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No. 69708-1

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

The Estate of
ELMORE E. ELLISON,
Deceased

Elaine Ellison and Kathy Cook,

Appellants,

v.

Estate of Elmore E. Ellison,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

Elmore Ellison died believing he effectively transferred his entire estate, including his Individual Retirement Accounts at Edward Jones, to his three stepchildren. He told his broker and his attorney that was what he wanted, and his broker's testimony and his Last Will and Testament evidence his clear intent. Thus, the Court should affirm (1) the enforcement of Decedent Elmore Ellison's clear and undisputed intent to pass his Edward Jones Individual Retirement Accounts ("IRA") to his stepchildren, and (2) the trial court's consideration of Elmore's¹ professional financial advisor William Anderson's testimony. It is undisputed that Elmore had no contact with appellants, his biological daughters, for almost 30 years before his passing; they now return after his death and hope to inherit an IRA they admit he had no intention of giving to them. Appellants base their claims entirely on small-print boilerplate language buried in Edward Jones's standard paperwork that neither Elmore nor Mr. Anderson ever read or even knew existed. This form, non-negotiable boilerplate language is insufficient to overturn Elmore's undisputed intent -- the Court should affirm the trial court's application of the "substantial compliance" doctrine to the facts of this case and find

¹ By the use of first names, counsel means no disrespect.

Elmore complied with the steps necessary to pass his IRA to his stepchildren.

Specifically, Elmore told his financial advisor Mr. Anderson that he intended for his stepchildren to inherit his IRA, and understood that his advisor would take the remaining steps necessary to effectuate this intent. Pursuant to Elmore's directions and before Elmore died, Mr. Anderson met with Elmore's stepchildren to complete paperwork to set-up accounts to receive the IRA proceeds after Elmore died. Unbeknownst to Elmore, Edward Jones apparently did not execute all of the paperwork necessary to complete the intended passing of the IRA to his stepchildren.

These are undisputed facts. Elmore took all necessary and reasonable steps to pass his IRA account to his stepchildren, whom he thought of as his own, and to disinherit appellants, with whom he had no relationship. Elmore's clear and undisputed intent should not be put aside because his financial advisor failed to notify him of a boilerplate clause, and failed to execute all the necessary paperwork to pass Elmore's IRA to his intended beneficiaries. These types of facts are precisely why the "substantial compliance" doctrine exists.

The trial court did not err. It properly determined that Elmore's financial advisor was not an "interested party" to Elmore's estate, and that his stepchildren are the rightful intended beneficiaries of Elmore's IRA.

The court's order is fully supported by the law and the facts, and appellants have failed to show otherwise. The Court should affirm the grant of summary judgment to the rightful beneficiaries of Elmore's IRA, and deny appellants' requests for relief in their entirety.

II. RESPONSES TO ASSIGNMENTS OF ERROR

1. The trial court correctly decided Elmore's stepchildren were the proper and intended beneficiaries of Elmore's IRA.

2. The trial court correctly considered Elmore's Edward Jones agent's testimony as he was not an "interested party" to Elmore's estate and thus was not barred by the deadman's statute from testifying.

III. STATEMENT OF THE CASE

A. Elmore's Relationship with His Stepchildren

Elmore Ellison and Louise Golden were married in 1980. CP 268. When Elmore married Louise, he became a parent to her children. CP 294. At that time, Christine ("Christie") Baklund was 15 years old and starting high school, Mike Golden was 17 years old and also in high school, and Patricia ("Pat") Harmon was 21 years old and graduating from college. CP 268, 288, 294. Elmore and Louise were married for 30 years until she predeceased him on May 15, 2010. CP 268. When Elmore

joined the family, he soon became a father figure to Louise's children, his stepchildren. CP 288, 294, 269.

As noted above, Christie was only 15 years old when Elmore moved in with Louise. CP 294. Elmore helped raise Christie during high school, and Christie had the closest relationship with Elmore of the three siblings. CP 294, 269.

Mike and Elmore became close several years later. Mike had the same name and was around the same age as Elmore's biological son when that son died. CP 289. Over time, Mike and Elmore developed a bond and considered each other good friends. CP 289. Because Mike's biological father was not around, Elmore became an important influence in Mike's life. CP 289. The same was true of Elmore's relationship with Pat and Christie, both of whom called him "Dad." CP 269, 294. Elmore similarly referred to them as his "daughters." CP 269. Christie gave him Father's Day cards, and they all regularly spent holidays with Elmore and Louise, along with their kids who called Elmore "Grandpa." CP 268, 294, 289. Elmore had two estranged daughters from his first marriage. CP 269.

B. Elmore's Estate Plan for His Stepchildren

After Louise died, Elmore was alone and in poor health. CP 289, 269. His stepchildren began seeing him more regularly and assisting with his daily needs. CP 289, 268, 294. Around this time, they learned that Elmore had Stage IV cancer and was in contact with an attorney and his long time broker at Edward Jones, William Anderson, to finalize his transfer of wealth. CP 269. As part of Elmore's estate plan, Mr. Anderson met with the stepchildren to help each of them set up their own IRA at Edward Jones to facilitate the receipt of funds from Elmore's IRA into their own individual accounts. CP 269-270, 289, 295. Elmore had planned to attend the meeting but was unable to make it at the last minute due to his illness. CP 270. Following the meeting, each stepchild met separately with Mr. Anderson at his office and signed IRA forms. CP 295, 299; 270, 273; 290, 293.

Around the same time, Elmore also modified and executed his Last Will and Testament ("Will"), which provides that his stepchildren will receive his Estate in equal share:

After payment of all just, lawful and proper charges against my estate during the usual course of the probate thereof, I hereby give, devise and bequeath, all the rest, residue and remainder of my estate for distribution, whatsoever be its nature and wheresoever found, in equal shares, share and share alike, unto my stepdaughters, CHRISTINE SUE

BAKLUND, PATRICIA MARIE HARMON, and my stepson MICHAEL DEAN GOLDEN, all to be their sole and separate estates per stirpes, provided Forty Thousand Dollars (\$40,000.00) PLUS the balance of the existing care loan on behalf of CHRISTINE SUE BAKLUND with Boeing Credit Union shall be deducted from the distributive share of CHRISTINE SUE BAKLUND and distributed equally between the beneficiaries of the LAST WILL AND TESTAMENT

See CP 270, 275-276.

In the following paragraph, the Will provides: **“I have specifically and intentionally excluded my own children and their lineal descendants as beneficiaries of my estate.”** CP 276 (emphasis added).

The Will’s “Identification of Family” provision identifies Elmore’s biological daughters by name and describes them as “children born to or adopted by me as a result of a former marriage.” CP 275. The Will also identifies Elmore’s stepchildren by name and designates them as the only beneficiaries of the Estate. *Id.* at 1-2. CP 275-276. Elmore’s Will also includes the following clause, in bold and all caps:

IN THE EVENT I HAVE ADDED ONE OR MORE NAMES TO ANY BANK ACCOUNTS, INVESTMENTS, OR OTHER ASSETS, I HAVE DONE SO FOR CONVENIENCE PURPOSES ONLY WITH THE EXPRESS UNDERSTANDING THAT ALL OF MY ASSETS SHALL BE DISTRIBUTED PURSUANT TO THE TERMS AND CONDITIONS OF THIS LAST WILL AND TESTAMENT.

CP 57, CP 276.

Based on their discussions with Mr. Anderson, Elmore's stepchildren believed that as the only beneficiaries of Elmore's Estate, they would receive in equal shares the Estate proceeds, which they thought included the funds from Elmore's non-probate IRA. CP 269-270; CP 289-290; CP 295-296. They also understood that Elmore had affirmatively disinherited his biological daughters by excluding them from the Estate. *See* CP 270. Elmore's IRA at Edward Jones did include a beneficiary designation form, which Elmore signed, naming Louise (Elmore's wife; Mike, Pat and Christie's mother) the primary beneficiary of his estate. CP 270, 281-286. No contingent beneficiaries were listed. The standard Edward Jones IRA forms also contained a Custodial Agreement, consisting of six pages of standard form provisions in small print, which did not require a signature or any initials by Elmore. CP 281-286.

Buried within the fine print on page four of the Custodial Agreement, is a default boilerplate provision, entitled, "Absence of Designation of Beneficiaries," which provides that if no beneficiary survives the depositor, the beneficiaries of the account shall be deemed to be designated in the following order: "Depositor's surviving spouse; or if none, then Depositor's descendants, per stirpes, or if none, then

Depositor's estate." CP 284. The word "Descendant" is defined earlier in the document as a child or grandchild "but not a foster child or stepchild." CP 283. There is no dispute that this provision is entirely inconsistent with Elmore's intent to leave his entire Estate, including his IRA, to his stepchildren and to disinherit his biological children.

In addition to Mr. Anderson, other disinterested third parties recounted that Elmore wanted his stepchildren, Pat, Christie, and Mike, to receive all of his assets at his death, including his Edward Jones account, and expressed this on more than one occasion. CP 300-301. For example, third-party Victoria Ferrington overheard conversations between the now Personal Representative of Elmore's estate and Mr. Anderson whereby Mr. Anderson confirmed that he would make sure the decedent's accounts were in order and that everything was taken care of with regard to the Edward Jones IRA, meaning that it was set up to go to the three stepchildren, as Elmore wished. *Id.* In addition, Ms. Ferrington heard Elmore himself express that he was sure that Mr. Anderson was aware of his wishes that Elmore's stepchildren receive one-third each of his Edward Jones IRA. *Id.* at 4. CP 301.

C. Appellants File a Petition for Distribution of the IRA Despite Having No Contact with Elmore for Over Thirty Years

After Elmore's passing, appellants initiated this lawsuit by filing a petition requesting distribution of the Edward Jones to them, despite having no contact with Elmore for over 30 years before his death. CP 245-255. Appellants based their claim to the IRA entirely on the boilerplate, small-print language embedded in the standard form Custodial Agreement. *Id.* Mr. Anderson was the primary witness in the dispute between the estranged, biological daughters of Elmore on the one hand and the intended beneficiaries/stepchildren of Elmore's Estate on the other hand. Mr. Anderson had numerous discussions with Elmore about the fact that Elmore wanted his three stepchildren, who are also the beneficiaries of his Estate, to inherit his Edward Jones account.² Mr. Anderson also testified about actions he took at Elmore's direction, including setting up three new accounts for the estate beneficiaries/stepchildren so that Elmore's IRA account could seamlessly transfer to them at Elmore's death.

On August 31, 2012, the Personal Representative of Elmore's estate deposed Mr. Anderson. He testified, in pertinent part by page and line, as follows:

² See e.g. CP 28, 31, 40-41, 42, 43-45, 47-48, 49.

EXAMINATION BY THERESA WANG [Counsel for the Estate]

- 15:6-13 Q What is the procedure for filling out the application form?
- A That's filled out with the client.
- Q So the Edward Jones agent -- a company is supplying it and filling it out?
- A No. **The client gives us the information that they want as their beneficiary designations. I actually put it on the form.**

CP 27.

...

- 17:11-17 Q Okay. What, if anything, did Mr. Ellison tell you about Patricia Harmon, Christine Baklund, and Michael Golden?
- A Those were his stepchildren, Louise's children. And he explained to me how good those children had been to him and that **his assets were supposed to transfer to those children.** Also a grandchild.

CP 28.

...

- 19:12-21 Q And what, if anything, can you tell me about why those accounts did not list Patricia, Christina, and Michael as the beneficiaries?
- A Well, Mrs. Ellison was named as the beneficiary on the account at the time the account was opened. **And Mr. Ellison believed that he had taken care of the asset transfer that would occur at his death so that in his will those assets were to go to Michael, Christina, and Patricia. He believed he had that taken care of in the will that he drafted.**

CP 29.

...

20:23-21:16 Q Okay. And what, if anything, did Mr. Ellison tell you about his biological daughters?

A **That he had no relationship with them. And I think it had been 20 years or more since he had heard or had any communication with them, that his relationships were with Michael, Christina, and Patricia.** . . . Just in conversations, it was very clear that he wanted the assets that he and Louise had accumulated together, had together, were held in joint accounts, they were each other's beneficiaries on their IRAs. **And his assumption was that if Louise was deceased, that the assets would then transfer via his will to his three stepchildren.**

CP 30-31.

...

25:19-25 Q Is it common for clients to negotiate terms of this contract?

A **It's nonnegotiable.**

Q Nonnegotiable?

A Nonnegotiable.

Q **Is it fair to say it's a boilerplate contract?**

A **It is.**

CP 32.

...

37:18-38:4 Q Okay. And what, if anything, was your understanding of Mr. Ellison's estate plan?

A Mr. Ellison's estate plan was to leave the assets that he and Louise accumulated to Patricia and Michael and Christina as well as a partial portion of the assets to go to his granddaughter, which is Christina's daughter, because they made a commitment to her. And I don't know the details of the commitment, for a portion of her college education.

Q Okay. **And what, if anything, was your understanding of what Mr. Ellison intended to leave his biological daughters?**

A **My understanding was they were to receive nothing.**

CP 33-34.

...

40:6-11 Q Baklund. To the best of your knowledge, as Mr. Ellison's financial adviser for over two years, was Mr. Ellison aware of boilerplate language in what we previously referred to as Exhibit 1?

A **I would suggest that very few, if any, clients read those documents thoroughly.**

CP 35.

40:20-41:12 Q [Referencing Exhibit 7] **So on the third line, under "Oldest Beneficiary Name" this form lists "Estate."**

A Mm-hm (answers affirmatively).

Q Can you tell me how that came about?

A This is a form that would have been generated by my assistant. And because we were working on the estate of Elmore and we knew that the estate was to pass to his stepchildren -- this isn't the sort of thing that goes in and checks your accounts. It's the sort of thing that she put "Estate" in, and I'm sure because it was on her mind that we were working on the estate, and it generated a report that shows how much needed to be taken out before the end of the year.

Q Okay. **So is it a fair statement to say that your assistant put the estate designation in there based on your understanding that that was the beneficiary of the IRA account?**

A **Yes.**

CP 35-36.

...

44:8-9 EXAMINATION BY MR. HAWKES [Counsel for Appellants]:

CP 37.

...

60:3-5 Q Okay. And you are familiar with its contents [of the Edward Jones custodial agreement]?

A **It's a boilerplate contract.** I certainly don't read it every time a client opens an account.

CP 39.

...

70:17-71:8 Q Okay. You testified on direct exam today that it was your understanding that he thought that his will gave everything to his stepchildren and nothing to his bio children; is that correct?

A Yes. That is correct.

Q Okay. Do you have any specific memory of Mr. Ellison telling you verbally or in writing or any other way telling you that at any particular time, any specific memory of him saying, "This is what I want"?

A Yes.

Q How many such occasions were there?

A There was at least one occasion. It was an occasion where we had discussed what he wanted to have happen to his assets when he passed away. He believed he had it taken care of by his will. **He did not want any assets to go to his children with whom he told me specifically he had no relationship.**

CP 40-41.

...

72-5-12 Q Why did that topic come up in your conversation?

A **The topic came up because he wanted to make sure that I understood what his wishes were for his assets, both in the nonretirement account and in the retirement account, he wanted those assets to go to his stepchildren with whom he did have a relationship with.**

CP 42.

...

87:14-88:15 Q Okay. Tell us what is the earliest specific memory you have about such a conversation after Louise died?

A After Louise died and the death certificate was delivered by Elmore in person to my office, **he talked about wanting to make sure that his stepchildren inherit the assets that he and Louise had.** In subsequent conversation with Elmore, I have described the last meeting I had with Elmore, which was a few days before he passed away, the day that I met the three stepchildren and got their information. In a prior conversation that I had with Elmore -- this was after he became sick but before he was basically on his death bed -- we talked about the assets that he had in his IRA at that point, and he believed that he had the stepchildren covered by that will. And I think that will may be in these documents here. I don't know. I don't remember what all is in here. Y'all have had me flipping back and forth too much. But, yes, I do remember specifically having that conversation.

Q Okay. Do you remember specifically what he said that led you to that belief?

A. **Well, he said I need to meet with his three stepchildren and get their information, which is what led to my having a meeting with Patricia, Michael, and Christina -- And Christina's daughter was also at that meeting -- to get the information so that we could open the account so that we could transfer the assets when he died.**

CP 43-44.

...

89:16-90:11 A I can't remember exactly. I mean, if nothing is clear from the questions these lawyers have asked me today, **Elmore wanted the assets that he and Louise had to go to his stepchildren.**

Q That's your belief?

A **It's not my belief. It's the truth. I heard Elmore say that. It's not a negotiable thing. It's not. This is what he asked for. It's what he wanted.**

Q Okay. And my question is, what did he say specifically, and when did he say that?

A Again, sir, I met -- I talked to Elmore after he found out he had Stage IV cancer. Before he was on his deathbed, **he asked me to meet with his stepchildren to get their information so that they would have accounts to receive the assets when he died, and asked me to open inherited or decedent IRA accounts, which we did. On that same day that I got the information from the stepchildren, because Elmore asked me to get that information from them** and have a meeting with them and let them know what was going to happen, I went and saw Elmore, and he was on his deathbed at that time.

CP 45-46.

...

91:23-92:5 A I believe I have been very specific about saying that in my prior conversations with Elmore, after Louise's death, **that he made it extremely clear to me that the assets were to go to his stepchildren. I believe I have said that at least a half dozen times since we have been sitting here.** I also believe that Elmore had instructed them, asked them, encouraged them to maintain their relationship with me and with Edward Jones.

CP 47-48.

...

95:11-19 Q (By Mr. Hawkes) Okay. What do you recall about any meeting after the death certificate meeting at which he spoke to you about where he wanted his assets to go when he passed away?

A As I have testified earlier, Elmore came to my office on at least a couple of occasions to deliver checks.

During one of those periods it was brought up.
Elmore expressed to me that he wanted the assets to pass to his stepchildren.

CP 49

...

98:12-23 Q Okay. Are you aware that this Exhibit 1, this custodial agreement, are you now aware that this custodial agreement identifies the biological children as the inheritors of an IRA if there is no beneficiary designation in writing?

A I am agreeing that's what the contract says.

Q **Were you aware of that at the time that you had this financial-adviser relationship with Mr. Ellison?**

A **No.**

Q Did you become aware of that fact in relation to this litigation?

A Yes.

CP 50.

D. The Trial Court Enforces Elmore's Unambiguous Intent and Grants Respondent's Motion for Summary Judgment

On November 16, 2012, the trial court held a hearing on appellants' motion to strike Mr. Anderson's testimony as a violation of the deadman's statute and respondent's motion for summary judgment. After hearing oral argument, the trial court denied appellant's motion to strike and granted respondent's motion for summary judgment. In its oral ruling, the court noted that it was required to ascertain "the true intent of the testator and give that intent effect if it's legally permissible to do so." RP 1. The court then stated that "[h]ere, Mr. Ellison's actions with regard

to his wishes for his IRA account were clear from start to finish. . . . the court is empowered to change a beneficiary designation in a non-probate asset if it appears that the decedent during his lifetime substantially complied with the provisions of the policy to effectuate the change.”

RP 2. Because Mr. Ellison had taken the requisite steps to effectuate his intent to transfer his IRA to his stepchildren, the court concluded that “Mr. Ellison was in substantial compliance with his intent to transfer the IRA proceeds to his intended beneficiaries — his three stepchildrens [sic].” RP 3. The court ordered the IRA to be distributed to Pat, Michael and Christie in equal parts. *Id.*

On December 13, 2013, appellants filed a notice of appeal of the order on motion for summary judgment dated November 16, 2012. CP 241-44. Appellants did not file a notice of appeal of the trial court’s order denying their motion to strike. *Id.* The trial court’s orders are fully supported by the facts and the law — appellants have failed to show otherwise. The Court should affirm both of the trial court’s orders.

IV. ARGUMENT

A. The Trial Court Properly Enforced Elmore’s Unambiguous Intent to Pass his IRA to His Stepchildren

1. Courts May Enforce Attempted Changes in Beneficiaries Under the “Substantial Compliance” Doctrine

Washington permits courts to enforce attempted changes in beneficiaries of non-probate assets. *Estate of Freeberg*, 130 Wn. App. 202, 205, 122 P.3d 741 (2005); *Rice v. Life Ins. Co.*, 25 Wn. App. 479, 482, 609 P.2d 1387, *review denied*, 93 Wn.2d 1027 (1980); *Allen v. Abrahamson*, 12 Wn. App. 103, 105, 529 P.2d 469 (1974) (and cases cited therein). The general rule as to attempted changes of beneficiaries is that courts of equity will give effect to the intention of the decedent when the decedent has “substantially complied” with the provisions of the policy regarding that change. *Estate of Freeberg*, 130 Wn. App. at 205; *Allen*, 12 Wn. App. at 105. Substantial compliance requires that the decedent has manifested an intent to change beneficiaries and done “everything reasonably possible to make that change.” *Estate of Freeberg*, 130 Wn. App. at 205; *Allen*, 12 Wn. App. at 105 (“Substantial compliance with the terms of the policy means that the insured has not only manifested an intent to change beneficiaries, but has done everything which was reasonably possible to make that change.”).

It is undisputed that Elmore intended for his stepchildren to be the beneficiaries of the funds in his Edward Jones IRA. This intent was recounted multiple times by Mr. Anderson at his deposition. CP 28-31,

33-36, 40-49, 275-79. Elmore told his broker in no uncertain terms that he wanted his stepchildren to inherit his Edward Jones account. *Id.* Elmore also directed his broker to establish individual “inherited” accounts with each of his stepchildren so they could seamlessly receive their shares of Elmore’s IRA directly from Edward Jones at the time of Elmore’s death. CP 46. Elmore incorrectly believed his Will was sufficient to effect this change; in fact, Mr. Anderson admitted it was *Edward Jones’s* responsibility to enter the information provided by Elmore on the appropriate forms, not Elmore. CP 27, 29-30, 34-36, 40, 43-44. Elmore and his broker were both so convinced Elmore had taken all the steps necessary to transfer his IRA account to his stepchildren that Edward Jones’ internal office memorandum (created after Elmore died) names the “Estate” as the beneficiary of the account on its internal forms. These facts are precisely the facts that require a court to enforce a decedent’s attempt to designate his stepchildren as beneficiaries.

The trial court’s order distributing the IRA to Elmore’s stepchildren is fully supported by the law. In *Estate of Freeberg*, Ms. Freeberg testified that the couple had instructed their **Edward Jones** agent to change the beneficiaries by removing their respective children in favor of each other. *Id.* at 204. She also remembered signing some type

of paperwork. *Id.* An employee at Edward Jones corroborated this testimony and testified herself that she was present when the Freebergs came to change their beneficiaries, and that Mr. Freeburg directed the office to change his beneficiary to Ms. Freeburg on all of his investments, including his IRA. The Edward Jones employee could not explain why the change had not been made on the IRA, and that she knew it was Mr. Freeberg's intent to have his wife as the beneficiary of his IRA. *Id.* at 204-05. Noting the Edward Jones agent could not explain why the intended change was not made on the IRA account, the trial court found Mr. Freeberg had substantially complied with the requirements to change the beneficiary and enforced his intent for Ms. Freeberg to become the beneficiary of the IRA. *Id.* at 207. The appellate court affirmed. *Id.* The *Freeberg* case is controlling.

In the present case, Mr. Anderson from **Edward Jones** testified:

15:6-13 Q What is the procedure for filling out the application form?

A That's filled out with the client.

Q So the Edward Jones agent -- a company is supplying it and filling it out?

A No. **The client gives us the information that they want as their beneficiary designations. I actually put it on the form.**

CP 27.

...

- 40:20-41:12 Q [Referencing Exhibit 7] So on the third line, under "Oldest Beneficiary Name" this form lists "Estate."
- A Mm-hm (answers affirmatively).
- Q Can you tell me how that came about?
- A This is a form that would have been generated by my assistant. And because we were working on the estate of Elmore and we knew that the estate was to pass to his stepchildren -- this isn't the sort of thing that goes in and checks your accounts. It's the sort of thing that she put "Estate" in, and I'm sure because it was on her mind that we were working on the estate, and it generated a report that shows how much needed to be taken out before the end of the year.
- Q Okay. So is it a fair statement to say that your assistant put the estate designation in there based on your understanding that that was the beneficiary of the IRA account?
- A Yes.

CP 35-36.

- 89:16-90:11 A I can't remember exactly. I mean, if nothing is clear from the questions these lawyers have asked me today, Elmore wanted the assets that he and Louise had to go to his stepchildren.
- Q That's your belief?
- A It's not my belief. It's the truth. I heard Elmore say that. It's not a negotiable thing. It's not. This is what he asked for. It's what he wanted.
- Q Okay. And my question is, what did he say specifically, and when did he say that?
- A Again, sir, I met -- I talked to Elmore after he found out he had Stage IV cancer. Before he was on his deathbed, he asked me to meet with his stepchildren to get their information so that they would have accounts to receive the assets when he died, and asked me to open inherited or decedent IRA accounts, which we did. On that same day that I got the information from the stepchildren, because Elmore asked me to get that information from them and have a meeting with them and

let them know what was going to happen, I went and saw Elmore, and he was on his deathbed at that time.

CP 45-46.

91:23-92:2 A I believe I have been very specific about saying that in my prior conversations with Elmore, after Louise's death, **that he made it extremely clear to me that the assets were to go to his stepchildren. I believe I have said that at least a half dozen times since we have been sitting here.**

CP 47-48.

As described above and elsewhere in his deposition, Mr. Anderson made it abundantly clear that Elmore wanted his stepchildren to inherit his IRA. As with the decedent in *Estate of Freeberg*, Elmore conveyed his intent to his broker at Edward Jones. Unlike the *Freeberg* case, Elmore even went an extra step and had his broker set up “inherited or decedent IRA accounts” for each of the three stepchildren. *See* CP 46.

Mr. Anderson and the Edward Jones office all reasonably believed that Elmore had taken all necessary action to pass his IRA to his stepchildren. Edward Jones’s own internal documents created *after* Elmore died even indicated the “Estate” as the account beneficiary. CP 54. Clearly, Edward Jones believed Elmore did properly designate his stepchildren as the beneficiaries of his IRA. Elmore “substantially complied” with changing his beneficiary designation from his deceased wife to his stepchildren; he

did “everything reasonably possible to make that change.” *Estate of Freeberg*, 130 Wn. App. at 205; *Allen*, 12 Wn. App. at 105. He died believing this change was effectively made.

Likewise, in *Sun Life Assurance Company v. Sutter*, 1 Wn.2d 285, 287-89, 95 P.2d 1014 (1939), the insured died without having returned a form that was sent to him by the insurance company with the requirement that he sign and return the form to effect a change in beneficiary. Because he had previously sent an unsigned form to the insurance company that made his intent clear, our Supreme Court held that this constituted substantial compliance, sufficient to effect the intended change.

The test in all the substantial compliance cases is whether the intent was clear and the decedent did what was “reasonably possible” to make the change. In the present case, Elmore told his broker in no uncertain terms who he wanted his beneficiaries to be, and instructed his broker to set up three new accounts for his three stepchildren. CP 46. It is **undisputed** that Elmore wanted his stepchildren to inherit his Edward Jones account. He did “everything reasonably possible” to make sure the assets would go to his stepchildren. The trial court properly concluded that the boilerplate language, which provision the broker admitted he did

not even know was there³, should not serve to completely frustrate Elmore's estate plan and specifically his plan as conveyed to his broker about who the beneficiaries on his Edward Jones account should be. Moreover, the Edward Jones boilerplate language should not serve to supersede the Edward Jones document indicating the "Estate" is the beneficiary. Again, this is precisely the type of case that demands application of the substantial compliance doctrine.

2. The Paramount Duty of Courts in Probate Matters is to Give Effect to the Decedent's Intent

The intent of the testator is the controlling factor in estate matters. It is the trial court's paramount duty to ascertain, if possible, the true intent of the testator and give it effect, if legally permissible. *In re Lidston's Estate*, 32 Wn.2d 408, 414-16, 202 P.2d 259 (1949). *Matter of Estate of Bergau*, 103 Wn.2d 431, 435, 693 P.2d 703 (1985); *In re Estate of Riemcke*, 80 Wn.2d 722, 728, 497 P.2d 1319 (1972).

A will does not control the disposition of non-probate assets, such as an IRA. However, a will *is* evidence of a decedent's intent with regard to his estate plan. Here, Elmore's Will provides (and as Elmore clearly expressed to his broker at Edward Jones), Elmore's intent was for his three

³ CP 50.

stepchildren to inherit his entire Estate in three equal share. Elmore incorrectly believed his Will controlled the disposition of his IRA held at Edward Jones. CP 29. However, it is clear that as part of this estate plan, Elmore intended for his stepchildren to receive all his assets. With regard to his IRA in particular, he told his broker on multiple occasions and in no uncertain terms that he wanted his step-children to inherit his Edward Jones account. He directed his broker to set up three new “inherited or decedent IRA” accounts for each of his three step-children so they could seamlessly inherit his investment account. As his broker testified, it was Edward Jones’s responsibility to enter the information provided by Elmore on the beneficiary designation form. CP 27. Edward Jones’s internal documentation later indicates the “Estate” was the beneficiary of Elmore’s account. CP 54.

Elmore clearly intended to disinherit his biological daughters and their descendants as provided in the Will and as he expressed to his broker at Edward Jones. These facts are uncontroverted.

Where the court’s paramount duty in estate matters is to give effect to the decedent’s intent, a boilerplate provision in the Edward Jones Custodial Agreement should not operate to frustrate Elmore’s estate plan and give his assets to the very two and only two individuals that he

specifically disinherited in his Will. Granted, a will does not control the disposition of a non-probate assets, however, allowing Elmore's disinherited biological daughters to receive a substantial asset from his Estate would be diametrically opposed to his intent for them to receive nothing from his Estate. Accordingly, because Elmore intended for his stepchildren to receive the proceeds of his Edward Jones account, and because he specifically disinherited his estranged, biological daughters, this Court should affirm the trial court's order that the Edward Jones proceeds be distributed to Elmore's stepchildren as the intended rightful beneficiaries.

3. Standard Form Boilerplate Provision Should Not Defeat Elmore's Clear Intent

Appellants' reliance exclusively on a standard-form boilerplate provision for designating beneficiaries in Elmore's IRA documents is misplaced. First of all, courts are wary of enforcing boilerplate provisions or contracts of adhesion because they tend to bind a party to important terms without the party's understanding or actual agreement to them. For instance, in analyzing contracts of adhesion, courts consider whether the contract is a standard form printed contract, whether important terms were "hidden in a maze of fine print," and whether, from a practical standpoint, consumers would have read the fine print and or realized its significance.

See Zuver v. Airtouch Commc'ns, Inc., 153 Wn.2d 293, 304-05, 103 P.3d 753 (2004) (noting that an adhesion contract is procedurally unconscionable where the party lacks “meaningful choice”); *Mattingly v. Palmer Ridge Homes LLC*, 157 Wn. App. 376, 388-89, 238 P.3d 505, 511 (2010); *Luna v. Household Fin. Corp. III*, 236 F. Supp. 2d 1166, 1176 (W.D. Wash. 2002) (ruling that if terms are hidden in a “maze of fine print,” that factor weighs in favor of a finding of procedural unconscionability); *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 459, 45 P.3d 594 (2002) (noting that an adhesion contract is generally prepared on standard printed form, is prepared by one party and submitted to the other on a take it or leave it basis, and there is no true equality of bargaining power between the parties).

Here, it is significant that the standard form boilerplate provision at issue is essentially “hidden in a maze of fine print” on page four of six pages of a standard form agreement included in Elmore’s IRA paperwork. CP 65, 284; *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d at 304-05. The boilerplate provision is part of a standard form contract of Edward Jones. In contrast to Elmore’s Will, which includes his stepchildren and excludes his biological children by name, the standard form boilerplate provision at issue refers to “Depositor’s descendants,” and “descendants” are defined

on the preceding page as children or grandchildren “but not a . . . stepchild.” CP 64, 283.

The trial court found such a standard-form provision should not be enforced in light of Elmore’s obvious intent, as expressed to his broker at Edward Jones, for his stepchildren to be the beneficiaries of his IRA. Elmore had a close relationship with his stepchildren for more than 30 years, and he intended for them — not his estranged, disinherited daughters — to receive the proceeds of his IRA. Appellants’ claim to the contrary is unconvincing and unsupported by any evidence of Elmore’s intent. The Court should affirm.

B. The Trial Court’s Consideration of Mr. Anderson’s Testimony was Appropriate

1. Mr. Anderson is Not a “Party in Interest”

As a threshold matter, appellants’ arguments regarding the court’s consideration of Mr. Anderson’s testimony is procedurally-defective. *See* RAP 5.3(a). Appellants’ notice of appeal does not include a request for review of the trial court’s denial of their motion to strike Mr. Anderson’s testimony. *Winton Motor Carriage Co. v. Blomberg*, 84 Wash. 451, 147 P. 21 (1915) (“the notice of appeal shall designate with reasonable certainty from what judgment or orders, whether one or more, the appeal is taken”). Instead, appellants’ notices of appeal dated December 13,

2012, request review of only the trial court's order granting respondent's motion for summary judgment dated November 16, 2012. It does not specify appeal of the trial court's order denying appellants' motion to strike dated the same day. The Court should decline to exercise review of this issue.

Nevertheless, if the Court is inclined to consider the request for review of the order on motion to strike, appellants' arguments regarding the consideration of Mr. Anderson's testimony fail on their merits. Mr. Anderson is not a "party in interest" to the proceedings and is therefore not barred by the deadman's statute. RCW 5.60.030 (the "deadman's statute") provides that:

[I]n an action or proceeding where the adverse party sues or defends as . . . legal representative of any deceased person . . . then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased . . . person

A party in interest is one who stands to lose or gain as a direct result of the judgment. *In re Estate of Shaughnessy*, 97 Wn. 2d 652, 656, 648 P.2d 427 (1982). The party's interest must be a "direct and immediate interest in the event of the action, and not an uncertain, remote, and contingent interest." *Swingley v. Daniels*, 123 Wash. 409, 415, 212 P. 729

(1923)(emphasis added); *Wildman v. Taylor*, 46 Wn. App. 546, 731 P.2d 541 (1987). There is also a distinction between a party's a subjective personal interest in the outcome of a case, and being a "party in interest" competent to testify under the deadman's statute. In *Fies v. Storey*, the trial court excluded the testimony of the son of the decedent under the deadman's statute, as an interested party. 21 Wn. App. 413, 420, 585 P.2d 190 (1978), *overruled on other grounds by Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984). The Court of Appeals, however, found the son's general concern regarding family financials did not make him an "interested party" within the meaning of the statute. 21 Wn. App. at 421. Specifically, the son was not a party in interest because he did not have a direct and certain interest in the outcome of the litigation. *Id.* at 422. *See also Raab v. Wallerich*, 46 Wn.2d 905, 290 P.2d 697 (1955) (holding the mother of a child subject to paternity action was not an "interested party" because she had no interest in the estate); *Aetna Life Ins. Co. v. Boober*, 56 Wn. App. 567, 573-74, 784 P.2d 186 (1990) (finding the guardian of a beneficiary was not an interested party).

Edward Jones is not a party to this action, and Mr. Anderson is not a party in interest. He may have a cursory interest in seeing one of his client's accounts flow as instructed by a client, but that is not enough to

outright bar his testimony under the deadman's statute. Appellants claim Mr. Anderson will receive commissions if the Estate beneficiaries prevail in this action, which at best is "an uncertain, remote, and contingent" possibility. This statement is based on pure speculation and without consideration of the fact that the stepchildren have withdrawn their IRA proceeds from Edward Jones.⁴

Regardless, such does not equate to a "direct and immediate interest in the event of [the] action." The only "direct and immediate" result of this action is whether the appellants or the stepchildren receive the proceeds of Elmore's Edward Jones account. This action will bear no other direct results. Thus, the *only* people barred from testifying as "parties in interest" are the appellants and the stepchildren. As in *Fies*, there is a distinction between a party's subjective personal interest in the outcome of a case, and being a "party in interest" competent to testify under the deadman's statute. Mr. Anderson is not barred from testifying in this action.

Appellants also claim Mr. Anderson is a "party in interest" because he and Edward Jones *may be sued* if the Estate does not prevail in this

⁴ Even before they prevailed on summary judgment, the likelihood that they would remove their accounts from Edward Jones was always present.

action. Such “an uncertain, remote, and contingent” future hypothetical possibility likewise does not fall into the category of a “direct and immediate interest” in the event of the action. *Swingley*, 123 Wash. at 415. Appellant’s overbroad definition of “party in interest” helps no one. Were the Court to overturn the trial court’s decision and adopt this broad definition urged by appellants, one would need only to *threaten* a lawsuit in the future to exclude an unfavorable witness. Every single excerpt cited by the Estate beneficiaries in their brief, including each provision of Mr. Anderson’s deposition detailing Elmore’s intent regarding his Edward Jones IRA, is admissible under the deadman’s statute.

2. Testimony In Favor of the Estate is Not Barred by the Deadman’s Statute

Even assuming *arguendo* that Mr. Anderson was a “party in interest” (although, again, he is not), because the purpose of the statute is to protect the decedent’s estate, witnesses may testify in favor of the decedent or the estate, even if they are interested parties. *Fies v. Storey*, 21 Wn. App. 413; *In re Estate of Davis*, 23 Wn. App. 384, 386, 597 P.2d 404 (1979). Whether testimony favors an estate is determined by the alignment of the parties, and the nature of the claim involved. As stated in Washington Practice:

[W]hen a claim is made by or against an estate by one who would not otherwise take property upon distribution of the estate [Appellants], persons who stand to inherit from the estate (and who are thus parties in interest, as the term is used in the statute) may nevertheless testify in favor of the estate.

5A Karl B. Tegland, WASH. PRACTICE: EVIDENCE LAW & PRACTICE, § 601.25 (2007). The relevant inquiry is whether the party's testimony could diminish the estate. Comment, *The Deadman's Statute in Washington*, 15 Gonz. L. Rev. 501, 507-08 (1980).

For example, in *In re Estate of Jackson*, a party was prevented from testifying because he disputed a debt owed to the estate. 200 Wash. 116, 93 P.2d 349, 123 A.L.R. 1281 (1939). Barring his testimony, the court held such an individual's testimony would not be in favor of the estate because it would be in the interest of the decedent, if living, to deny it. *In re Estate of Cunningham*, 94 Wash. 191, 193, 161 P. 1193 (1917). In contrast, in *Estate of Davis*, the court heard the testimony of the decedent's two children, even though they were directly interested as intestate takers from the decedent's estate. 23 Wn. App. at 385. Despite their interests, the court allowed their testimony because it was offered to preserve, rather than diminish, the estate's assets. *Id.* at 386.

Here, Mr. Anderson will receive nothing “direct and immediate” from the results of the Court’s ruling either way, and is not a “party in interest.” But even if he were, his testimony favors Elmore’s Estate — indeed, his testimony is exactly what the decedent told him he wanted to happen with his IRA and therefore it is not barred by the deadman’s statute under *Davis* and *Cunningham*.

3. The Deadman’s Statute is Not Nearly As Broad as Appellants Claim

Third, even if some specific quotes from Elmore’s lips are barred, there is still substantial evidence of Elmore’s intent with regard to his Edward Jones account that is admissible. Evidence barred by the statute may still be introduced in one of four ways: (1) testimony of a nonparty witness with no financial stake in the outcome, *Lappin v. Lucerell*, 13 Wn. App. 277, 292, 534 P.2d 1038, 94 A.L.R.3d 594 (1975); (2) a party’s own acts, *In re Estate of Lennon*, 108 Wn. App. 167, 29 P.3d 1258 (2001); (3) testimony by the parties in interest as to their feelings or impressions in relation to the transaction, *Lappin*, 13 Wn. App. at 291; or

(4) documentary evidence, *Erickson v. Robert S. Kerr, M.D., P.S., Inc.*, 125 Wn.2d 183, 188, 883 P.2d 313 (1994).⁵

a. Testimony of a Non Party Witness With No Financial Stake in Outcome

Edward Jones is named in the appellant's caption in their initial Petition⁶, but Edward Jones has never appeared as a party in this action. Thus, as a non-party witness with no financial stake in the outcome, Mr. Anderson is permitted to testify. Moreover, as briefed above, he is not a "party in interest" so whether or not Edward Jones is actually or properly a party to this action, Mr. Anderson is not barred from testifying as to conversations and transactions he had with Elmore.

b. The Own Acts of Mr. Anderson are Not Barred by the Deadman's Statute

The appellants' attempt to prohibit testimony regarding any "transaction" or regarding any statements that Elmore made to Mr. Anderson, or in his presence. The definition of transaction is, however, narrowly defined as the "doing or performing of some

⁵ A party may also waive the deadman's statute, however, here it appears it has not yet been waived by any party. *Botka v. Estate of Hoerr*, 105 Wn. App. 974, 980, 21 P.3d 723 (2001).

⁶ In subsequent filings, appellants did not include names of the parties in their caption, they also do not appear to be serving Edward Jones with any pleadings besides the initial service (however, it is hard to be certain as they do not have certificates of service on file with the court).

business . . . or the management of any affair.” *Lennon*, 108 Wn. App. at 174 (citing *Bentzen v. Demmons*, 68 Wn. App. 339, 344, 842 P.2d 1015 (1993)). Yet case law supports the proposition that the acts of the witness are not “transactions” with the decedent. Witnesses may testify to circumstances surrounding transactions with the decedent, but may only do so to the extent that their testimony does not involve the decedent’s acts, and is limited to “acts of the witness alone.” *Vogt v. Hovander*, 27 Wn. App. 168, 172, 616 P.2d 660 (1979); *Thor v. McDearmid*, 63 Wn. App. 193, 201, 817 P.2d 1380 (1991).

For purposes of the deadman’s statute, a transaction is defined by acts by and between the party and decedent, for the benefit or detriment of one or both. *Bentzen v. Demmons*, 68 Wn. App. at 344 (citing *In re Estate of Wind*, 27 Wn.2d 421, 426, 178 P.2d 731, 173 A.L.R. 1276 (1947)). *Estate of Lennon*, also affirmed case law that a party may testify to his or her own acts. See also *Boettcher v. Busse*, 45 Wn.2d 579, 582, 277 P.2d 368, 49 A.L.R.2d 191 (1954) (“testimony by a party in interest as to the performance of labor or the rendition of services for the decedent, is not prohibited under the statute as a transaction with the decedent.”); *Ah How v. Furth*, 13 Wash. 550, 554, 43 P. 639 (1896) (“The testimony of respondent that he worked at the house of the intestate, and the character

of the work performed by him, was not testimony in relation to a 'transaction had by him with, or any statement made to him by,' such intestate. Such testimony related solely to acts of the witness alone, and was, we think, entirely competent.") (citations omitted).

In *Estate of Lennon*, Roger Lennon was permitted to testify to a litany of acts that he had performed. 108 Wn. App. at 171-73. Testimony regarding only a few acts was barred by the deadman's statute. *Id.* at 178. Otherwise, the following acts of Roger Lennon were admitted as evidence: going to banks; taking the stock certificates to Seafirst, then Washington Mutual; caring for decedent; giving her money; decedent's medical problems; visiting decedent during work; sleeping on the couch; testimony that stocks were to be his inheritance; and that accounts were jointly-held. *Id.* at 171 (emphasis added).

Here, the trial court properly considered Mr. Anderson's testimony as to his own acts regardless of whether he is a party in interest. (Again, the Estate absolutely does not believe he is a party-in-interest so none of his testimony should be barred, but if the Court disagrees, at minimum Mr. Anderson would be permitted to testify as to his own acts.) In this case, Mr. Anderson's act of meeting with Pat, Michael and Christine (the Estate beneficiaries/stepchildren) so he could get their information and

create new accounts for them is admissible. Likewise, the act of his office assistant in designating the “Estate” in the “Oldest Beneficiary Name” section of their internal forms after Elmore died is not barred by the deadman’s statute. CP 35-36, 54. Appellants’ reliance on the broad definition of transaction as *any* matter that the decedent, if alive, could contradict, is simply not accurate nor is it helpful to the Court.

c. Testimony Regarding Feelings or Impressions is not Barred by the Deadman’s Statute.

Parties in interest may testify as to their “feelings or impressions” in relation to the transaction at issue. *Estate of Lennon*, 108 Wn. App. 167, 175, 29 P.3d 1258 (2001). Thus, Mr. Anderson is allowed to testify as to his own impression. *Id.* at 175 (*citing Jacobs v. Brock*, 73 Wn.2d 234, 237-38, 437 P.2d 920 (1968) (“the deadman’s statute does not prevent an interested party from testifying regarding his or her own feelings or impressions.”). In *Jacobs*, Mrs. Jacobs provided a very detailed level of care to Dr. Brock. 73 Wn.2d at 235. She testified that they “were to receive the Lake Crescent property for their services.” *Id.* at 236. Her husband was asked and answered famously:

“Why didn’t you submit a statement to Dr. Brock?” (Answer: “I was always given the impression that we were getting the lake property for looking after him.”)

Id. at 237. The Court held that Mr. Jacob's statement "did not reveal a statement made by the decedent nor did it relate to a transaction with the decedent." *Id.* (citing cases that a decedent must be able to contradict the statement). "Clearly, Mr. Jacob's statement of his own feelings or impressions does not come within this definition." *Id.* at 238. *See also Dwelley v. Chesterfield*, 88 Wn.2d 331, 334, 560 P.2d 353 (1997); *Lappin v. Lucerell*, 13 Wn. App. 277, 534 P.2d 1038, 94 A.L.R.2d 594 (1975).

For purposes of the deadman's statute, the determination of what testimony constitutes an impression or inadmissible testimony turns on what question is asked. Regarding the portion of *In re Estate of Miller*, 134 Wn. App. 885, 891, 143 P.3d 315 (2006), the testimony was barred because it indirectly attempted to characterize the nature of a transaction with a decedent -- specifically whether the check was offered as a loan or gift. In *Miller*, the court contrasted that testimony with the testimony admitted in *Jacobs*, and held the testimony was not barred because it did not relate to a transaction with the decedent. In *Jacobs*, 73 Wn.2d at 237, the court admitted the statement cited above because that particular testimony did not describe a specific transaction and did not indirectly

introduce testimony about conversations between the witness and the decedent.

Here, the trial court decided Mr. Anderson's impressions that Elmore wanted to leave his Edward Jones account to his Estate beneficiaries was not in violation of the deadman's statute. It also properly considered Mr. Anderson's impression that Elmore did not want his account to go to his biological daughters with whom Elmore had no relationship is not barred by the deadman's statute, as well as Mr. Anderson's impression that Elmore believed he did everything necessary to effect the transfer to the Estate beneficiaries occurred. This testimony was properly before the trial court.

d. Documents are Not Barred by the Deadman's Statute

The deadman's statute bars only witness testimony; documentary evidence and testimony describing the documentary evidence are admissible. *Wildman v. Taylor*, 46 Wn. App. 546, 554, 731 P.2d 541 (1987); *see also Erickson v. Robert S. Kerr, M.D., P.S., Inc.*, 125 Wn.2d 183, 188, 883 P.2d 313 (1994). For example, in *Wildman v. Taylor*, after admitting documentary evidence, the court permitted a witness to testify that he received the letter from the decedent, and to identify decedent's signature on the letter. 46 Wn. App. at 554. However, the court

disallowed testimony as to the meaning of the documents. *Id.*; *see also Goldsworthy v. Oliver*, 93 Wash. 67, 69, 160 P. 4 (1916) (admitting receipts upon which witness identified decedent's signature). Thus, the trial court properly concluded (1) the Edward Jones internal document indicating post-death that it even believed the "Estate" is the beneficiary; (2) Elmore's Will which, while not legally controlling the disposition of the IRA, clearly states Elmore's intent to disinherit his biological daughters; and (3) the documents indicating Mr. Anderson set up three separate "inherited" accounts for Elmore's stepchildren were not barred by the deadman's statute.

C. Respondent is Entitled to Attorneys' Fees and Costs

Under RAP 18.1, should respondent prevail on appeal, respondent requests that the Court award its taxable costs incurred and its reasonable attorneys' fees. RAP 14.1; RCW 11.96A.150.

V. CONCLUSION

Elmore intended for his stepchildren to inherit *all* of his assets, including his Edward Jones IRA account. Elmore did "everything reasonably possible" to effectuate this intent -- he consulted with his financial advisor, and he directed his advisor and his stepchildren to work together to set up "inherited" accounts for their receipt of the IRA

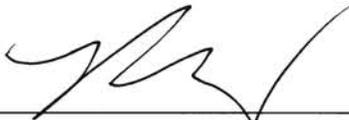
proceeds upon his death. Elmore's agent did not tell him he needed to do anything more, but rather testified that the client "gives us the information that they want as their beneficiary designation. I actually put it on the form." CP 27. Indeed, Edward Jones thought all the necessary paperwork was in and even after death indicated the "Estate" was the beneficiary. CP 54. Elmore was unaware of any further action required to pass his IRA account on to his stepchildren. He died believing his IRA would be seamlessly transferred to his stepchildren at his death. These are undisputed facts. It is likewise undisputed that Elmore specifically disinherited his biological daughters, with whom he had no relationship, and that he did not want them to inherit anything from his Estate.

Mr. Anderson is not a "party in interest" and therefore, is not barred by the deadman's statute from testifying. Any interest he or Edward Jones may have in this action is not "direct and immediate," but is instead remote, contingent and speculative at best. The trial court properly denied appellants' motion to strike and considered Mr. Anderson's testimony as submitted on the Estate's motion for summary judgment.

The Court should effectuate Elmore's unambiguous intent to pass his IRA to his stepchildren and should decline to give effect to default, boilerplate language that the Edward Jones financial advisor himself did not know was in its forms. As the trial court concluded, "Mr. Ellison's

actions with regard to his wishes for his IRA account were clear from start to finish. . . . the court is empowered to change a beneficiary designation in a non-probate asset if it appears that the decedent during his lifetime substantially complied with the provisions of the policy to effectuate the change.” The Court should affirm both of the trial court’s orders.

DATED this 31st day of May, 2013.

By: 

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 31st day of May, 2013, I caused a true and correct copy of the foregoing document, "Respondent's Brief," to be delivered by e-mailing and mailing first class United States mail, postage prepaid, to the following:

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