particularly those under 14 years old, have no fundamental right as so-called "natural guardians" of their children to make a binding determination whether their loss of consortium claims may feasibly be joined in the parents' personal injury action. Both statutory and decisional law require that a court-supervised guardian act on behalf of the children.

## V. ARGUMENT

### *Introduction*

This brief supplements the WSTLA Foundation amicus brief filed at the Court of Appeals level. See supra at 1.

#### **A) The Court Of Appeals Correctly Found Infeasibility Of Joinder Based Upon Legal Impossibility, Because The Minor Children Were Not Represented By A Guardian During The Life Of The Parents' Personal Injury Action.**

The Court of Appeals correctly held that joinder of the Blackshear children's loss of consortium claims was legally impossible:

The record shows that no one appeared as guardian or GAL [guardian ad litem] for the children in the parents' suit and that it was not until May 8, 2006, well after the parents' trial was completed, that Kelley was appointed GAL for the children. In Washington, RCW 4.08.050 requires that "when an infant is a party, he or she shall appear by guardian." Therefore, without a guardian it was legally impossible for the children to have joined their claim with that of their parents. Thus, as a matter of law, joinder was not legally feasible and was, therefore, impossible.

Kelley, 147 Wn.App. at 298 (footnote omitted).<sup>3</sup>

This legal impossibility analysis is dispositive. Although the court was sparing in explaining why RCW 4.08.050 is controlling, governing statutory and decisional law unquestionably requires that a court-supervised guardian act on behalf of a minor child seeking a civil remedy under the civil justice system. See WSTLA Fdn. Am. Br. at 6-11.<sup>4</sup>

In light of the legal impossibility determination, the Court of Appeals analysis of "factual feasibility" is dicta. See Kelley at 298-301. The analysis was not only unnecessary to disposition of the appeal, it was also inappropriate because it presupposes an assessment by a guardian—which did not occur in this case. See Kelley at 301 (recognizing "[a]nd when a GAL is timely appointed, evidence of loss of parental consortium must exist before the parents' trial for such joinder to be practical and in the child's best interests"). This Court should affirm the Court of Appeals on the legal impossibility analysis alone.

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<sup>3</sup> The omitted footnote provides: "Because all three children were 14 or younger when they filed their amended complaint, they were 'infants' for the purposes of RCW 4.08.050." Kelley at 298 n.5.

<sup>4</sup> RCW 4.08.050 is not the only statute regarding appointment of a guardian for a minor child. See Ch. 11.88 RCW and Ch. 11.92 RCW. Although RCW 4.08.050 is particularly concerned about representation of minors involved in civil litigation, it should be read in light of the protections embodied in Ch. 11.88 RCW and Ch. 11.92 RCW, as these statutes provide a necessary framework for court supervision of guardians ad litem. Otherwise, RCW 4.08.050 does not impose any accountability requirements for guardians operating under its provisions. Cf. Beach v. Board of Adjustment, 73 Wn.2d 343, 346, 438 P.2d 617 (1968) (stating "[w]here ... two statutes relate to the same subject matter, the court will in its attempt to ascertain legislative purpose, read the sections as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived"); GALR 1(a) (providing guardian ad litem rules apply to guardians ad litem appointed pursuant to RCW 4.08.050 if the appointment is under the procedures of Title 11). The current version of GALR 1 is reproduced in the Appendix to this brief.

**B) Under RCW 11.88.030, Centennial Could Have Requested The Appointment Of A Guardian For The Blackshear Children, For The Purpose Of Evaluating The Feasibility Of Joining In The Parents' Personal Injury Action.**

Centennial argues, in assessing the Ueland joinder issue, that "[i]n the case of a minor, it is his or her parent and attorney that have the responsibility of deciding for the child whether to appoint a guardian ad litem or join the claim." Centennial Ct. App. Supp. Br. at 6. Centennial further contends that nothing in RCW 4.08.050 requires a defendant in a civil action to seek appointment of a guardian for minors who might have an interest in the pending action. See id.

Be that as it may, WSAJ Foundation agrees with Kelley that Centennial had the ability to request that the superior court appoint a guardian to represent the Blackshear children's interest prior to their parents' trial. See Kelley Supp. Br. at 11. For example, RCW 11.88.030(1) allows "[a]ny person" to petition for the appointment of a guardian or limited guardian of an incapacitated person. Under RCW 11.88.010(1)(d), a minor is an incapacitated person.<sup>5</sup> Consequently, even if Centennial were frustrated by inaction of the parents (or their attorney), it had standing to force the issue—in its own self-interest—by seeking appointment of a guardian for the purpose of assessing whether the

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<sup>5</sup> The current versions of RCW 11.88.010 and RCW 11.88.030 are reproduced in the Appendix to this brief. Note that under RCW 11.88.040, governing notice and hearing for appointment of a guardian or limited guardian, the appointment process is streamlined when the guardianship is sought by a parent of a minor, particularly one under the age of 14 years-old. See RCW 11.88.040(1)-(4). The current version of RCW 11.88.040 is reproduced in the Appendix to this brief.

children should join the parents' personal injury action in light of the Ueland requirement. If an appointment ensued, then a guardian, subject to court supervision, would have evaluated the joinder issue and taken appropriate action. If the guardian were disinclined to join the parents' personal injury action because of perceived factual infeasibility, then he or she could have sought court approval of this decision.<sup>6</sup>

**C) Washington Law Contemplates That Only A Guardian May Act On Behalf Of A Minor Child In Pursuing A Claim For Relief Under The Civil Justice System.**

Both Centennial and amicus curiae WDTL argued below that the parents had the right to decide for their children whether they should be joined for purposes of pursuing their loss of consortium claims, and that the parents' decision is binding on the children. See Centennial Ans. to WSTLA Fdn. Am. Br. at 7 (invoking parents' fundamental liberty interest in rearing minor children); WDTL Am. Br. at 8 (asserting right of parent as "natural guardian" of children). Whatever unfettered fundamental rights parents may have with respect to child-rearing, such rights do not include control over a child's property rights or financial interests subject to protection under the civil justice system. See generally Alison M. Brumley, Parental Control of a Minor's Right to Sue in Federal Court, 58

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<sup>6</sup> It was disputed in the Court of Appeals briefing whether Centennial could have sought to join the Blackshear children under CR 19. See WDTL Am. Br. at 9 & n.5; WSTLA Fdn. Am. Br. at 13 n.10. On further reflection, this issue seems irrelevant, if Centennial otherwise had the capacity to bring the joinder issue to the fore by seeking appointment of a guardian for the Blackshear children.

U. Chi. L. Rev. 333, 337 (1991).<sup>7</sup> For this reason, in Washington, pursuit of a minor child's claim to civil relief categorically requires involvement of a guardian. See WSTLA Fdn. Am. Br. at 6-11.

## VI. CONCLUSION

The Court should adopt the analysis advanced in the WSTLA Foundation amicus brief and this WSAJ Foundation supplemental amicus brief, and resolve the issue on review accordingly.

DATED this 21st day of December, 2009.

  
BRYAN P. HARNETIAUX  
*for with authority*

  
GEORGE M. AHREND

On Behalf of WSAJ Foundation

\*Brief to be transmitted for filing by email; signed original retained by counsel.

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<sup>7</sup> While Centennial invokes parents' fundamental right in child-rearing as relevant to the joinder issue, it otherwise recognizes as valid the state's requirement that minor children be represented by guardians in civil actions. See Centennial Ct. App. Supp. Br. at 3-6. However, Centennial does not appear to challenge the state's police power, as *parens patriae*, to impose a guardianship scheme for the protection, inter alia, of minor children's property and financial interests.

# Appendix

**RCW 11.88.010. Authority to appoint guardians--Definitions--Venue--Nomination by principal**

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a

limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse or domestic partner of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor.

[2008 c 6 § 802, eff. June 12, 2008; 2005 c 236 § 3, eff. Jan. 1, 2006; (2005 c 236 § 2 expired January 1, 2006); 2004 c 267 § 139, eff. Jan. 1, 2006; 1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309

§ 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 1.88.010. Prior: 1917 c 156 §  
195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15  
§.1.]

**RCW 11.88.030. Petition--Contents--Hearing** *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71)*<sup>[1]</sup>

(1) Any person or \*entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the

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<sup>1</sup> See the certification from the Secretary of State indicating that Referendum No. 71 was approved by the voters on November 3, 2009, which is included in this Appendix and available at [http://www.sos.wa.gov/\\_asserts/elections/2009GeneralCert.pdf](http://www.sos.wa.gov/_asserts/elections/2009GeneralCert.pdf).

alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment;

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE

PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE ..... COUNTY SUPERIOR COURT BY ..... IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT

YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

[2009 c 521 § 36, eff. July 26, 2009; 1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

**\*Reviser's note:** Trust companies, national banks, and nonprofit corporations are no longer referred to in RCW 11.88.020, as amended by 1997 c 312 § 1.

**RCW 11.88.040. Notice and hearing, when required--Service--  
Procedure**

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse or domestic partner of the alleged incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place

of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

[2008 c 6 § 803; eff. June 12, 2008; 1995 c 297 § 2; 1991 c 289 § 3; 1990 c 122 § 5; 1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 1969 c 70 § 1; 1965 c 145 § 11.88.040; Prior: 1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.]

## GALR 1. SCOPE AND DEFINITIONS

(a) **Statement of Purpose and Scope of Rule.** The purpose of these rules is to establish a minimum set of standards applicable to all superior court cases where the court appoints a guardian ad litem or any person to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person pursuant to Title 11, 13 or 26 RCW.

These rules shall also apply to guardians ad litem appointed pursuant to RCW 4.08.050 and RCW 4.08.060, if the appointment is under the procedures of Titles 11, 13 or 26 RCW.

These rules shall not be applicable to guardians ad litem appointed pursuant to Special Proceedings Rule (SPR) 98.16W and chapter 11.96A RCW.

(b) **Definitions.** As used in this rule, the following terms have these meanings:

(1) *Court.* Court shall mean any superior court in the State of Washington and all divisions thereof.

(2) *Guardian ad Litem.* Guardian ad litem shall mean any person or program appointed in a Title 11, 13, or 26 RCW action under the Revised Code of Washington to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person. The term guardian ad litem shall not include an attorney appointed to represent a party.

(3) *Judge.* Judge shall mean a judicial officer of the superior court, including commissioners and judges *pro tempore*.

(4) *Registry.* Registry shall mean the list of people authorized by the court to serve as guardians ad litem or CASA programs authorized by RCW 26.12.175.

[Adopted effective November 27, 2001.]



**CANVASS OF THE RETURNS  
OF THE GENERAL ELECTION  
HELD ON NOVEMBER 3, 2009**

I, Sam Reed, Secretary of State of the State of Washington, do hereby certify that according to the provisions of RCW 29A.60.260, I have canvassed the returns of the 1,823,364 votes cast by the 3,583,278 registered voters of the state for and against the initiative and referendum which were submitted to the vote of the people at the state general election held on the 3<sup>rd</sup> day of November, 2009, as received from the County Auditors.

**Initiative Measure No. 1033**

"Initiative Measure No. 1033 concerns state, county and city revenue.

This measure would limit growth of certain state, county and city revenue to annual inflation and population growth, not including voter-approved revenue increases. Revenue collected above the limit would reduce property tax levies."

Yes  
No

729,918  
1,003,943



**Referendum Measure No. 71**

"The legislature passed Engrossed Second Substitute Senate Bill 5688 concerning rights and responsibilities of state-registered domestic partners and voters have filed a sufficient referendum petition on this bill.

This bill would expand the rights, responsibilities, and obligations accorded state-registered same-sex and senior domestic partners to be equivalent to those of married spouses, except that a domestic partnership is not a marriage."

Approved	951,822
Rejected	838,842

I further certify that, according to the provisions of RCW 43.07.030, I have canvassed the returns of the votes cast at the state general election held on the 3<sup>rd</sup> day of November, 2009, for all joint legislative offices, and that the votes cast for candidates for these offices are as follows:

**Legislative District 9 - State Representative Pos. 1  
(1-year unexpired term)  
(Adams, Asotin, Franklin\*, Garfield, Spokane\*, Whitman)**

Susan Fagan	(Prefers Republican Party)	15,844
Pat Hailey	(Prefers Republican Party)	13,004

**Legislative District 15 - State Representative Pos. 2  
(1-year unexpired term)  
(Clark\*, Klickitat, Skamania, Yakima\*)**

David Taylor	(Prefers Republican Party)	13,851
John (Jobs) Gotts	(Prefers Democratic Party)	6,144

**Legislative District 16 - State Representative Pos. 2**  
**(1-year unexpired term)**  
**(Benton\*, Columbia, Franklin\*, Walla Walla)**

Laura Grant

(Prefers Democratic Party)

13,283

Terry R. Nealey

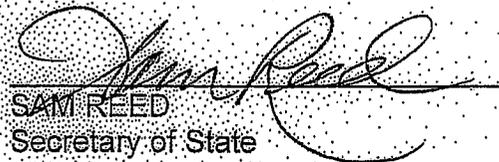
(Prefers Republican Party)

19,138

(\*Only part of the county is included in the legislative district.)



IN WITNESS WHEREOF, I have set  
my hand and affixed the official Seal  
of the State of Washington, this 1<sup>st</sup> day  
of December, 2009.

  
SAM REED  
Secretary of State