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Division I
State of Washington

APPEAL NO. 72643-9-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

(Whatcom County Court Case No. 13-4-00568-2)

**BEVERLY YOUNG, BLAKE BOATMAN, BRADLEY BOATMAN,
BRENT BOATMAN, and WILLIAM BOATMAN**

Appellants,

vs.

**BRIAN BOATMAN, individually and as Attorney-in-Fact for
Bojilina H. Boatman; and THE ESTATE OF BOJILINA H.
BOATMAN**

Respondent Brian Boatman's Brief

Respondents' Brief

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I – INTRODUCTION

Respondent Brian Boatman is the adult son of Bojjilina Boatman, Deceased. She died on May 18, 2013, of advanced Alzheimer's dementia at the age of 85. CP 57. Brian Boatman served as her attorney-in-fact for nearly six (6) years. CP 57-8. Her Last Will named Brian Boatman as her Personal Representative. CP 58. On or about June 7, 2013, Brian Boatman was appointed Personal Representative of her Estate, without Bond and with Nonintervention Powers. CP 6. Brian Boatman has four brothers and one sister (Siblings). The Siblings are the appellants in this action and petitioners in the Superior Court TEDRA matter on appeal.

At the time of Brian Boatman's mother's death, her estate's gross value was just under \$45,000.00. CP 27. She also had an IRA with approximately \$298,500.00, which were funds gifted to her by her twin brother. CP 27. Pursuant to the IRA survivorship provisions, Brian Boatman made sure each of the Siblings received an equal share from the \$298,500.00. CP 58. Each of the five (5) Siblings and Brian Boatman received \$49,500.00. CP 58.

Also, at the time of Bojilina's death, she had a trust account, also funded with money she received as a gift from her twin brother, consisting of about \$212,000.00 and 161 shares of Micro-Ohm Corporation. On or about March 11, 2014, the trust account assets were distributed equally to each child in the sum of \$35,031.74 and 27 shares of stock each (except Brian Boatman, who took only 26 shares of stock.) CP 224-25; CP 262; CP 264; 267; CP 255-260; CP 250-252.

Brian Boatman's Siblings have not complained about the administration of the Estate or the distribution of any property which existed at the time of their mother's death. Instead, the TEDRA litigation asked the trial court to allow the beneficiaries, on behalf of the Estate, to advance a claim against Brian Boatman for his alleged misconduct, before their mother's death, under Bojilina Boatman's power of attorney.

This appeal challenges the trial court's correct decisions regarding standing and jurisdiction. Judge Rickert did not err. Even assuming standing and jurisdiction, in equity, Judge Rickert appropriately summarily determined that the Siblings had not presented sufficient evidence to justify removal of Brian Boatman

as Personal Representative. The Court should affirm the trial court.
CP 943, Finding of Fact No. 7.

II - RESTATEMENT OF THE CASE

Brian Boatman, a single man, took care of his mother for six (6) years, a woman first living with and ultimately dying of Alzheimers, from September 2006 until early 2013. CP 58; CP 52.

The Siblings, in their opening brief, admit that beginning in the fall of 2006, Bojilina Boatman could no longer live alone. App. Opening Brief 5. Further, the Siblings admit that from the fall of 2006 until April of 2007, their mother's care was split between Blake and DeLisa Boatman, husband and wife, and Brian Boatman. *Id.* Further, the Siblings admit that from April 2007 until January 2013, Brian Boatman took over "primary" responsibility for their mother's care. *Id.*

These choices required Brian Boatman to give up much of his income. CP 59; CP 61. His time and focus for most of six (6) years was on his mother's care. That care was extremely emotional and difficult. CP 61. Brian Boatman's daily tasks for his mother, associated with her disease, were transportation, toilet assistance, personal hygiene, care of her colostomy bag, often

changing soiled sheets and occasionally cleaning urine and feces from the floor and furniture. CP 61.

Brian Boatman spent the following time in care of his mother:

2006	1,511 hours
2007	7,093 hours
2008	7,228 hours
2009	6,936 hours
2010	7,642 hours
2011	6,920 hours
2012	7,192 hours
2013	2,487 hours

(App. 47,000 hours)

CP 82-90; CP 60. During his care, Brian Boatman received the following writings from the Siblings:

- "Brian has given mom the best care imaginable." CP 146.
- "Thanks for being there for mom." CP 148.
- "Thank you to mom and you for the holiday's checks." *Id.*
- "Really am grateful for you doing this." CP 150.
- "Brian, Thank-you for sharing the wealth and fruits of moms money, Brent 10/17/11" CP 151.
- "It was needed and I am extremely grateful. . . Thanks for your commitment to Mom and again for the generous monies." CP 152.
- "Hope you continue with all the beautiful love you give to Mom each day." CP 153.

- "I just received my Bank of Hawaii statement today. Thanks so very much." CP 154.

Between 2006 and 2012, the Siblings received, from Brian Boatman, acting under his power of attorney, the following money from their mother:

- Petitioner Beverly Boatman \$17,612.00
- Petitioner Bill Boatman \$17,000.00
- Petitioner Blake Boatman \$15,500.00
- Petitioner Brad Boatman \$18,500.00
- Petitioner Brent Boatman \$18,500.00

CP 92. Further, under the power of attorney, Brian Boatman paid all Siblings for each and every hour of care they provided their mother.

- Beverly Boatman \$ 9,950.00 (App. 700 hours)
- Bill Boatman \$17,000.00 (App. 1,200 hours)
- Blake/Delisa Boatman \$26,875.00 (App. 1,800 hours)
- Brad Boatman \$ 1,600.00 (App. 100 hours)
- Brent Boatman \$ 920.00 (App. 60 hours)

CP 52; CP 60.

In October of 2005, Bojilina Boatman executed a Durable Power of Attorney (hereinafter "POA"). CP 175; CP 179. The POA became effective upon receipt by the named attorney-in-fact, of "a written statement of determination of the disability of the principal, which shall include the inability to effectively manage her property and affairs for reasons such as mental illness, mental deficiency...."

Id.

On July 12, 2007, Bojilina Boatman went to her primary care physician, Carletta Vanderbilt, M.D. At that visit, Dr. Vanderbilt provided a note stating that she was "incompetent to make decisions affecting health or financial issues." *Id.*; CP 183. From July 12, 2007, until the date of Bojilina Boatman's death on May 18, 2013, Brian Boatman acted as attorney-in-fact for Bojilina Boatman.

The Durable POA provided that:

[T]he attorney-in-fact shall have the power to do all things with respect to the assets and liabilities of the principal, real or personal, wherever located... including but not limited to:

- a. To make, amend, alter or revoke any of the principal's wills or codicils; and
- b. To make, amend, alter or revoke any of the principal's life insurance beneficiary designations; and

c. To make, amend, alter or revoke any of the principal's employee benefit plan beneficiary designations; and

d. To make, amend, alter or revoke any of the principal's trust agreements; and

e. To make, amend, alter or revoke any of the principal's community property agreements; and

f. To make gifts of any property owned by the principal; and

g. To make transfers of any of the principal's property to any trust, whether or not the principal is the beneficiary thereof;

h. To sell, transfer, convey, encumber, mortgage, lease, and purchase, any property, real or personal.

Further, the attorney-in-fact shall have the full power to provide for the support, maintenance and health of the incompetent principal, including provide informed consent for health care decisions on the principal's behalf.

CP 179-80.

III - ISSUES PRESENTED

1. Whether the Siblings, as Estate beneficiaries, lack standing to bring claims of conversion and breach of fiduciary duty against Brian Boatman, while he served as decedent Bojilina H. Boatman's attorney-in-fact? [Yes.]

2. Whether the trial court erred in its decision to not remove Brian Boatman as Personal Representative (PR) of the Estate? [No.]

3. Is respondent Brian Boatman entitled to an award of attorney fees incurred with respect to this appeal pursuant to RAP 18.1 and RCW 11.96A.150? [Yes.]

IV - LEGAL ARGUMENT

A. STANDARDS OF REVIEW

Whether a party has standing to sue is a question of law reviewed de novo. *Spokane Airports v. RMA, Inc.*, 149 Wn.App. 930, 939, 206 P.3d 364 (Div. 3, 2009).

Assuming legal standing, the trial court decision not to remove Brian Boatman, as PR in the Estate cause of action, is examined for an abuse of discretion. Even assuming standing, the trial court's refusal to remove Brian Boatman as PR is reviewed for abuse of discretion. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006); *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000). This Court will not reverse absent a manifest abuse of discretion. *Mayer*, 156 Wn.2d at 648; *Haley*, 142 Wn.2d at 156. A trial court abuses its discretion if it relies on unsupported facts, applies the wrong legal standard, or takes a view no reasonable person would take. *Mayer*, 156 Wn.2d at 684. Equity is implicit in the exercise of probate discretion and has long been

recognized as inherent in the jurisdiction of the probate court. *Estate of Herrera*, 10 Cal.App.4th 630, 637-38, 12 Cal.Rptr.2d 751 (Cal. App. 1992).

B. STANDING

The Siblings had no legal ability to bring claims for breach of fiduciary duty or conversion, in their own names, prior to the death of Bojilina Boatman. Such claims belonged to her. Presently, they are not representatives of the Estate. Prior to her death her claims belonged to her. After Bojilina Boatman's death, her claims belong to the PR. Any fiduciary duty owed by Brian Boatman, was owed to Bojilina Boatman, prior to her death. The Siblings incorrectly contend, without any legal authority, that TEDRA was somehow intended to send probate law down a rabbit hole, by allowing any beneficiary, in a new lawsuit, to advance costly litigation "on behalf of the estate" at a time where the estate is, as a matter of law, ordered to be managed by a court appointed PR without court intervention.

"Standing is jurisdictional." *Knight v. City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011). "Standing represents a jurisdictional requirement which remains open to review at all

stages of the litigation." *Nat. Org. for Women, Inc. v. Scheidler*, 510 U.S. 255, 114 S.Ct. 798, 802 (1994). "Absent a party with standing, courts lack jurisdiction to consider the challenge." *Postema v. Snohomish County*, 83 Wn.App 574, 579, 922 P.2d 176 (Div. 1, 1996).

Though the doctrine of standing does not implicate subject matter jurisdiction, it does prohibit a plaintiff from asserting another's legal rights. *Walker v. Munro*, 124 Wash.2d 402, 419, 879 P.2d 920 (1994). The claims of a plaintiff who lacks standing cannot be resolved on the merits and must fail. *Ullery*, 162 Wash.App. at 604–05, 256 P.3d 406.

Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co., 176 Wn.App. 185, 198-99, 312 P.3d 976 (Div. 1, 2013).

The concepts of standing and CR 17(a) real party in interest are often interchanged by our courts. Standing refers to the demonstrated existence of 'an injury to a legally protected right.' 'The real party in interest is the person who possesses the right sought to be enforced.'

Riverview Community Group v. Spencer & Livingston, 173 Wn.App. 568, 576, 295 P.2d 258 (Div. 3, 2013), *reversed on other grounds*, *Riverview Community Group v. Spencer & Livingston*, 181 Wn.2d 888, 337 P.3d 1076 (2014) (Citations omitted).

"The standing doctrine prohibits a litigant from raising another's legal rights." *Walker v. Munro*, 124 Wn.2d 402, 419, 879 P.2d 920 (1994); *Haberman v. WPPSS*, 109 Wn.2d 107, 138, 744 P.2d 1032, 750 P.2d 254 (1987). In *Haberman*, the Court correctly concluded that plaintiffs attempting to advance another's equal protection claim lacked standing. *Haberman*, 109 Wn.2d at 138.

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. . . .

CR 17(a).

To have standing, a party must show a real interest in the subject matter of the lawsuit, that is, a present, substantial interest, as distinguished from a mere expectancy, or future, contingent interest, and the party must show that a benefit will accrue it by the relief granted.

Primark, Inc. v. Burien Gardens Assoc., 63 Wn.App. 900, 907, 823 P.2d 1116 (Div. 1, 1992) (citing *State ex rel. Gebhart v. Superior Court for King Cy.*, 15 Wn.2d 673, 680, 131 P.2d 943 (1942)).

Even assuming standing, equity would prohibit standing under the facts of this case. The Siblings agreed that it would be

Brian Boatman who was responsible for the care for their mother for the remaining six (6) years of her life. The Siblings accepted thousands of dollars in gifts from their mother, via Brian Boatman acting under her power of attorney. They also required and accepted money from their mother, via Brian Boatman acting under her power of attorney, for any care they provided for their mother. After her death, they now complain about the gifts and the payments.

It is one of the fundamental principles upon which equity jurisprudence is founded, that before a complainant can have a standing in court he must first show that not only has he a good and meritorious cause of action, but he must come into the court with clean hands.

J.L. Cooper & Co. v. Anchor Securities Co., 9 Wn.2d 45, 71-2, 113 P.2d 845 (1941). Equity disqualifies any person who has dealt unjustly in the very transactions of which they complain. *Id.* at 75.

In this matter, the Siblings were denied an equitable forum (standing) to complain (on behalf of their mother) about gifts they received, alcohol which they drank, meals which they ate, compensation for care which they provided, and conduct of Brian

Boatman they allowed and praised for over six (6) years. CP 61-62; CP 324:24.

1. Conversion

The Siblings asked the trial court to compel the PR (Brian Boatman) to attempt to collect funds allegedly converted by Brian Boatman, while he served as attorney-in-fact to Bojilina Boatman. The alleged conversion is of \$15,000 on September 15, 2008 or \$5,000.00 on August 24, 2009. Any action for conversion is controlled by RCW 4.16.080(2), and shall be commenced within three years. Bojilina Boatman died on May 18, 2013. This matter was filed December 20, 2013. CP 5. The statute of limitations for any alleged conversion prior to December 20, 2010, even with standing, is time barred.

Therefore, even assuming such conversion occurred, and it did not, it is clearly banned by the statute of limitations and would be a waste of Estate assets (even if the Estate had any assets, which it does not.) However, the Declarations filed by the Siblings do not raise a material issue on the claim of conversion.

In order to recover in a conversion action, a plaintiff must rely upon the strength of his own title and right to possession without regard to the weakness of that of his

adversary. *Sussman v. Mentzer*, 193 Wash. 517, 520, 76 P.2d 595 (1938); *Smith v. Dahlquist*, 176 Wash. 84, 89, 28 P.2d 262 (1934); *Morehouse v. Spokane Security Finance Corp.*, 175 Wash. 501, 504, 27 P.2d 697 (1933).

Malchow v. Boise Cascade Corp., 20 Wn.App. 258, 259, 578 P.2d 1337 (Div. 3, 1978). Conversion is "the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of possession of it." *Brown ex rel. Richards v. Brown*, 157 Wn.App. 803, 817, 239 P.3d 602 (Div. 1, 2010) (Citations omitted).

Under the power of attorney, Brian Boatman had lawful justification and the duty to make deposits, pay expenses, and make payments for the care of Bojilina Boatman. He also had the lawful power to make gifts. Therefore, the only possible legal cause of action for the Estate is breach of fiduciary duty.

2. Fiduciary Duty

"Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability." RCW 11.94.040(1).

If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney-in-fact or

agent all the principal's powers of absolute ownership or has used language to indicate that the attorney-in-fact or agent has all the powers the principal would have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) **to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal....**

RCW 11.94.030 (Emphasis added).

A power of attorney is a written instrument by which one person, as principal, appoints another as agent and confers on the agent authority to act in the place and stead of the principal for the purposes set forth in the instrument. Powers of attorney are strictly construed. Accordingly, the instrument will be held to grant only those powers which are specified, and the agent may neither go beyond nor deviate from the express provisions.

Scott v. Goldman, 82 Wn.App. 1, 6, 917 P.2d 131 (Div. 2, 1996), (citing *Bryant v. Bryant*, 125 W.2d 113, 17-18, 882 P.2d 169 (1994)).

During the valid power of attorney, the fiduciary duty is owed to Bojilina Boatman, not to any prospective contingent heirs. The Siblings had a remedy to protect the assets of Bojilina Boatman before her death, had they been concerned about Brian Boatman's conduct as attorney-in-fact. They could have petitioned

the Whatcom County Superior court for a guardianship, and for removal of Brian Boatman as the attorney-in-fact during Bojilina Boatman's lifetime.

Persons allowed to file court petition.

(1) A petition may be filed under RCW 11.94.090 by any of the following persons:

- (a) The attorney-in-fact;
- (b) The principal;
- (c) The spouse or domestic partner of the principal;

. . . .

(e) Any other interested person, **as long as the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal** and has a good faith believe that the court's intervention is necessary, and that **the principal is incapacitated at the time of filing the petition or otherwise unable to protect his or her own interests.**

RCW 11.94.100(1) (Emphasis added.)

The statute of limitations on a claim of breach of fiduciary duty is three years. RCW 4.16.080(2). The limitations period begins to run when the cause of action accrues. *Janicki Logging & Const. Co., Inc. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wn.App. 655, 659, 37 P.3d 309 (Div. 1, 2001). The cause of action accrues when it happens, unless in the exercise of due diligence the Siblings, in the exercise of due care, did not know of the

essential elements of the breach. *Green v. A.P.C.*, 136 Wn.2d 87, 95, 960 P.2d 912 (1998). Again, assuming standing, any claim for breach of fiduciary duty that occurred before December 20, 2010, is time barred.

Had the Siblings petitioned for a guardianship during Bojilina Boatman's lifetime, a guardianship, if any, and an examination of Brian Boatman's conduct under the POA would only have disclosed that Brian Boatman took his fiduciary duty to his mother very seriously. Bojilina Boatman had the utmost trust in her son Brian, and included with the POA, that should a guardianship be necessary, Brian Boatman was to be the guardian. CP 180. Bojilina Boatman's brother, Byron Ritchie, created a trust for Bojilina Boatman and designated Brian Boatman as the Trustee. CP 240. Bojilina Boatman's brother had the utmost trust and confidence in his nephew Brian Boatman and made Brian Boatman the Trustee of the Trust he created for his sister. CP 64. Byron Ritchie, created a trust for Bojilina Boatman and designated Brian Boatman as the Trustee. CP 240. The trust was established to take care of the needs of his sister during her lifetime.

From and after the death of the Trustor, the Trustee shall pay to or apply for the benefit of ' BOJILINA H. BOATMAN, the entire net income of the BOJILINA H. BOATMAN TRUST quarter-annually or at more frequent intervals. If the Trustee shall deem the income to be insufficient, the Trustee shall also pay to or apply for the benefit of BOJILINA H. BOATMAN, as much of the principal of the BOJILINA H. BOATMAN TRUST as the Trustee, in the Trustee's discretion, shall deem necessary for her proper support, maintenance, health, and education, after taking into consideration, to the extent the Trustee shall deem advisable, any income or other resources of BOJILINA H. BOATMAN.

CP 241.

Unfortunately for Brian Boatman, he used his mother's assets to care for her and most of the trust assets were still in existence at the time of his mother's death. If he had instead, used the trust assets to care for his mother, and the Siblings were to complain about those action, each would have to pay back to the Estate and ultimately to Brian Boatman the \$85,000, or more, each received, under the no-contest provision of the trust:

If any beneficiary under this Declaration of Trust or any Amendment to it or any legal heir of the Trustor or any person claiming under any of them shall contest the Trustor's Last Will, or this Declaration of Trust or any Amendment to it, or shall seek to impair or invalidate any of the provisions of the Will or this Declaration of Trust or any Amendment to it, or shall conspire with or voluntarily assist anyone attempting to do any of those things, then in that event the Trustor specifically

disinherits such contesting person and all interests given to such contesting person under the Will and this Declaration of Trust or any Amendment to it, shall be forfeited and shall be disposed of in the same manner provided in both the Will and this Declaration of Trust or any Amendment to it, as if that contesting person had predeceased the Trustor without issue. The Trustee is authorized to defend any contest against this Declaration of Trust or any of its provisions, or any Amendment to it and to pay the expenses of the defense from the Trust Estate.

CP 242.

After Bojilina Boatman's death, any alleged claim against Brian Boatman, as attorney-in-fact, for breach of fiduciary duty belongs to the PR. It does not belong to any beneficiary of the Estate. The Siblings received notice of Brian Boatman's intentions to seek nonintervention powers, received notice of his appointment without intervention, and have not complained of his performance as PR.

(1) If at the time set for the hearing upon a petition for nonintervention powers, any person entitled to notice of the hearing on the petition under RCW 11.68.041 shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider the objections, if any, in connection with its determination under RCW 11.68.011(2)(c) of whether a grant of nonintervention powers would be in the best interests of the decedent's beneficiaries.

(2) The nonintervention powers of a personal

representative may not be restricted at a hearing on a petition for nonintervention powers in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b), unless a will specifies that the nonintervention powers of a personal representative may be restricted when the powers are initially granted. In all other cases, including without limitation any hearing on a petition that alleges that the personal representative has breached its duties to the beneficiaries of the estate, the court may restrict the powers of the personal representative in such manner as the court determines to be in the best interests of the decedent's beneficiaries.

RCW 11.68.050.

(1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

RCW 11.68.090(1).

Prior to her death, any one of the Sibilings had standing to demand an accounting. RCW 11.94.090. Under the power of attorney statutes, an interested person could file a petition under RCW 11.94.100. That Petition could have asked the Court to compel:

“the attorney-in-fact to submit . . . accounts or report the attorney in fact’s acts as attorney-in-fact to the principal . . . the guardian of the person or the estate, . . . or to any other person required by the court in its discretion . . . ; [or to determine that] [t]he attorney-in-fact has violated or is unfit to perform the fiduciary duties under the power of attorney.”

RCW 11.94.100.

Although not required, Brian Boatman provided the Siblings with an accounting of the books and records maintained on behalf of his mother from January 2006 through early 2014, prepared by bookkeeper, Kris Halterman of ABC Bookkeeping, LLP. CP 60; CP 95-141. As part of that accounting, Ms. Halterman prepared a Profit and Loss statement, categorizing their mother’s income and expenses from January 1, 2006, until their mother’s death on May 18, 2013. CP 92-94. Brian Boatman also provided the Siblings with a Profit and Loss Summary, based on Ms. Halterman’s accounting,

to categorize the expenses paid on behalf of their mother. CP 61;
CP 143. That accounting provided the following information¹:

Total Income:	\$610,500
Total Misc Expenses (dining out, gasoline, etc.):	\$21,500
Total Gifts:	\$117,000
Groceries:	\$23,500
Total Insurance:	\$7,000
Total Medical:	\$15,500
Total Taxes:	\$14,000
Total Utilities:	\$2,500
Total Professional Services:	\$6,500
Total Repairs and Maintenance:	\$13,500
Total Expenses Paid to Brian Boatman:	\$203,000
Total Paid for Care ² :	\$140,000
Total Rent:	\$132,000

The death of the principal immediately revoked Brian Boatman's power to act as his mother's power of attorney and any action by him as power of attorney would be of no effect, even an accounting. *Larson v. Anderson*, 97 Wash. 484, 166 P. 774 (1917). The Siblings not only lack standing to demand the accounting, the probate court had no ability to order such an accounting because the POA relationship ended as a matter of law, upon Bojilina Boatman's death. Even assuming standing, any such accounting

¹ Totals rounded.

² Exclusive of care provided by Brian Boatman.

(as attorney-in-fact) provided would be of no legal consequence. The fact that the Estate did an accounting and provided it voluntarily to the Siblings, did not provide authority for the probate court to order an accounting from the former attorney-in-fact.

A breach of a fiduciary duty is a claim in equity seeking equitable remedies. *Foster v. Gilliam*, 165 Wn.App. 33, 47-48, 268 P.3d 945 (Div. 1, 2011). Participants in the alleged wrongs, which conduct plays a role in producing the alleged injury, are without a remedy under the doctrine of unclean hands. *J.L. Cooper & Co. v. Anchor Securities Co.*, 9 Wn.2d at 71- 72.

C. INTERFERENCE WITH EXPECTED INHERITANCE

The Siblings asked the trial court to examine Brian Boatman's conduct under broader tort principles. They appear to claim some direct claim against their brother with regard to any imaginary inheritance they believed they might be entitled to.

"No Washington case has adopted the tort of interference with expected inheritance, although other jurisdictions have recognized this tort or extended the tort of interference with a business expectancy to include inheritance expectancy." *Grange*

Ins. Ass'n v. Roberts, 179 Wn.App. 739, 760, 320 P.3d 77, 89 (Div. 1, 2013).

The Siblings, under oath, declared that they want the probate court to order the Estate to spend money (it does not have) examining the actions of the PR, many well past any possible statute of limitations, because they believe that Brian Boatman's negligence ("improper management") reduced their share of the Estate. The Restatement 2nd describes the tort claimed, which is not allowed in Washington, as follows:

One who by fraud, duress or other tortious means prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to the other for loss of the inheritance or gift.

The Restatement Second of Torts, § 774(B).

Again, Washington does not recognize this tort. If Brian Boatman spent too much money taking care of his mother, which he did not, he did so negligently, harming himself in the same manner as he allegedly harmed each sibling.³

³ CP 51-56, The uncontroverted Affidavit of Bianca Boatman disclosed that the average nursing home costs of care for dementia/Alzheimer's patient was between \$84,000 and \$95,000.00 annually; \$500,000.00 to \$570,000.00 over a six (6) year period. Exhibit A, regarding average nursing home care costs for dementia/Alzheimer's patients in 2012.

D. REMOVAL AS PERSONAL REPRESENTATIVE

Washington common law does not allow the beneficiaries of a non-intervention probate to bring a cause of action against the Estate or on behalf of the Estate. Two cases, while not on point, are instructive: *Estate of Lennon v. Lennon*, 108 Wn.App. 167, 29 P.3d 1258 (Div. 1, 2001) and *Brown ex rel. Richards v. Brown*, 157 Wn.App. 803, 239 P.3d 602 (Div. 1, 2010).

1. *Estate of Lennon*.

In *Lennon*, this Court examined a “Christmas” gift by the power of attorney to himself from a bank account, JTWROS, while the principal was alive. *Estate of Lennon*, 108 Wn.App. at 173. The power of attorney argued that the “estate” had no standing to recoup the funds because it belonged to the principal. *Id.* at 182. The “estate” argued that the funds belonged to the estate and therefore the proper party/petitioner was the estate. *Id.* at 182-83.

In *Lennon*, this Court held that the claim belonged to the estate. *Id.* at 183-84. More importantly, in *Lennon*, this Court relied upon the following fact, which fact clearly distinguishes the facts in *Lennon* from the facts in this case: “[A]n attorney-in-fact

has no power 'to make any gifts of property owned by the principal' unless the document specifically provides otherwise." *Id.* at 183.⁴

Lennon, if misapplied to the facts in this case, would invite the probate court to appoint a new PR of the Estate, to sue Brian Boatman's Siblings and other family members for return of more than \$100,000.00 in gifts made by their mother, through her power of attorney, while she was alive, but disabled. An activity likely benefiting attorneys, but of no value to the Estate or family.

2. *Brown*

In *Brown*, this Court examined whether a guardian of an incompetent person could recover proceeds from a third party, under a theory of conversion or misappropriation, which proceeds were paid by the principal's power-of-attorney to his girlfriend, a third party. *Brown*, 157 Wn.App. at 807. The funds involved were \$20,000.00. *Id.* at 811. Standing was not an issue because the principal was still alive and the litigation was being advanced by a court appointed guardian. The trial court dismissed the claims on summary judgment. *Id.* at 812. Neither standing nor the powers

⁴ Brian Boatman's powers included the power "to make, amend, alter or revoke any of the principal's wills or codicils . . . (and) to make gifts of any property owned by the principal." *Durable Power of Attorney*, CP 179-180.

given were discussed in *Brown*. The relevant issue was whether the principal had created material issues of fact related to the \$20,000.00 gift. *Id.* at 817. Though apparently relied upon by the Siblings, *Brown* is not helpful to the Siblings on the issue of standing. However, *Brown* is instructive on when and how these issues should have been raised, which was during their mother's lifetime by a court appointed guardian ad litem. See *Brown*, 157 Wn.App. 803.

E. TRIAL COURT DID NOT ERR.

After her death, all claims belong to the Estate and the PR would have the duty to investigate and bring said claims if deemed by the PR to have merit. Here, Brian Boatman, serving as PR, under a nonintervention will, fulfilled that duty. When the Siblings raised these issues, Brian Boatman provided the Siblings with an accounting. CP 60; CP 92-94.

It shall be the duty of every personal representative to settle the estate, including the administration of any nonprobate assets within control of the personal representative under RCW 11.18.200, in his or her hands as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate. The personal representative shall collect all debts due the deceased and pay all debts as hereinafter provided. The

personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

RCW 11.48.010.

Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against personal representatives in all cases in which the same might have been maintained by and against their respective testators or intestates.

RCW 11.48.090.

No person is liable to an action as executor of his or her own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his or her interference with the estate of the deceased.

RCW 11.48.180.

Under common law, any creditor of an estate could recover from any person who intermeddled with the property of a decedent to the detriment of any creditor. RCW 11.48.180 "took away the common law rights of creditors to sue and placed the right to bring the action in the personal representative of the deceased."

Jacobson v. Lawrence, 6 Wn.App. 954, 957, 497 P.2d 262 (Div. 1, 1972).

The **personal representative** shall collect all debts due the deceased and pay all debts as hereinafter provided. The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

RCW 11.48.010 (Emphasis added.)

If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, **he or she shall stand chargeable, and be liable to the personal representative of the estate**, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate. (Emphasis added.)

RCW 11.48.060 (Emphasis added.)

The court may authorize the personal representative, without the necessary nonintervention powers, to compromise and compound any claim owing the estate. **Unless the court has restricted the power to compromise or compound claims owing to the estate, a personal representative with nonintervention powers may compromise and compound a claim owing the estate without the intervention of the court.** (Emphasis added.)

RCW 11.48.130 (Emphasis added).

F. TEDRA

Summary decisions under TEDRA (RCW 11.96A) are appropriate.

(8) Unless requested otherwise by a party in a petition or answer, **the initial hearing must be a hearing on the merits to resolve all issues of fact and all issues of law;**

(9) Any party may move the court for an order relating to a procedural matter, including discovery, and for summary judgment, in the original petition, answer, response, or reply, or in a separate motion, or at any other time; and

(10) If the initial hearing is not a hearing on the merits or does not result in a resolution of all issues of fact and all issues of law, the court may enter any order it deems appropriate, which order may (a) resolve such issues as it deems proper, (b) determine the scope of discovery, and (c) set a schedule for further proceedings for the prompt resolution of the matter.

RCW 11.96A.100 (8), (9), and (10) (Emphasis added). Standing is a legal issue. Removal is a factual issue, in equity. Because the declarations raised and addressed the issue of alleged misconduct of the PR, the trial court correctly concluded that the Siblings failed to provide “sufficient evidence to persuade this Court that Brian Boatman should be removed as the Personal Representative in this

matter.” CP 943; Conclusion No. 6. Removal of Brian Boatman was decided, in equity, summarily. Findings of fact and conclusions of law are unnecessary on summary judgment. *Shoulberg v. Pub. Util. Dist. No. 1 of Jefferson County*, 169 Wn.App. 173, 177, n. 1, 280 P.3d 491 (Div. 2, 2012), *review denied*, 175 Wn.2d 1024, 291 P.3d 253 (2012).

G. ATTORNEY FEES

The Estate has no money to fund this unfair attack upon its PR. When Bojilina Boatman died, Brian Boatman transferred more than \$425,000.00 to his brothers and sisters. He received \$85,000.00. Brian Boatman has already incurred over \$63,000.00 in attorney fees successfully defending the Siblings’ attack at the trial court, inclusive of the attorney fees as PR for the Estate.⁵ After this appeal, he will have paid more than his inheritance to the attorneys for the Estate and to the undersigned attorneys.

Equity allows this Court to award Brian Boatman his reasonable attorney fees incurred on appeal. Under RAP 18.1, this Court may award reasonable attorney fees if an applicable law grants Brian Boatman the right to recover reasonable attorney

⁵ Respondent’s Supplemental Designation of Clerk’s Papers, filed 4-27-15.

fees.⁶ Pursuant to RAP 18.1, Brian Boatman respectfully requests that he be awarded his attorney fees on appeal as the prevailing party.

A request for appellate attorney fees requires a party to include a separate section in his or her brief devoted to the request. RAP 18.1(b). This requirement is mandatory. *Phillips Bldg. Co. v. An*, 81 Wash.App. 696, 705, 915 P.2d 1146 (1996). This rule requires “more than a bald request for attorney fees on appeal.” *Thweatt v. Hommel*, 67 Wash.App. 135, 148, 834 P.2d 1058 (1992).

In re Washington Builders Ben. Trust, 173 Wn.App. 34, 86-7, 293 P.3d 1206 (Div. 2, 2013). RCW 11.96A.150(1) provides this Court with broad discretion to award attorney fees. *In re Estate of Frank*, 146 Wn.App. 309, 327, 189 P.3d 834 (Div. 2, 2008).

(1) Either the superior court or **any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party:** (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. **The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable.** In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors

⁶ Brian Boatman’s motion for attorney fees in the trial court has been reserved by the trial court pending this Court’s decision on appeal.

may but need not include whether the litigation benefits the estate or trust involved.

.....

RCW 11.96A.150(1) (emphasis added).

V – CONCLUSION

For the reasons stated above, the Court should affirm and award Brian Boatman fees on appeal.

RESPECTFULLY SUBMITTED THIS 27th day of April 2015.

SHEPHERD and ABBOTT



Douglas R. Shepherd, WSBA #9514
Bethany C. Allen, WSBA #41180
Kyle S. Mitchell, WSBA #47344
Of Attorneys for Respondent
Brian Boatman

APPENDIX A

RAP 18.1(a)

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

[Amended September 1, 2010]

APPENDIX B

RCW 11.96A.150

COSTS – ATTORNEYS' FEES

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may 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.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10).

APPENDIX C

RCW 4.16.080(2)

ACTIONS LIMITED TO THREE YEARS

The following actions shall be commenced within three years:

. . . .

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

. . . .

APPENDIX D

RCW 11.94.030

BANKING TRANSACTIONS

If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney-in-fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney-in-fact or agent has all the powers the principal would have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal, and (2) to enter any safe deposit box to which the principal has a right of access, subject to any contrary provision in any agreement governing the safe deposit box.

APPENDIX E

RCW 11.94.040(1)

LIABILITY FOR RELIANCE ON POWER OF ATTORNEY DOCUMENT.

(1) Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability.

APPENDIX F

RCW 11.94.090

COURT PETITION

(1) A person designated in RCW 11.94.100 may file a petition requesting that the court:

(a) Determine whether the power of attorney is in effect or has terminated;

(b) Compel the attorney-in-fact to submit the attorney-in-fact's accounts or report the attorney-in-fact's acts as attorney-in-fact to the principal, the spouse or domestic partner of the principal, the guardian of the person or the estate of the principal, or to any other person required by the court in its discretion, if the attorney-in-fact has failed to submit an accounting or report within sixty days after written request from the person filing the petition, however, a government agency charged with the protection of vulnerable adults may file a petition upon the attorney-in-fact's refusal or failure to submit an accounting upon written request and shall not be required to wait sixty days;

(c) Ratify past acts or approve proposed acts of the attorney-in-fact;

(d) Order the attorney-in-fact to exercise or refrain from exercising authority in a power of attorney in a particular manner or for a particular purpose;

(e) Modify the authority of an attorney-in-fact under a power of attorney;

(f) Remove the attorney-in-fact on a determination by the court of both of the following:

(i) The attorney-in-fact has violated or is unfit to perform the fiduciary duties under the power of attorney; and

(ii) The removal of the attorney-in-fact is in the best interest of the principal;

(g) Approve the resignation of the attorney-in-fact and approve the final accountings of the resigning attorney-in-fact if submitted, subject to any orders the court determines are necessary to protect the principal's interests;

(h) Confirm the authority of a successor attorney-in-fact to act under a power of attorney upon removal or resignation of the previous attorney-in-fact;

(i) Compel a third person to honor the authority of an attorney-in-fact, provided that a third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances;

(j) Order the attorney-in-fact to furnish a bond in an amount the court determines to be appropriate.

(2) The petition shall contain a statement identifying the principal's known immediate family members, and any other persons known to petitioner to be interested in the principal's welfare or the principal's estate, stating which of said persons have an interest in the action requested in the petition and explaining the determination of who is interested in the petition.

APPENDIX G

RCW 11.94.100

PERSONS ALLOWED TO FILE COURT PETITION

(1) A petition may be filed under RCW 11.94.090 by any of the following persons:

- (a) The attorney-in-fact;
- (b) The principal;
- (c) The spouse or domestic partner of the principal;
- (d) The guardian of the estate or person of the principal; or

(e) Any other interested person, as long as the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the court's intervention is necessary, and that the principal is incapacitated at the time of filing the petition or otherwise unable to protect his or her own interests.

(2) Notwithstanding RCW 11.94.080, the principal may specify in the power of attorney by name certain persons who shall have no authority to bring a petition under RCW 11.94.090 with respect to the power of attorney. This provision is enforceable:

(a) If the person so named is not at the time of filing the petition the guardian of the principal;

(b) If at the time of signing the power of attorney the principal was represented by an attorney who advised the principal regarding the power of attorney and who signed a certificate at the time of execution of the power of attorney, stating that the attorney has advised the principal concerning his or her rights, the applicable law, and the effect and consequences of executing the power of attorney; or

(c) If (a) and (b) of this subsection do not apply, unless the person so named can establish that the principal was unduly influenced by another or under mistaken beliefs when excluding the person from the petition process, or unless the person named is a government agency charged with protection of vulnerable adults.

APPENDIX H

RCW 11.68.050

OBJECTIONS TO GRANTING OF NONINTERVENTION POWERS – RESTRICTIONS

(1) If at the time set for the hearing upon a petition for nonintervention powers, any person entitled to notice of the hearing on the petition under RCW 11.68.041 shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider the objections, if any, in connection with its determination under RCW 11.68.011(2)(c) of whether a grant of nonintervention powers would be in the best interests of the decedent's beneficiaries.

(2) The nonintervention powers of a personal representative may not be restricted at a hearing on a petition for nonintervention powers in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b), unless a will specifies that the nonintervention powers of a personal representative may be restricted when the powers are initially granted. In all other cases, including without limitation any hearing on a petition that alleges that the personal representative has breached its duties to the beneficiaries of the estate, the court may restrict the powers of the personal representative in such manner as the court determines to be in the best interests of the decedent's beneficiaries.

APPENDIX I

RCW 11.68.090(1)

POWERS OF PERSONAL REPRESENTATIVE UNDER NONINTERVENTION WILL – SCOPE – RELIEF FROM DUTIES, RESTRICTIONS, LIABILITIES BY WILL

(1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

APPENDIX J

RCW 11.48.010

GENERAL POWERS AND DUTIES

It shall be the duty of every personal representative to settle the estate, including the administration of any nonprobate assets within control of the personal representative under RCW 11.18.200, in his or her hands as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate. The personal representative shall collect all debts due the deceased and pay all debts as hereinafter provided. The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

APPENDIX K

RCW 11.48.060

MAY RECOVER FOR EMBEZZLED OR ALIENATED PROPERTY OF DECEDENT.

If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he or she shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate.

APPENDIX L

RCW 11.48.090

ACTIONS FOR RECOVERY OF PROPERTY AND ON CONTRACT

Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against personal representatives in all cases in which the same might have been maintained by and against their respective testators or intestates.

APPENDIX M

RCW 11.48.130

COMPROMISE OF CLAIMS

The court may authorize the personal representative, without the necessary nonintervention powers, to compromise and compound any claim owing the estate. Unless the court has restricted the power to compromise or compound claims owing to the estate, a personal representative with nonintervention powers may compromise and compound a claim owing the estate without the intervention of the court.

APPENDIX N

RCW 11.48.180

LIABILITY OF EXECUTOR DE SON TORT

No person is liable to an action as executor of his or her own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his or her interference with the estate of the deceased.

APPENDIX O

RCW 11.96A.100(8)(9)(10)

PROCEDURAL RULES

Unless rules of court require or this title provides otherwise, or unless a court orders otherwise:

. . . .

(8) Unless requested otherwise by a party in a petition or answer, the initial hearing must be a hearing on the merits to resolve all issues of fact and all issues of law;

(9) Any party may move the court for an order relating to a procedural matter, including discovery, and for summary judgment, in the original petition, answer, response, or reply, or in a separate motion, or at any other time; and

(10) If the initial hearing is not a hearing on the merits or does not result in a resolution of all issues of fact and all issues of law, the court may enter any order it deems appropriate, which order may (a) resolve such issues as it deems proper, (b) determine the scope of discovery, and (c) set a schedule for further proceedings for the prompt resolution of the matter.

APPENDIX P

RCW 11.11.070(2) & (3)

OWNERSHIP RIGHTS AS BETWEEN INDIVIDUALS PRESERVED – TESTAMENTARY BENEFICIARY MAY RECOVER NONPROBATE ASSETT FROM BENEFICIARY – LIMITED ON ACTION TO RECOVER

.....

(2) A testamentary beneficiary entitled to a nonprobate asset otherwise transferred to a beneficiary not so entitled, and a personal representative of the owner's estate on behalf of the testamentary beneficiary, may petition the superior court having jurisdiction over the owner's estate for an order declaring that the testamentary beneficiary is so entitled, the hearing of the petition to be held in accordance with chapter 11.96 RCW.

(3) A testamentary beneficiary claiming a nonprobate asset who has not filed such a petition within the earlier of: (a) Six months from the date of admission of the will to probate; and (b) one year from the date of the owner's death, shall be forever barred from making such a claim or commencing such an action.

APPENDIX Q

RCW 11.02.005(10)

DEFINITIONS AND USE OF TERMS

When used in this title, unless otherwise required from the context:

.....

(10) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, transfer on death deed, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

APPENDIX R

CR 17(a)

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

BEVERLY YOUNG, BLAKE
BOATMAN, BRADLEY BOATMAN,
BRENT BOATMAN and WILLIAM
BOATMAN,

Petitioners/Appellants

vs.

BRIAN BOATMAN, individually and
as Attorney-in-Fact for Bojilina H.
Boatman; and THE ESTATE OF
BOJILINA H. BOATMAN,

Respondents.

Case No. 72643-9-1

**Whatcom County
Superior Court
Case No. 13-4-00568-2**

DECLARATION OF SERVICE

**DECLARATION OF
SERVICE
Page 1 of 2.**

SHEPHERD AND ABBOTT

ATTORNEYS AT LAW
2011 YOUNG STREET, SUITE 202
BELLINGHAM, WASHINGTON 98225
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I, Jen Petersen, declare that on April 27, 2015, I caused to be served a copy of the following document: **Respondent's Brief**; and, a copy of this **Declaration of Service**, in the above matter, on the following persons, at the following addresses, in the manner described:

James E. Britain, Esq.	() U.S. Mail
Britain & Vis, PLLC	() Fax
805 Dupont Street, Suite 1	() Messenger Service
Bellingham, WA 98225	() Personal Service
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Erin Crisman Glass, Esq.	() U.S. Mail
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300 N. Commercial Street	() Messenger Service
Bellingham, WA 98225	(X) Hand Delivery
erin@barronsmithlaw.com	()

*Pursuant to the parties' CR 5(b)(7) agreement dated May 14, 2014.

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

DATED this 27th day of April 2015, at Bellingham, WA.



Jen Petersen

**DECLARATION OF
SERVICE**
Page 2 of 2.

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