

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

No. _____

**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

Case #: 1031416

In the Matter of:
MADELINE M. THIEDE TRUST,
GERALD VERHAAG, a Beneficiary
of Madeline M. Thiede Trust

Respondent

v.

GORDON FINCH, a Beneficiary
and Trustee of Madeline M. Thiede Trust

Respondent

ROBERT E. KOVACEVICH, and AARON L. LOWE

Appellants.

DIVISION III No. 38979-1-III

**PETITION FOR REVIEW OF ROBERT E.
KOVACEVICH**

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Appendix B - Opinion, Judge Pennell, March 14, 2024.

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Appendix D- Applicable statutes and constitution.

I. IDENTITY OF PETITIONER

Robert E. Kovacevich is the Petitioner.

II. COURT OF APPEALS DECISION

Robert E. Kovacevich seeks review of the unpublished opinion dated March 14, 2024 and the denial of the Motion for Reconsideration dated May 9, 2024, *In the Matter of Madeline M. Thiede Trust, Gerald Verhaag a Beneficiary of Madeline M. Thiede Trust, Plaintiff v. Gordon Finch a Beneficiary and Trustee of the Madeline M. Thiede Trust, Respondent*.

III. ISSUES PRESENTED FOR REVIEW

- A. Whether a Motion to Quash is legally allowable to dismiss a TEDRA mediation?
- B. Whether attorney's fees are allowable to a litigant filing a Motion to Quash TEDRA mediation?
- C. Whether any attorney's fees should be awarded?
- D. Whether the appeal by Robert E. Kovacevich was a frivolous appeal?

ULTIMATE ISSUE

E. Whether Kovacevich qualifies for a TEDRA mediation?

IV. STATEMENT OF THE CASE

A. Procedural Facts in the Trial Court

1. Mr. Kovacevich Filed For TEDRA Mediation On January 21, 2022 (CP 305-312).

2. On February 10, 2022 Gordon Finch Moves to Quash the Notice of Mediation Filed by Robert E. Kovacevich (CP 155-162).

3. On March 23, 2022 Superior Court Judge Harold Clarke III Granted the Motion To Quash and Ordered Kovacevich to Pay Attorney's Fees (CP 167-169).

4. Kovacevich Filed a CR 59 Motion to Reconsider the Order to Quash (CP 175-212).

5. On May 20, 2022 the Trial Court Denied the CR 59 Motion (CP 233-5).

6. On June 10, 2022 the Notice of Appeal was Filed (CP 242-264).

B. Procedural Facts of the Court of Appeals

1. Finch Motion to Dismiss

2. Opening Brief of Kovacevich, November 29, 2022

3. Permission of the Court of Appeals to allow

Kovacevich to file Replacement Brief.

4. Commissioner Erin Geske's Ruling on Appealability.

5. Opinion of the Court of March 14, 2024.

6. Denial of Motion to Reconsider of May 9, 2024.
(Appendix C)

C. Background Facts

Madeline Thiede, on June 11, 2009 executed a revocable living trust. CP 291-303. The Trust was administered after April 9, 2014 by Gordon Finch as Trustee. The Trust, at page 10 authorized the trustee to employ attorneys and pay them reasonable compensation. CP 300. He retained Kovacevich as the Trust attorney and paid legal fees to him. CP 107; CP 121-125. The payment was for legal services rendered to the Trust while Finch was Trustee. Later Finch sought the return of the money paid January 9, 2018. It was paid back by Kovacevich. CP 1-5. Kovacevich seeks mediation to get the money back as the payment was authorized by the Trust. CP 305-312.

D. Facts Pertaining to this Appeal

The opposition to the notice of mediation moved to quash

the notice. The legal sufficiency of the notice to mediation was challenged. A motion to quash admits the allegations in the document. See *GMS Properties Inc., v. Superior Court*, 219 Cal.App.2d 407, 415, 33 Cal. Rptr 163 (1963) the motion is treated like a motion to dismiss. Here, the notice of mediation (CP 306) alleges that the superior court granted “Kovacevich permission to pursue recovery of \$11,211.80 paid by Robert E. Kovacevich to Trustee James Spurgetis.” This Order is at CP 7-14; the permission is at CP 13, 14.

The Trust expense issue is an unanswered question. CP 14. Neither James Spurgetis, Gordon Finch or any other party to the lawsuit served Kovacevich with process or any notice of the TEDRA proceeding. The reference is to the TEDRA proceeding of June 2019 (CP 34-49) and Order approving TEDRA (CP 50-51). These facts allow this court to grant the Petition.

V. ARGUMENT

In accordance with RAP 13.4(b) this Court should grant review on the following issues:

A. RAP 13.4(b)(2) is violated as Division III was in conflict with its own decision.

The Court of Appeals failed to follow the decision of Commissioner Geske in her ruling in this case filed February 7, 2023 in the appeal. A courtesy copy is attached as Appendix A.

The first page of the ruling states: “This matter was set on the commissioner’s docket after the court determined Robert Kovacevich’s notice of appeal should be treated as a notice for discretionary review pursuant to RAP 5.2(c). However, as set forth below, this court has determined that under the unique procedural posture of this matter, it appears this matter is actually appealable as a matter of right.”

Commissioner Geske at page 3 frames the issue. The ruling also states:

Mr. Finch’s response points out that Mr. Kovacevich failed to satisfy this burden to demonstrate he is entitled to discretionary review. He further argues that Mr. Kovacevich lacked standing to issue a notice of mediation. . . In reply Mr. Kovacevich argued in part that discretionary review is granted to non-party appellate seeking review of CR 11 sanctions under RAP 3.1 and a long line of Washington cases, including *Guardianship of Lasky*, 54 Wn.App. 841, 776 P.2d 696 (1989).

At page 6: “Accordingly, IT IS ORDERED this matter may move forward as appealable.” The opinion on the appeal from the same court, Judge Pennell on March 14, 2024 (Appendix B) never mentioned the ruling on this case by Commissioner Geske. Commissioner Geske in her order at page 6 stated: “It appears that the court’s Order denying the motion to reconsider is appealable under RAP 2.2(a)(13) as a final order after judgment.” At page 2 all the trial court orders are listed. At page 3 the Commissioner’s ruling states “he further argues that Mr. Kovacevich lacked standing to issue the notice of mediation.” The Court of Appeals assigned the issue of appealability to Commissioner Geske. No motion to modify was filed. RAP 13.4(b)(2) applies. Judge Pennell completely ignored Commissioner Geske’s ruling on appealability and issued an opinion in complete conflict on appealability on the same case

B. The Court of Appeals Committed Reversible Error When it Held that Kovacevich Lacked Standing to Compel Mediation.

No citation of authority was cited by the court of appeals at page 4 and 5 of its Opinion that Kovacevich had no standing to

compel mediation to support lack of standing. “Standing generally refers to a particular party’s right to bring a legal claim.” *State v. Wallahee*, 2024 WL 2197319 *3 (5/16/2024) quoting from *Washington State Housing Finance Committee v. National Homebuyers*, 193 Wn.2d 704, 711, 445 P.3d 533 (2019). RCW 11.18.200(2)(f) gives Kovacevich a stake in the living trust assets as the beneficiaries were aware of his claim. Kovacevich had standing as he had a right to file a claim against the revocable living trust of Madeline Thiede as it never cleared claims before distribution. The TEDRA Agreement was kept secret from Kovacevich. CP 18-33, CP 80-81. The TEDRA Agreement was approved two days after signature. The Order was never served on Kovacevich. CP 18-33; CP 80, 81; CP 50-1. Of consequence is the “cushion” that was kept in Trust by Mr. Spurgetis for “unknown Trust expenses.” CP 39. The trial court granted Kovacevich permission to file a claim against Trustee Spurgetis to get the \$11,211.80 of legal fees Kovacevich had to pay to the Trust. CP 13-14.

The TEDRA statutes apply to any “matter” to determine

any class of creditors. RCW 11.96A.030(2) and 2(a). Since no application was made to appoint a notice agent the TEDRA definition statutes, RCW 11.96A.030(2)(g) (Non probate asset) and 2(g)(l)(i) (class of creditors) apply. The statute references the notice agent appointment. RCW 11.18 and 11.42. RCW 11.18.200(b) states that a beneficiary “takes the asset subject to the . . . claims . . . and administration expenses.” The April 6, 2023 Opening Brief of Kovacevich at page 29-30 details this application and seeks to apply the TEDRA statutes. In making the statement on lack of standing the appeals court never cited the Opinion cited by Kovacevich in his Opening Brief, *Weyand v. Estate of Newell*, 23 Wn.App.2d 1016 (unpublished 2022). It is persuasive as the analysis is directly in point with this case. At 1016 *1 Weyand filed a claim against the estate in a conventional probate. It was dismissed. “Weyand then filed a petition” under TEDRA. “Costs of administration are within TEDRA’s purview, so the TEDRA procedure was proper.” At *3: “thus Weyand’s petition was properly before the court” “as a TEDRA petition because it appeared a claim for reimbursement of administration

under RCW 11.96A.030(2)(c).” “TEDRA gives the courts ‘full and ample power and authority under [Title RCW 11] to administer and settle’ all matters involved in estates.” The application of TEDRA and *Weyand* was completely ignored. It was the seminal issue in this case.

C. The Court of Appeals Decision is in Conflict with Two Decisions of this Court

Kovacevich received a civil sanction on the issue of payment of his legal fees. The court of Appeals denied him a right to mediation to recover the fees taken from him. *Mitchell v. Watson*, 58 Wn.2d 206, 361 P.2d 744 (1961) held that a civil sanction does not prevent a demand to return of his money. “The contumacy of a party disobeying an order of the court, may justify his punishment for contempt, but it does not justify the deprivation of his civil rights or the taking of his property and giving it to another.” *Id.* at 214. *In re Bailey’s Estate*, 58 Wn.2d 685, 364 P.2d 539 (1961) is also in point. The share of an estate beneficiary was forfeited due to the beneficiary’s contempt. The decision held that there was no reason to forfeit the share and

ordered it paid. The court followed *Mitchell v. Watson*, quoting from *Mitchell*, 58 Wn.2d at 301. RAP 13.4(b)(1) applies.

D. This Court Should Accept Review as Non Judicial TEDRA Settlement is Obviously a Vital Method to Achieve Prompt Resolution of Trust and Estate Issues Present in Many Estates. Accordingly This Issue is One of Substantial Public Interest as Many Estates Will Benefit From This Court's Decision.

The Trust and Estate Dispute Resolution Act was passed in this state in 1999. RCW 11.96A.070(3) states “The legislature hereby confirms the long-standing public policy of promoting prompt and efficient resolution of matters involving trust and estates.” This statement by the legislature clearly codifies the public interest of RAP 13.4(b)(4). TEDRA also reduces the ever increasing court congestion.

The Washington State Department of health compiles annual deaths from death certificates registered in Washington State. In 2022 the number of deaths of Washington residents numbered 69,116. Washington State Department of Health (<https://doh.wa.gov>, Washington-tracking network-wtn).

In this case the trial court granted a motion to quash a

TEDRA mediation request. The public policy is imbedded in TEDRA at RCW 11.96A.300(d) that requires mediation “except for good cause shown” essentially the burden is upon the party that does not want to settle by mediation. The appeals court completely ignored this applicable law and granted a motion to quash that is never mentioned in this procedural statute.

RCW 11.96A.010 also restates the purpose of TEDRA. “The provisions are intended to provide non judicial methods for resolution of matters, such as mediation, arbitration and agreement.” The lower courts in this case failed to apply the meaning of the TEDRA statutes and the direction of the legislature to allow mediation. Upholding a motion to quash not even mentioned as a TEDRA method is directly contrary to the law. The confusion caused by this case is likely to occur in light of the many trust and estates that will encounter issues. The Washington Constitution, Article IV (6) specifically states that superior courts shall have jurisdiction of “all matters of probate. TEDRA is a probate matter. Accordingly, there is substantial public interest for this Court to strike down the untethered

motion to quash never contemplated in the TEDRA law. In probate matters the litigants often fight over probate assets. Litigation eats into the assets. TEDRA eliminates court action that is often bitter and prolonged. TEDRA insures that heirs get more assets by eliminating imbalance of litigants.

E. The Court Opinion on Frivolous Appeal is in Direct Conflict with Decisions of the Supreme Court and Also in Conflict with Division III's Own Published Decision.

The Court Opinion of March 14, 2024 did not review the law on frivolous appeal or law of the case on attorney fee awards.

The Court did not follow the Division Three published Opinion of *Washington Election Integrity Coalition v. Shumacher*, 28 Wn.App.2d 176, 537 P.3d 1058 published October 24, 2023 by Chief Judge Siddoway holding that denied the right to a sanction for a frivolous appeal. The Opinion relied on several Washington State Supreme Court cases including following *Advocates for Responsible Development v. Western Growth Management*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). The Division Three Opinion (28 Wn.App.2d at 206) states:

RAP 18.9(a) authorizes appellate courts to impose attorney fees as sanctions either ‘on its own initiative or on motion of a party’ against a party that has file[d] a frivolous appeal. In determining whether an appeal is frivolous, the court examines the entire record for whether ‘the appeal presents no debatable issues upon which reasonable minds might differ, and [whether] the appeal is so devoid of merit that there is no possibility of reversal.’ *Advocs. For Responsible Dev., v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). ‘Raising at least one debatable issue precludes finding that the appeal as a whole is frivolous,’ even where that issue is tenuous. *Id.* (stating that the imposition of sanctions was improper because one court in a foreign jurisdiction agreed with appellant). A finding that an appeal lacks merit does not equate to a finding that an award of sanctions is appropriate. *Id.*; see also *Green River Cmty. Coll. Dist. No. 10 v. Higher Ed. Pers. Bd.*, 107 Wn.2d 427, 443, 730 P.2d 653 (1986). Any doubts as to whether an appeal is frivolous should be resolved in favor of the appellant.

Advocs. For Responsible Dev., 170 Wn.2d at 580 states:

¶ 6 RAP 18.9(a) permits an appellate court to award a party attorney fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action. *Reid v. Dalton*, 124 Wash.App. 113, 128, 100 P.3d 349 (2004). An appeal is frivolous if, considering the entire record, the court is convinced that the appeal is so devoid of merit that there is no possibility of reversal. *Tiffany] Family Trust Corp. v. City of Kent*, 155 Wash.2d 225, 241, 119 P.3d 325 (2005). All doubts as to

whether the appeal is frivolous should be resolved in favor of the appellant. . . . Raising at least one debateable issue precludes finding that the appeal as a whole is frivolous. *Id.* at 580

The brief of Kovacevich on appeal on April 6, 2023 contains four full pages of case citations and one and a half pages of citations to statutes. The appellate court in this case never reviewed the law and never mentioned that all were frivolous. The Division III Opinion at page 7 made a ruling that “Mr. Kovacevich had no standing to file a notice under TEDRA compelling mediation. His arguments on appeal are based on frivolous theories.” This all inclusive conclusion without citing cases is unconscionable. It is wrong as a matter of law by concluding that all cases were frivolous. It is wrong and contrary to the standard to determine frivolous litigation. *Matter of the Estate of Sammann*, 17 Wn.App.2d 1030, *6 rejected RAP 18.9(a). “Moreover, the respondent’s do not advance frivolous arguments.” Here this petition involves the first impression issue on construction of RCW 11.96A.300(2)(d) on “just cause.” “Cases of first impression that present debatable issues of

substantial public importance are not frivolous.” *Moorman v. Walker*, 54 Wn.App. 461, 466, 773 P.3d 887 (1989).

Hotel Employees and Restaurant Employees Local 8 v. Jensen, 51 Wn.App. 676, 691, 754 P.2d 1277 (1988) rejected a frivolous holding where one case supported a contrary position. “Although we do not find Rodriguez persuasive on that issue, the case precludes a finding that the appeal was totally devoid of merit.” It is unconscionable that the appeals court would award frivolous attorney fees when Kovacevich’s brief cited *Weyand v. Newall*, 23 Wn.App.2d 1016 (unpublished 2022) a case that proved that there is merit in Kovacevich’s argument. The court cannot award frivolous attorney’s fees when a case supports the issue Kovacevich set forth. Here we have a appeals commissioner ruling the case was appealable and a brief citing many cases. *Grandville Condominium Homeowners Ass’n v. Kuehner*, 177 Wn.App. 543, 558, 312 P.3d 702 (2013) also applies. “As a general rule, we will not find a case frivolous when it presents an issue of first impression.” *Id?*

F. The Court of Appeals Determination at Page 4 of

Its Decision That “He did not have a personal stake” Missed the Point. The Beneficiaries and Especially Trustee Spurgetis Knew There was a Right to a Claim for Refund of Attorney’s Fees Against the Trust.

The Court of Appeals concluded that the case was over. This makes no difference since the trust beneficiaries (CP 107,121-125) did not address the known claim. The Agreement by the Trustee and Beneficiaries agreed on distribution but acknowledged that Kovacevich had a right to claim his \$11,211.80 back. CP 13, 14; CP 23. The Agreement was approved without notice to Kovacevich. CP 15, 16.

Payment of claims against assets distributed to heirs must occur to make sure that net assets can be distributed. Here the revocable living trust was the instrument to pass the assets on death. Kovacevich does not seek a money judgment. He only seeks a mediation hearing.

The Appeals Court made the wrong assumption that the litigation was over and that it settled all the issues. The issue of payment of expenses before distribution has nothing to do with the litigation. It is a probate matter.

VI. CONCLUSION

The court of appeals failed to review the contrary ruling of its own commissioner. It made a sweeping conclusion that all the cases of other courts were frivolous even though *Weyand v. Newell*, 23 Wn.App.2d 1016 (unpublished 2022) was cited in Kovacevich's brief. This is a case requesting mediation. This petition should be granted and mediation ordered. No attorney's fees should be awarded.

This document contains 3,084 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 4th day of June, 2024.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the foregoing was filed in the Supreme Court of the state of Washington which caused to be served to the following attorney(s) or party/parties of record at their regular office/residence/Email address as listed:

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APPENDIX A

The Court of Appeals
of the
State of Washington
Division III

FILED
Feb 07, 2023
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

In the Matter of:)	No. 38979-1-III
)	
MADLINE M. THIEDE TRUST,)	
)	
GERALD VERHAAG, a beneficiary of)	
Madeline M. Thiede Trust,)	
)	COMMISSIONER'S RULING
Plaintiff,)	
v.)	
)	
GORDON FINCH, a beneficiary and)	
Trustee of Madeline M. Thiede Trust,)	
)	
Respondent.)	

This matter was set on the commissioner's docket after the court determined Robert Kovacevich's notice of appeal should be treated as a notice for discretionary review pursuant to RAP 5.2(c). However, as set forth below, this court has determined that under the unique procedural posture of this matter, it appears this matter is actually appealable as a matter of right.

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Background

On June 10, 2022, non-party Robert Kovacevich filed a notice of appeal seeking review of seven orders of the Spokane County superior court:

- May 31, 2022 Letter Ruling re: Request for Attorney's fees/Motion for Reconsideration
- May 20, 2022 Order Denying Robert Kovacevich's Motion to Reconsider
- May 20, 2022 Order Determining Attorney Fees Payable Under Order Granting Motion to Quash Robert Kovacevich's Notice of Mediation
- May 20, 2022 Order Denying Motion to Sever Joinder
- June 7, 2022 Declaration of Gerald Verhaag's Counsel re: Attorney Fees and Costs Vis a Vis Kovacevich's Motion for Reconsideration
- June 8, 2022 Application for Order Determining Attorney Fees Payable Under Court's May 31, 2022 Ruling
- June 8, 2022 Proposed Order Determining Attorney Fees Payable Under Court's May 31, 2022 Ruling-Gordon Finch¹

This court screened the matter as a notice of discretionary review, and set the matter on the commissioner's docket on the motion for discretionary review. Following multiple extensions of time to obtain the record, Mr. Kovacevich filed a document title "Opening Brief of Appellants." In his brief, Mr. Kovacevich does not address the standards for discretionary review but instead argues that this appeal presents several legal issues of first impression and that the court committed error on multiple grounds.

¹ It appears that the last three "orders" designated by Mr. Kovacevich are not actually orders entered by the superior court but instead pleadings by the parties in the underlying matter that relate to the designated orders, including an unsigned proposed order.

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Mr. Finch's response points out that Mr. Kovacevich failed to satisfy his burden to demonstrate he is entitled to discretionary review. He further argues that Mr. Kovacevich lacked standing to issue the notice of mediation, the notice was procedurally and legally deficient, and that the award of attorney fees sanctions were appropriate. Mr. Finch also requested his attorney fees pursuant to RAP 18.1 and CR 11 for having to respond to Mr. Kovacevich's motion, which he characterizes as baseless and frivolous, and a bad faith attempt to further delay final resolution of this matter. In reply, Mr. Kovacevich argued in part that discretionary review is granted to non-party appellants seeking review of CR 11 sanctions under RAP 3.1 and a long line of Washington cases, including *In re Guardianship of Lasky*, 54 Wn. App. 841, 776 P.2d 695 (1989).

At oral argument in this matter, the commissioner asked the parties if the orders at issue were actually interlocutory orders or if these orders were appealable pursuant to RAP 2.2(a)(13) or any other provision of RAP 2.2(a) where it appears the parties to this TEDRA matter previously settled all claims. Mr. Kovacevich maintained these orders were appealable as a matter of right, and again referenced RAP 3.1. Mr. Finch's counsel did not weigh in on appealability under RAP 2.2(a), but did indicate that the orders were not interlocutory because there is really nothing left to do in this matter other than potentially obtain judgments for the sanctions.

Analysis

Although interlocutory review is disfavored, it is available in those rare instances where the alleged error is reasonably certain and its impact on the trial is manifest. *Mayberry v.*

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City of Seattle, 53 Wn.2d 716, 721, 336 P.2d 878 (1959). RAP 2.3(b) sets forth four situations in which this Court may take discretionary review. The purpose of interlocutory review is to allow this court to intervene and take pretrial review.

Here, it appears the orders at issue are not actually interlocutory. This was a TEDRA² action, filed by Gerald Verhaag against Gordon Finch, a beneficiary and Trustee of the Madeline M. Thiede Trust, based on several payments of trust funds Mr. Finch made to himself and his then-attorney, Mr. Kovacevich. Mr. Finch subsequently retained new counsel and returned all funds he had paid to himself. He then entered into a TEDRA agreement with the other trust beneficiaries under which he assumed their expenses and losses incurred in connection with the improper payments and took an assignment of their claims against Mr. Kovacevich. In accordance with the terms of the Trust, the beneficiaries agreed to a voluntary distribution of the Trust assets under Washington law. The Agreement provided that it would settle all claims pending in the instant TEDRA action, and was approved by the superior court on June 13, 2019.

The court subsequently entered several orders and judgments pertaining to contempt proceedings against Mr. Kovacevich. Mr. Kovacevich appealed several orders and judgments, this court affirmed the superior court, and the mandate issued on December 30, 2021. Nearly a month later, Mr. Kovacevich filed a notice of mediation and Mr. Finch³ filed a motion to quash. The motion to quash argued in part that Mr. Kovacevich lacked standing, the original TEDRA matter was resolved and ended, and the issues raised in the TEDRA mediation notice were

² Trust and Estate Dispute Resolution Act, chapter 11.96A, RCW.

³ Mr. Finch was joined by the new Trustee, James Spurgetis, and Mr. Verhaag.

No. 38979-1-III

barred by res judicata. The motion also argued the notice of mediation was frivolous and advanced without reasonable cause under CR 11 and RCW 4.84.185.

In March 2022, the superior court granted the motion to quash and imposed sanctions against Mr. Kovacevich and his attorney, Aaron Lowe. Mr. Kovacevich moved for reconsideration. On May 20, 2022, the superior court denied the reconsideration motion and imposed additional sanctions against Mr. Kovacevich and Mr. Lowe. Mr. Kovacevich subsequently filed the notice of appeal at issue.⁴

RAP 2.2(a)(13) provides that "[a]ny final order made after judgment that affects a substantial right," is appealable as a matter of right. The RAPs do not define what constitutes a judgment for purposes of RAP 2.2(a)(13) but our courts have recognized that a final judgment is an order or decision that resolves the parties' legal claims. *Denny v. City of Richland*, 195 Wn.2d 649, 654, 462 P.3d 842 (2020). As noted above, the parties to this action entered into a TEDRA agreement which purportedly resolved all claims between the parties and the court entered an order approving the settlement agreement in June 2019. Where the order resolved all issues between the parties and effectively discontinued the action, it appears the order was a judgment for purposes of RAP 2.2(a)(13).

Moreover, it appears the court's order denying reconsideration and orders imposing attorneys fees as sanctions on reconsideration affect a substantial right as they all concern the

⁴ The superior court docket indicates that after Mr. Kovacevich filed his notice of appeal, the superior court filed multiple orders on June 22, 2022, including an order granting request for fees, order determining attorney fees payable, and a letter ruling regarding fee requests. It also appears that multiple satisfaction of judgments were entered in October 2022 and that no other actions have occurred in the superior court, other than the designation of the clerk's papers.

No. 38979-1-III

imposition of sanctions on Mr. Kovacevich. The order denying reconsideration and imposing sanctions appears to be a final order - as the parties noted at the hearing in this matter, at this point there is nothing left to do in the superior court matter, other than possibly obtain judgments. Accordingly, the order denying reconsideration of the order granting the motion to quash and imposing CR 11 sanctions and order imposing CR 11 sanctions for filing the motion for reconsideration appear to be final orders made after judgment that affects a substantial right under RAP 2.2(a)(13). See e.g., Ende, D., WASHINGTON PRACTICE Vol. 15 Civil Procedure § 51:14 (3d ed.) (noting that a postjudgment order imposing CR sanctions would be appealable under RAP 2.2(a)(13) as a final order after judgment).⁵

It appears that the court's Order denying the motion to reconsider is appealable pursuant to RAP 2.2(a), and that the other orders entered contemporaneously with the order denying reconsideration may also be reviewed.⁶ Accordingly, IT IS ORDERED, this matter may move forward as appealable. Mr. Finch's motion for attorney fees is denied as premature - he may renew his fee request in his response brief.⁷ The Clerk shall issue a perfection letter in this

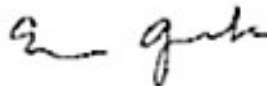
⁵ Additionally, where Mr. Kovacevich is a non-party, the court's order denying reconsideration discontinued his efforts to seek mediation, and there is apparently nothing left to do in the superior court matter, the court's order denying reconsideration may also arguably be appealable pursuant to RAP 2.2(a)(3).

⁶ As noted above, it appears that the last three "orders" designated by Mr. Kovacevich that were entered on June 7 and 8 are not actually orders entered by the superior court but instead pleadings by the parties that relate to the designated orders.

⁷ To the extent Mr. Finch requests fees pursuant to CR 11, this court notes that although sanctions are available in this court pursuant to RAP 18.9, this court does not impose CR 11 sanctions. See e.g., *Bldg. Indus. Ass'n of Washington v. McCarthy*, 152 Wash. App. 720, 750, 218 P.3d 196, 210-11 (2009); *State v. A.W.*, 181 Wn. App. 4004, 413, 326 P.3d 737 (2014).

No. 38979-1-III

matter.⁸



Erin Geske
Commissioner

⁸ It appears Mr. Kovacevich may have already perfected the record in this matter and that he filed his opening brief in place of a motion for discretionary review. However, the Clerk's office shall confer with the parties as to whether the existing record needs to be supplemented.

APPENDIX B

FILED
MARCH 14, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of:)	No. 38979-1-III
MADELINE M. THIEDE TRUST)	
_____)	
GERALD VERHAAG, a beneficiary)	
of Madeline M. Thiede Trust,)	
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
GORDON FINCH, a beneficiary and)	
Trustee of Madeline M. Thiede Trust,)	
)	
Respondent)	
_____)	
ROBERT E. KOVACEVICH,)	
)	
Appellant.)	

PENNELL, J. — Robert Kovacevich appeals from superior court orders arising out of his notice of mediation under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, including an award of attorney fees to Gordon Finch and Gerald

No. 38979-1-III

In re Madeline M. Thiede Tr.

Verhaag. We affirm the superior court and grant the request of Mr. Finch and Mr. Verhaag for attorney fees and costs on appeal.

FACTS¹

After Gordon Finch was replaced as trustee of a trust created by his mother, he made several distributions of trust funds to himself and his then-attorney, Robert Kovacevich, based on advice received from Mr. Kovacevich. When the distributions were challenged through a civil contempt motion, Mr. Finch retained new counsel and returned all the funds he had paid to himself. Mr. Kovacevich did not return the funds he had received.

Mr. Finch later entered into a TEDRA agreement (the Agreement) with the other trust beneficiaries. Under the terms of the Agreement, the beneficiaries settled all disputes between themselves and agreed to a distribution of trust assets. Mr. Finch assumed all expenses and losses in connection with the improper distributions and took an assignment of claims against Mr. Kovacevich. The superior court approved the Agreement in an order dated June 13, 2019.

¹ Our statement of facts is taken from our decision in Mr. Kovacevich's prior consolidated appeal. See *In re Madeline M. Thiede Tr.*, No. 36940-4-III (Wash. Ct. App. May 25, 2021) (unpublished), https://www.courts.wa.gov/opinions/pdf/369404_unp.pdf. Additional details are set forth in that opinion.

Based on the Agreement's assignment of claims, Mr. Finch obtained judgments against Mr. Kovacevich for unsatisfied contempt awards and related attorney fees. Mr. Kovacevich unsuccessfully challenged the judgments in the superior court and on appeal. A mandate on the prior appeal was issued on December 29, 2021.

Despite losing on appeal, Mr. Kovacevich still failed to comply with the outstanding judgments. Instead, in January 2022, he filed a notice of mediation in the TEDRA case.

Mr. Finch filed a motion to quash the notice of mediation.² Among other things, he argued Mr. Kovacevich lacked standing. Mr. Finch also sought sanctions. The superior court agreed Mr. Kovacevich lacked standing to compel mediation and imposed sanctions against Mr. Kovacevich and his attorney, Aaron Lowe. Mr. Kovacevich filed a motion to reconsider, which was denied.

Mr. Kovacevich now appeals.³

² The new trustee, James Spurgetis, and Gerald Verhaag later joined in Mr. Finch's motion.

³ While Mr. Kovacevich in his appellate briefing identifies both himself and Aaron Lowe as appellants, there is no mention of Mr. Lowe in Mr. Kovacevich's notice of appeal, and the notice is signed only by Mr. Kovacevich. We deem Mr. Kovacevich as the only appellant on review. See RAP 5.2.

ANALYSIS

Standing

The primary issue in this case is whether Mr. Kovacevich has standing to bring a claim under TEDRA. “Standing is a threshold issue, which we review *de novo*.” *In re Est. of Becker*, 177 Wn.2d 242, 246, 298 P.3d 720 (2013) (citing *Knight v. City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011)).

TEDRA was enacted “to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters” through nonjudicial dispute resolution. RCW 11.96A.260. Under TEDRA, a “party” to a dispute arising in trust, estate, or nonprobate matters may require the parties to go to mediation prior to involving the court. RCW 11.96A.280.

Mr. Finch and Mr. Verhaag argue Mr. Kovacevich is not a party under TEDRA and thus lacks standing to compel mediation. We agree.

“The standing doctrine requires that [an individual] must have a personal stake in the outcome of the case in order to bring suit.” *Sabey v. Howard Johnson & Co.*, 101 Wn. App. 575, 584, 5 P.3d 730 (2000). At the time Mr. Kovacevich filed his notice of mediation, he did not have a personal stake in resolution of the Madeline M. Thiede Trust. The trust beneficiaries had already settled all internal disputes and the trust assets

No. 38979-1-III

In re Madeline M. Thiede Tr.

had been disbursed. Pursuant to the Agreement, all claims regarding Mr. Kovacevich were assigned to Mr. Finch and were no longer of concern to the trust. To the extent Mr. Kovacevich disagreed with the validity of the Agreement, his claims were rejected by our prior unpublished decision.

Mr. Kovacevich lacked any basis in fact or law to compel mediation under TEDRA. We therefore affirm the superior court's order quashing Mr. Kovacevich's notice of mediation based on lack of standing.

Sanctions

Mr. Kovacevich also appeals the superior court's award of attorney fees in favor of Mr. Finch, Mr. Verhaag and Mr. Spurgetis. "We review an award of fees and costs under [TEDRA] for abuse of discretion." *In re Survivor's Tr. of Blankenship*, 18 Wn. App. 2d 686, 704, 493 P.3d 751 (2021). "A court abuses its discretion if it exercises it in a manner that is manifestly unreasonable, on untenable grounds, or for untenable reasons." *Id.* (citing *In re Est. of Lowe*, 191 Wn. App. 216, 239, 361 P.3d 789 (2015)).

The superior court did not abuse its discretion in awarding attorney fees. The TEDRA statute allows for an award of attorney fees "to any party . . . from any party to the proceedings." RCW 11.96A.150(1). Although, as set forth above, Mr. Kovacevich

No. 38979-1-III
In re Madeline M. Tiede Tr.

was not a party to the proceedings, he frivolously represented himself as such when he sought to compel mediation. In so doing, he subjected himself to liability for attorney fees as if he were a party. *See K&W Children's Tr. v. Est. of Fay*, 20 Wn. App. 2d 862, 874, 503 P.3d 569 (2022) ("When a person not a party of record has been the 'moving party,' although [they] lack[] standing, [they] render[] [themselves] liable for the costs that [they have] caused to be incurred.").

Mr. Kovacevich complains the superior court failed to abide by the lodestar method in assessing fees. However, adherence to the lodestar method is not required in the TEDRA context. *See Survivor's Tr.*, 18 Wn. App. 2d at 705; *see also In re Guardianship of Decker*, 188 Wn. App. 429, 447, 553 P.3d 669 (2015) ("[I]f the primary considerations for the fee award are equitable, courts are not required to apply the lodestar method to determine an award of fees."). RCW 11.96A.150 affords discretion to award attorney fees based on equitable considerations.

Mr. Kovacevich contends the superior court failed to enter written findings of fact to support its fee award. But the court's letter ruling dated May 31, 2022, clearly identifies its legal and equitable basis for granting fees. The court reasonably found Mr. Kovacevich's motion for reconsideration to be baseless and frivolous.

The award of fees is affirmed.

APPELLATE ATTORNEY FEES

The parties have both submitted requests for appellate attorney fees. Under RAP 18.1(a), this court may award attorney fees and costs on appeal "[i]f applicable law" allows. RCW 11.96A.150 allows superior courts and appellate courts to order a party to a TEDRA action to pay another party's reasonable attorney 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."


We agree with Gordon Finch and Gerald Verhaag that this is an appropriate case for an award of fees. Mr. Kovacevich had no standing to file a notice under TEDRA compelling mediation. His arguments on appeal are based on frivolous theories that have been previously rejected by this court and others. Fees and costs against Mr. Kovacevich and in favor of the Mr. Finch and Mr. Verhaag are appropriate.

CONCLUSION

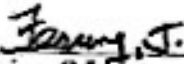
The orders on appeal are affirmed. We award reasonable attorney fees and costs on appeal to Gordon Finch and Gerald Verhaag subject to their timely compliance with RAP 18.1(d).

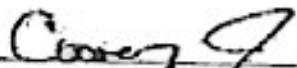
No. 38979-1-III
In re Madeline M. Thiede Tr.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Pennell, J.

WE CONCUR:


Fearing, C.J.


Cooney, J.

APPENDIX C

FILED
MAY 9, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of:

MADELINE M. THIEDE TRUST

GERALD VERHAAG, a beneficiary
of Madeline M. Thiede Trust,

Respondent,

v.

GORDON FINCH, a beneficiary and
Trustee of Madeline M. Thiede Trust,

Respondent.

ROBERT E. KOVACEVICH,

Appellant.

No. 38979-1-III

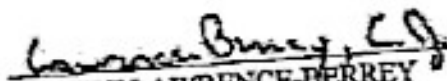
ORDER DENYING MOTION
FOR RECONSIDERATION

THE COURT has considered appellant Robert Kovacevich's motion for
reconsideration of this court's March 14, 2024, opinion; and the record and file herein.

IT IS ORDERED that the appellant's motion for reconsideration is denied.

PANEL: Judges Pennell, Fearing, and Cooney

FOR THE COURT:


ROBERT LAWRENCE-BERREY
Chief Judge

APPENDIX D

11.18.200. Liability of beneficiary of nonprobate asset--Abatement, WA ST 11.18.200

West's Revised Code of Washington Annotated

Title 11. Probate and Trust Law (Refs & Notes)

Chapter 11.18. Liability of Beneficiary of Nonprobate Asset

West's RCWA 11.18.200

11.18.200. Liability of beneficiary of nonprobate asset--Abatement

Effective: June 12, 2014

Currentness

(1) Unless expressly exempted by statute, a beneficiary of a nonprobate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities, claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset. The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities, claims, the asset's fair share of expenses of administration, and the asset's share of any applicable estate taxes under chapter 83.110A RCW. Before making demand that a beneficiary of a nonprobate asset account to the personal representative, the personal representative must give notice to the beneficiary, in the manner provided in chapter 11.96A RCW, that the beneficiary is liable to account under this section.

(2) The following rules govern in applying subsection (1) of this section:

(a) A beneficiary of property passing at death under a community property agreement takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section. However, assets existing as community or separate property immediately before the decedent's death under the community property agreement are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(b) A beneficiary of property held in joint tenancy form with right of survivorship, including without limitation United States savings bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(c) A beneficiary of payable-on-death or trust bank accounts, bonds, securities, or similar obligations, including without limitation United States bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(d) A beneficiary of a transfer on death deed or of deeds or conveyances made by the decedent if possession has been postponed until the death of the decedent takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

11.18.200. Liability of beneficiary of nonprobate asset—Abatement, WA SR 11.18.200

(e) A trust for the decedent's use of which the decedent is the grantor is subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the same extent as the trust was subject to claims of the decedent's creditors immediately before death under RCW 19.36.020.

(f) A trust not for the use of the grantor but of which the decedent is the grantor and that becomes effective or irrevocable only upon the decedent's death is subject to the decedent's claims, liabilities, estate taxes, and expenses of administration as described in subsection (1) of this section.

(g) Anything in this section to the contrary notwithstanding, nonprobate assets that existed as community property immediately before the decedent's death are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(h) The liability of a beneficiary of life insurance is governed by chapter 48.18 RCW.

(i) The liability of a beneficiary of pension or retirement employee benefits is governed by chapter 6.15 RCW.

(j) An inference may not be drawn from (a) through (i) of this subsection that a beneficiary of nonprobate assets other than those assets specifically described in (a) through (i) of this subsection does or does not take the assets subject to claims, liabilities, estate taxes, and administration expenses as described in subsection (1) of this section.

(3) Nothing in this section derogates from the rights of a person interested in the estate to recover any applicable estate tax under chapter 83.110A RCW or from the liability of any beneficiary for estate tax under chapter 83.110A RCW.

(4) Nonprobate assets that may be responsible for the satisfaction of the decedent's general liabilities and claims abate together with the probate assets of the estate in accord with chapter 11.10 RCW.

Credits

[2014 c 58 § 21, eff. June 12, 2014; 1999 c 42 § 605; 1997 c 252 § 3; 1994 c 221 § 19.]

OFFICIAL NOTES

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Effective date—1999 c 42: See RCW 11.96A.902.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.100.035.

Notes of Decisions (3)

West's Revised Code of Washington Annotated

Title 11. Probate and Trust Law (RCW & ASRs)

Chapter 11.42. Settlement of Creditor Claims for Estates Passing Without Probate (RCW & ASRs)

West's RCWA 11.42.010

11.42.010. Notice agent—Qualifications

Currentness

(1) Subject to the conditions stated in this chapter, and if no personal representative has been appointed in this state, a beneficiary or trustee who has received or is entitled to receive by reason of the decedent's death substantially all of the decedent's probate and nonprobate assets, is qualified to give nonprobate notice to creditors under this chapter.

If no one beneficiary or trustee has received or is entitled to receive substantially all of the assets, then those persons, who in the aggregate have received or are entitled to receive substantially all of the assets, may, under an agreement under RCW 11.96A.220, appoint a person who is then qualified to give nonprobate notice to creditors under this chapter.

(2) A person or group of persons is deemed to have received substantially all of the decedent's probate and nonprobate assets if the person or the group, at the time of the filing of the declaration and oath referred to in subsection (3) of this section, in reasonable good faith believed that the person or the group had received, or was entitled to receive by reason of the decedent's death, substantially all of the decedent's probate and nonprobate assets.

(3)(a) The "notice agent" means the qualified person who:

(i) Pays a filing fee to the clerk of the superior court in a county in which probate may be commenced regarding the decedent, the "notice county", and receives a cause number; and

(ii) Files a declaration and oath with the clerk.

(b) The declaration and oath must be made in affidavit form or under penalty of perjury and must state that the person making the declaration believes in reasonable good faith that the person is qualified under this chapter to act as the notice agent and that the person will faithfully execute the duties of the notice agent as provided in this chapter.

(4) The following persons are not qualified to act as notice agent:

(a) Corporations, trust companies, and national banks, except: (i) Such entities as are authorized to do trust business in this state; and (ii) professional service corporations that are regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys;

(b) Minors;

11.42.010. Notice agent—Qualifications, WA ST 11.42.010

(c) Persons of unsound mind;

(d) Persons who have been convicted of a felony or of a misdemeanor involving moral turpitude; and

(e) Persons who have given notice under this chapter and who thereafter become of unsound mind or are convicted of a felony or misdemeanor involving moral turpitude. This disqualification does not bar another person, otherwise qualified, from acting as successor notice agent.

(5) A nonresident may act as notice agent if the nonresident appoints an agent who is a resident of the notice county or who is attorney of record for the notice agent upon whom service of all papers may be made. The appointment must be made in writing and filed with the court.

Credits

[1999 c 42 § 609; 1997 c 252 § 24; 1994 c 221 § 31.]

OFFICIAL NOTES

Effective date—1999 c 42: See RCW 11.96A.902.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.100.035.

West's RCWA 11.42.010, WA ST 11.42.010

Current with effective legislation from the 2024 Regular Session of the Washington Legislature. Some statute sections may be more current, see credits for details.

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West's Revised Code of Washington Annotated
Title 11. Probate and Trust Law (Refs & Annots)
Chapter 11.96A. Trust and Estate Dispute Resolution (Refs & Annots)

West's RCWA 11.96A.010

11.96A.010. Purpose

Currentness

The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The [This] chapter also provides for judicial resolution of disputes if other methods are unsuccessful.

Credits

[1999 c 42 § 102.]

Notes of Decisions (8)

West's RCWA 11.96A.010, WA ST 11.96A.010

Current with effective legislation from the 2024 Regular Session of the Washington Legislature. Some statute sections may be more current, see credits for details.

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West's Revised Code of Washington Annotated
 Title 11: Probate and Trust Law (Refs & Annos)
 Chapter 11.96A: Trust and Estate Dispute Resolution (Refs & Annos)

West's RCWA 11.96A.030

11.96A.030. Definitions

Effective: July 25, 2021

Currentness

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; (v) the determination of fees for a personal representative or trustee; or (vi) the powers and duties of a statutory trust director or directed trustee of a directed trust under chapter 11.98B RCW;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code,¹ the qualification of any gift thereunder as a

qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust;

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation;

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset;

(h) With respect to any custodianship under a uniform transfers to minors act, the determination of any issues subject to court determination under chapter 11.114 RCW; and

(i) The reformation of a will or trust to correct a mistake under RCW 11.96A.125.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means any person who has a legal or equitable interest in, or who holds a power or a claim with respect to, the subject of a matter. Each of the terms "party" or "parties" must be construed liberally in its context to fulfill the purposes of the procedural rules contained in this chapter as supplemented by the court rules and to promote justice, without creating

new substantive rights that do not otherwise exist under the laws of this state or principles of equity, and may include without limitation the following:

(a) With respect to any property held subject to a revocable trust:

(i) Each trustee of the property subject to the trust; and

(ii) Each trustee who transferred the property;

(b) With respect to any property held subject to an irrevocable trust:

(i) Each trustee of the trust holding the property;

(ii) Each qualified beneficiary, as defined in RCW 11.98.002, of the property subject to the trust and any other beneficiary whose interest is protected under the constitutional principles of due process; and

(iii) Each holder of a power relating to the property;

(c) With respect to any testate property:

(i) Each personal representative appointed to execute the will governing that property;

(ii) Each devisee or legatee of that testate property;

(iii) Each holder of a power relating to the testate property following the testator's death; and

(iv) Each creditor whose claim has been established by allowance or judgment;

(d) With respect to any intestate property:

(i) Each personal representative appointed to administer that property;

(ii) Each heir of the decedent who owned that property;

(iii) Each holder of a power relating to the intestate property following the owner's death; and

(iv) Each creditor whose claim has been established by allowance or judgment;

(c) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) Each custodian of the property;

(ii) Each transferee and beneficiary of the property; and

(iii) Each qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW;

(f) With respect to any custodial property subject to a uniform transfers to minors act:

(i) Each custodian of the custodial property;

(ii) The minor, as defined in RCW 11.114.010, for whose benefit the custodian holds the custodial property; and

(iii) Each other person who holds a power under chapter 11.114 RCW to act on behalf of the minor;

(g) With respect to any community property, each spouse;

(h) With respect to a matter relating to the powers and duties of a trust director or a directed trustee, or both:

(i) Each trust director with an interest in the matter;

(ii) Each directed trustee;

(iii) Each beneficiary, holder of a power, or other person whose interest or power is affected by the matter and is protected under the constitutional principles of due process;

(i) Each creditor whose claim has been allowed but has not been paid;

(j) The attorney general to the extent that the attorney general is a necessary and proper party under RCW 11.110.120 and corresponding common law;

(k) Each person who claims a legal right, title, or interest in property being subjected to probate or trust administration, nonprobate assets, other property passing at death, or custodial property, including without limitation the resolution of rights and duties under RCW 11.18.200 and questions relating to legal ownership or statement; and

(l) When necessary, a party's representative or representatives, which may include without limitation guardians; custodians; guardians ad litem; special representatives; virtual representatives; attorneys in fact; fiduciaries; and notice agents, resident agents, and qualified persons, as those terms are defined in chapter 11.42 RCW.

(6) "Persons interested in the estate, trust, nonprobate asset, other property passing at death, or custodial property" means all persons legally or beneficially interested in the estate, trust, nonprobate asset, other property passing at death, or custodial property; all persons holding powers with respect to the trust, estate, nonprobate asset, other property passing at death, or custodial property; the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust; all fiduciaries of the estate, trust, nonprobate asset, or other property passing at death; and all custodians of custodial property.

(7) "Trustee" means any acting and qualified trustee of the trust.

(8) "Virtual representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120 or other applicable law.

Credits

[2021 c 140 § 4018, eff. July 25, 2021; 2015 c 115 § 1, eff. July 24, 2015. Prior: 2011 c 327 § 5, eff. Jan. 1, 2012; 2009 c 523 § 20, eff. July 26, 2009; 2008 c 6 § 927, eff. June 12, 2008; 2006 c 360 § 10, eff. June 7, 2006; 2002 c 66 § 2; 1999 c 42 § 104.]

OFFICIAL NOTES

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

Notes of Decisions (7)

Footnotes

1 26 U.S.C.A. § 2056A.

West's RCWA 11.96A.030, WA ST 11.96A.030

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11.96A.070. Statutes of limitation, WA ST 11.96A.070

West's Revised Code of Washington Annotated
Title 11. Probate and Trust Law (Refs & Annos)
Chapter 11.96A Trust and Estate Dispute Resolution (Refs & Annos)

West's RCWA 11.96A.070**11.96A.070. Statutes of limitation**

Effective: July 28, 2013

Currentness

(1)(a) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date a report was delivered in the manner provided in RCW 11.96A.110 to the beneficiary or to a representative of the beneficiary if the report adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or should have known of the potential claim. A report that includes all of the items described in this subsection [(1)](b) that are relevant for the reporting period is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust for such period:

- (i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;
- (ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;
- (iii) The trustee's compensation for the period;
- (iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;
- (v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;
- (vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;
- (vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and
- (viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the trustee delivers the report in the manner provided in RCW 11.96A.110.

11.96A.070. Statutes of limitation, VIA ST 11.96A.070

(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

- (i) The removal, resignation, or death of the trustee;
- (ii) The termination of the beneficiary's interest in the trust; or
- (iii) The termination of the trust.

(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long-standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to:

- (a) Encourage and facilitate the participation of qualified individuals as special representatives;
 - (b) Serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and
 - (c) Promote complete and final resolution of proceedings involving trusts and estates.
- (i) Actions against a special representative must be brought before the earlier of:
 - (A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or
 - (B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by

11.96A.070. Statutes of limitation, WA ST 11.96A.070

reason of the special representative's duties or actions as special representative, the special representative must be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

Credits

[2013 c 272 § 4, eff. July 28, 2013; 2011 c 327 § 7, eff. Jan. 1, 2012; 1999 c 42 § 204.]

OFFICIAL NOTES

***Reviser's note:** Chapter 30.22 RCW was recodified as chapter 30A.22 RCW pursuant to 2014 c 37 § 4, effective January 5, 2015.

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Notes of Decisions (17)

West's RCWA 11.96A.070, WA ST 11.96A.070

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(e) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) Each custodian of the property;

(ii) Each transferee and beneficiary of the property; and

(iii) Each qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW;

(f) With respect to any custodial property subject to a uniform transfers to minors act:

(i) Each custodian of the custodial property;

(ii) The minor, as defined in RCW 11.114.010, for whose benefit the custodian holds the custodial property; and

(iii) Each other person who holds a power under chapter 11.114 RCW to act on behalf of the minor;

(g) With respect to any community property, each spouse;

(h) With respect to a matter relating to the powers and duties of a trust director or a directed trustee, or both:

(i) Each trust director with an interest in the matter;

(ii) Each directed trustee;

(iii) Each beneficiary, holder of a power, or other person whose interest or power is affected by the matter and is protected under the constitutional principles of due process;

(i) Each creditor whose claim has been allowed but has not been paid;

(j) The attorney general to the extent that the attorney general is a necessary and proper party under RCW 11.110.120 and corresponding common law;

(k) Each person who claims a legal right, title, or interest in property being subjected to probate or trust administration, nonprobate assets, other property passing at death, or custodial property, including without limitation the resolution of rights and duties under RCW 11.18.200 and questions relating to legal ownership or abatement; and

11.96A.300. Mediation procedure, WA ST 11.96A.300

West's Revised Code of Washington Annotated
Title 11. Probate and Trust Law (Refs & Anns)
Chapter 11.96A. Trust and Estate Dispute Resolution (Refs & Anns)

West's RCWA 11.96A.300**11.96A.300. Mediation procedure****Currentness**

(1) *Notice of mediation.* A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties' virtual representatives as follows:

(a) *If no hearing has been set.* If no hearing on the matter has been set, by serving notice in substantially the following form before any petition setting a hearing on the matter is filed with the court:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, RCW 11.96A.300(4) requires you to furnish to all other parties or their virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable mediators is as follows:)

DATED: _____

(Party or party's legal representative)

(b) *If a hearing has been set.* If a hearing on the matter has been set, by filing and serving notice in substantially the following form at least three days prior to the hearing that has been set on the matter:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless the court determines at the hearing set for ... o'clock on, (identify place of already set hearing), that mediation shall not apply pursuant to RCW 11.96A.300(3). If the court determines that mediation shall not apply, the court may decide the matter at the hearing, require arbitration, or direct other judicial proceedings.

(Optional: Our list of acceptable mediators is as follows:)

DATED: _____

(Party or party's legal representative)

(2) Procedure when notice of mediation served before a hearing is set. The following provisions apply when notice of mediation is served before a hearing on the matter is set:

(a) The written notice required in subsection (1)(a) of this section may be served at any time without leave of the court.

(b) Any party may object to a notice of mediation under subsection (1)(a) of this section by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The party objecting to notice of mediation under subsection (1)(a) of this section must file and serve the petition objecting to mediation no later than twenty days after receipt of the written notice of mediation. The petition may include a request for determination of matters subject to judicial resolution under RCW 11.96A.080 through 11.96A.200, and may also request that the matters in issue be decided at the hearing.

(c) The hearing on the petition objecting to mediation must be heard no later than twenty days after the filing of that petition.

(d) The party objecting to mediation must give notice of the hearing to all other parties at least ten days before the hearing and must include a copy of the petition.

At the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (i) Deciding the matter at that hearing, but only if the petition objecting to mediation contains a request for that relief, (ii) requiring arbitration, or (iii) directing other judicial proceedings.

(3) Procedure when notice of mediation served after hearing set. If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(4) Selection of mediator; mediator qualifications.

11.96A.300. Mediation procedure, WA ST 11.96A.300

(a) If a petition objecting to mediation is not filed as provided in subsection (3) of this section, or if a court determines that mediation shall apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of qualified and acceptable mediators. If the parties cannot agree on a mediator within ten days after the list is required to be furnished, a party may petition the court to appoint a mediator. All parties may submit a list of qualified and acceptable mediators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified mediator from lists of acceptable mediators provided by the parties.

(b) A qualified mediator must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estate and trust matters, (ii) an individual, who may be an attorney, with special skill or training in the administration of trusts and estates, or (iii) an individual, who may be an attorney, with special skill or training as a mediator. The mediator may not have an interest in an affected estate, trust, or nonprobate asset, and may not be related to a party.

(5) Date for mediation. Upon designation of a mediator by the parties or court appointment of a mediator, the mediator and the parties or the parties' virtual representatives shall establish a date for the mediation. If a date cannot be agreed upon within ten days of the designation or appointment of the mediator, a party may petition the court to set a date for the mediation session.

(6) Duration of mediation. The mediation must last at least three hours unless the matter is earlier resolved.

(7) Mediation agreement. A resolution of the matter that is the subject of the mediation must be evidenced by a nonjudicial dispute resolution agreement under RCW 11.96A.220.

(8) Costs of mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties. The details of those costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter. Each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the mediation proceeding: (a) Except as may occur otherwise as provided in RCW 11.96A.320, or (b) unless the matter is not resolved by mediation and the arbitrator or court finally resolving the matter directs otherwise.

Credits

[2001 c 14 § 4; 1999 c 42 § 505.]

Notes of Decisions (1)

West's RCWA 11.96A.300, WA ST 11.96A.300

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Article IV Section 6

Constitution of the State of Washington

shall be so distributed and assigned by law or in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session. The first superior judges elected under this Constitution shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and thereafter the term of office of all superior judges in this state shall be for four years from the second Monday in January next succeeding their election and until their successors are elected and qualified. The first election of judges of the superior court shall be at the election held for the adoption of this Constitution. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Supreme court may authorize superior court judge to perform judicial duties in any superior court. Art. 4 Section 2(a).

SECTION 6 JURISDICTION OF SUPERIOR COURTS. Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [AMENDMENT 87, 1993 House Joint Resolution No. 4201, p 3063. Approved November 2, 1993.]

Amendment 65, part (1977) — Art. 4 Section 6 Jurisdiction of Superior Courts — The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal

fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [AMENDMENT 65, part, 1977 Senate Joint Resolution No. 113, p 1714. Approved November 2, 1977.]

Amendment 65 also amended Art. 4 Section 10.

Amendment 28, part (1952) — Art. 4 Section 6 JURISDICTION OF SUPERIOR COURTS — The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to one thousand dollars, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [AMENDMENT 28, part, 1951 Subordinate House Joint Resolution No. 13, p 962. Approved November 4, 1952.]

Note: Amendment 28 also amended Art. 4 Section 10.

ORIGINAL TEXT — ART. 4 Section 6 JURISDICTION OF SUPERIOR COURTS — The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, or the value of the property in controversy amounts to one thousand dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization, and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and non-judicial days.

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