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SUPREME COURT NO. 86766-3

IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

-----  
JEFFREY MANARY,

Respondent,

v.

EDWIN A. ANDERSON,

Appellant.  
-----

REPLY TO ANSWER ON PETITION FOR REVIEW  
-----

Attorneys for Respondent  
Thomas G. Burke, WSBA No. 6577  
Burke Law Offices, Inc., P.S.  
612 S. 227<sup>th</sup> Street  
Des Moines, WA 98198  
(206) 824-5630

ORIGINAL

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**TABLE OF AUTHORITIES**

**Cases**

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**A. IDENTITY OF PETITIONER**

Petitioner Jeffrey Manary has asked this court to accept review of the Court of Appeals decision terminating review designated in Part B of the petition for review. Petitioner respectfully submits this Reply to the Answer filed by responding party Anderson.

**B. NEW ISSUE PRESENTED IN ANSWER TO PETITION FOR REVIEW**

The answer of responding party Anderson includes a “Restatement of Issues Presented for Review” with includes the following: “C. Whether Anderson is entitled to attorneys’ fees?” *Answer; p. 1.*

Anderson does not specify in either his statement of issues, statement of the case, or argument whether or not he is requesting an award of reasonable attorney’s fees.

This reply is submitted to address the possibility that Anderson is seeking an award of reasonable attorney’s fees under RCW 11.96A.150.

**C. STATEMENT REGARDING NEW ISSUE: ATTORNEY’S FEES**

Anderson did not request or receive an award of reasonable attorney’s fees in the Court of Appeals. There was no request included in

his responsive brief and no citation to RCW 11.96A.150 as a basis for such an award. *Appendix A*.

In the cost bill submitted to the Court of Appeals, Anderson includes a request for award of statutory attorney fees, only. *Appendix B*.

***D. ARGUMENT REGARDING NEW ISSUE: ATTORNEY'S FEES***

Anderson has requested an award of "attorney's fees" pursuant to RCW 11.96A.150. *Answer; p.19*. Anderson also asserts that this Court is authorized to award such relief under RAP 18.1(a) and (j).

RAP 18.1 specifically address the award of attorney's fees incurred in answering a petition for review. "If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review." *RAP 18.1(j)*. There was no award of attorney's fees to Anderson in the Court of Appeals. The only "attorney's fees" addressed were the statutory attorney's fees included Anderson's Cost Bill. Therefore, Anderson is not authorized to receive reasonable attorney's fees for answering the petition for review.

RCW 11.96A.150 states that "...any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party." *RCW 11.96A.150(1)*. However, the court should consider "...any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved." *Id.* Generally, attorney fees may be awarded against a trust "only where the litigation results in a substantial benefit to the trust." *Cook v. Brateng*, 158 Wn.App. 777, 795, 262 P.3d 1228, 1236 (2010). Anderson has not even alleged or argued any benefit to the estate in support of his request

It is undisputed that Anderson did not argue or cite to RCW 11.96A.150 as a basis for award of reasonable attorney's fees in its briefing to the Court of Appeals. In the answer, Anderson fails to provide any factual basis, citation or argument why this statute would apply in this proceeding. The party requesting fees on appeal is required by RAP 18.1(b) to argue the issue and provide citation to authority in order to advise the court as to the appropriate grounds for an award of attorneys' fees and costs. *Blueberry Place Homeowners Ass'n v. Northward Homes, Inc.* 126 Wn.App. 352, 363, 110 P.3d 1145, 1152 (2005). Anderson has failed to meet this burden.

***E. CONCLUSION***

To the extent that Anderson's request for an award of "attorney's fees" is deemed to be a request for an award of reasonable attorney's fees pursuant to RCW 11.96A.150, it should be denied.

DATED this 4 day of January, 2012

Respectfully submitted,

BURKE LAW OFFICES, INC PS



Thomas G. Burke, WSBA No. 6577  
Attorney for Petitioner Manary

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing via legal messenger  
on the 5<sup>th</sup> day of January, 2012 to the following counsel of record at the  
following address:

John M. Casey  
Curran Law Firm  
555 West Smith Street  
Kent, WA 98032

  
\_\_\_\_\_  
Jeannie L. Kenyon  
Paralegal to Thomas G. Burke

# APPENDIX A

**TABLE OF AUTHORITIES**

**CASES**

*Chelan County Deputy Sheriffs' Ass'n v. Chelan County*, 33 Wn. App. 413, 655 P.2d 251 (1982)..... 4, 7

*In re Estate of Button*, 79 Wn.2d 849, 490 P.2d 731 (1971) ..... 14

*In re Estate of Furst*, 113 Wn. App. 839, 55 P.3d 664 (2002)..... 5, 13

*Rice v. Life Insurance Co. of North America*, 25 Wn. App. 479, 609 P.2d 1387, review denied, 93 Wn.2d 1027 (1980)..... 13

*Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117 (2005)..... 7

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**SECONDARY SOURCES**

14A Karl Tegland, *Washington Practice, Civil Procedure*, §25:29  
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F.B. Rep. on S.B. 6181, 55<sup>TH</sup> Leg., Reg. Sess. (WASH. 1998)..... 14

Cynthia J. Artura, *Superwill To The Rescue? How Washington's Statute  
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# APPENDIX B

NO. 65821-2-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

JEFFREY MANARY,

Respondent,

v.

EDWIN A. ANDERSON,

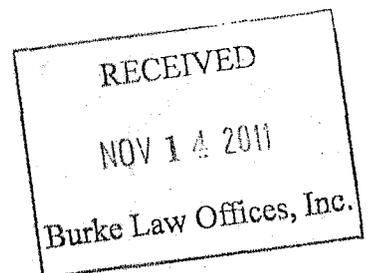
Appellant.

COST BILL

Edwin A. Anderson, Appellant, asks that the following costs be awarded:

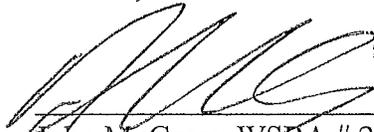
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|---|----------|
| 1. Attorneys' fees  | \$250.00 |
| 2. Transcript of Report of Proceedings                          | \$169.40 |
| 3. Appeal Filing Fee  | \$280.00 |
| 4. Copies of clerk's papers.                                    | \$153.50 |
| 5. Charges of appellate court clerk for reproduction of briefs. | \$ 19.32 |

TOTAL \$872.22



The above expenses are allowed as costs by RAP 14.3(a), reasonable expenses actually incurred, and reasonably necessary for review. Jeffrey Manary, Respondent, should pay these fees and costs.

DATED this 9 day of November, 2011.



John M. Casey WSBA # 24187  
Andrea L. Schiers WSBA # 38383  
Attorneys for Respondent  
Curran Law Firm P.S.  
555 West Smith Street  
P.O. Box 140  
Kent, Washington 98035-0140  
Tel: 253.852.2345

**CERTIFICATE OF SERVICE**

Kristina Church, being first duly sworn, on oath deposes and says I am over the age of 18 years and am not a party to the within cause. I work at Curran Law Firm P.S. and on this date I caused to be served by facsimile and also sent by legal messenger a true and correct copy of the above Cost Bill the following persons set forth below:

*Counsel for Respondent:*

Thomas G. Burke  
Burke Law Offices Inc., P.S.  
612 South 227<sup>th</sup> Street  
Des Moines, WA 98198  
Fax #: 206-824-9096

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

DATED at Kent, Washington, this 9<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
Kristina Church

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