Supreme Court No. 103,485-7
Court of Appeals No. 57860-3-II

SUPREME COURT
OF THE STATE OF WASHINGTON

ELIZABETH PARMAN,

Petitioner,

vs.

ESTATE OF RUTH PARMAN and SHAWN PARMAN,

Respondents.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

A. INTRODUCTION 1

B. IDENTITY OF RESPONDENT 3

C. COURT OF APPEALS DECISION 3

D. COUNTERSTATEMENT OF ISSUES 4

1. Does the Decision's affirmance of an order sealing a copy of Robert Parman's will present a significant question of law under Washington's Constitution? 4

2. Does the Decision conflict with *Greaves v. Medical Imaging Systems, Inc.* and *Klinke v. Famous Recipe Fried Chicken, Inc.*? 4

3. Does the "discoverability" of a copy of a Robert Parman involve an issue of substantial public interest requiring determination by this Court? 5

4. Did the Decision make credibility findings such that it conflicted with a published Court of Appeals opinion or did the Decision involve an issue of substantial public interest? 5

5. Should this Court award Shawn attorney fees for answering the Petition? 5

E. COUNTERSTATEMENT OF THE CASE 6

F. THIS COURT SHOULD DENY REVIEW 14

1. Legal Standard for Accepting Review. 14

2. Sealing the Robert Parman will-copy does not involve a significant question of law under the Washington Constitution. 15

3. The Decision does not conflict with *Greaves v. Medical Imaging Systems, Inc.* and/or *Klinke v. Famous Recipe Fried Chicken, Inc.* 18

4. The "discoverability" of a Robert Parman will-copy does not involve an issue of substantial public interest. 20

5. The Decision did not make credibility determinations..... 22

G. THIS COURT SHOULD AWARD ATTORNEY FEES FOR ANSWERING THE PETITION..... 24

H. CONCLUSION..... 27

TABLE OF AUTHORITIES

CASES

Bale v. Allison, 173 Wn. App. 435, 294 P.3d 789 (2013)..... 18

Bartlett v. Est. of Parman, No. 85373-2-I, 2024 WL 16944991 (Wn. App. Feb. 12, 2024) (unpublished) 11

Boyles v. Dep't of Retirement Sys., 105 Wn.2d 499, 716 P.2d 869 (1986)..... 25

Cook v. Cook, 80 Wn.2d 642, 497 P.2d 584 (1972) 19

Greaves v. Medical Imaging Systems, Inc., 124 Wn.2d 389, 879 P.2d 276 (1994) 2, 4

In re Cross, 198 Wn.2d 806, 500 P.3d 958 (2021) 17

Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wn.2d 255, 616 P.2d 644 (1980) 2, 4, 19

Millers Cas. Ins. Co. v. Biggs, 100 Wn.2d 9, 665 P.2d 887 (1983) 25

Parman v. Estate of Parman, 57860-3-II, 2024 WL 1734727 (Wn. App. Apr. 24, 2024) (unpublished) 3, 23, 26

Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982) 1, 16

State v. Watson, 155 Wn.2d 574, 122 P.3d 903 (2005) 20

Streater v. White, 26 Wn. App. 430, 435, 613 P.2d 187 (1980) .. 25

Thompson v. Henderson, 22 Wn. App. 373, 591 P.2d 784 (1979) 19

Wade v. Rypien, No. 39172-8-III, 2024 WL 488409 (Wn. App. Feb. 8, 2024) (unpublished) 26

Whiting v. Armstrong, 23 Wn.2d 290, 160 P.2d 1014 (1945) . 19

STATUTES

RCW 11.12.020 20

RCW 11.96A.150 ..... 24, 25

RCW 4.16.080 14

RCW 64.04.020 20

RCW 64.04.101 20

RULES

GR 14.1 ..... 21, 27

RAP 12.3(d) 21

RAP 13.4(b) ..... passim

RAP 13.4(b)(2) 22, 23

RAP 13.4(b)(4) 22, 24

RAP 18.1 ..... 25, 27

RAP 18.1(j) 24

RAP 18.9 ..... 24, 25, 27

RPC 1.6 (cmt 2) 16

RPC 1.6 (cmt. 20) 17

OTHER AUTHORITIES

Black's Law Dictionary (12th ed. 2024)..... 23

WSBA Informal Opinion no. 2041 (2003) 17

A. INTRODUCTION

This Court should deny Elizabeth Bartlett's ("Elizabeth[1]") Petition for Discretionary Review because it does not meet any of the grounds for review under RAP 13.4(b).

First, she complains the Court of Appeals decision (the "Decision") incorrectly applied the *Seattle Times v. Ishikawa* factors[2] to seal a will-copy she filed in court. But she does not argue that the *Ishikawa* framework is unconstitutional. She only argues that the Court of Appeals got it wrong under that framework. That is not a constitutional question. And she is wrong. The Court of Appeals properly applied *Ishikawa*.

Second, the Decision does not conflict with *Greaves v. Medical Imaging Systems, Inc.*, 124 Wn.2d 389, 879 P.2d 276

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[1] First names are used for clarity. No disrespect is intended.

[2] *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982).

(1994) or *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 616 P.2d 644 (1980). Elizabeth's claim for promissory estoppel failed because she lacked admissible evidence of a promise. At most, she had evidence that Ruth Parman once expressed an intent to bequeath real property. CP 488-89. Under well-settled Washington law, intent to devise is not a promise. The Decision therefore does not conflict with *Greaves* or *Klinke*.

Third, Elizabeth's motion in the trial court to compel production of a will-copy (which she already possessed) does not present an issue that involves substantial public interest. The Decision is unpublished and does not affect anyone other than the parties at bar.

Fourth, Elizabeth argues the Decision incorrectly sided against her attorney Dan Young's version of events surrounding how he obtained a copy of a Robert Parman will. This is incorrect. The Decision did not make any credibility findings. Nor does this affect anyone's interest other than her attorney's.

Finally, this Court should award Shawn attorney fees and costs for answering the Petition. Ruth's estate should not bear the cost of answering the Petition, which focuses on repairing the memory of her attorney's questionable methods than adherence to RAP 13.4(b). Elizabeth should pay for that rather than the Parman estate.

B. IDENTITY OF RESPONDENT

The respondent is Shawn Parman ("Shawn") in his capacity as the personal representative for his mother Ruth Parman's ("Ruth") estate.

C. COURT OF APPEALS DECISION

Shawn requests this Court deny the Petition to review the Court of Appeals' decision which affirmed the Thurston County Superior Court's dismissal of all but one of Elizabeth's causes of action. *Parman v. Estate of Parman*, 57860-3-II, 2024 WL 1734727 (Wn. App. Apr. 24, 2024) (unpublished).

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D. COUNTERSTATEMENT OF ISSUES

Under RAP 13.4(b), the Petition presents the following issues:

1. Does the Decision's affirmance of an order sealing a copy of Robert Parman's will present a significant question of law under Washington's Constitution?

ANSWER: No. Washington's Constitution permits courts to seal documents when privacy interests outweigh the public's interest. Pet. at 6-7. Elizabeth does not challenge the constitutionality of that framework. Instead, she challenges how the Decision applied that framework to the facts at bar. That is not a constitutional question.

2. Does the Decision conflict with *Greaves v. Medical Imaging Systems, Inc.* and *Klinke v. Famous Recipe Fried Chicken, Inc.*?

ANSWER: No. It is well-settled in Washington that Ruth's statement that she intended to include Elizabeth in her estate plan is not a promise.

3. Does the "discoverability" of a copy of a Robert Parman involve an issue of substantial public interest requiring determination by this Court?

ANSWER: No. The Decision is unpublished and it affects only the parties at bar.

4. Did the Decision make credibility findings such that it conflicted with a published Court of Appeals opinion or did the Decision involve an issue of substantial public interest?

ANSWER: No. It is obvious the Decision did not choose one witness's version of events over another. And the Decision is unpublished. It affects only the parties.

5. Should this Court award Shawn attorney fees for answering the Petition?

Yes. This Court can and should award fees under RAP 18.1(j) and 18.9 in order to compensate the estate for having to respond to a Petition that does not adhere to RAP 13.4(b) standards.

E. COUNTERSTATEMENT OF THE CASE

In 1997, spouses Shawn and Elizabeth Parman bought raw land to build a home and make it a horse property (referred to herein as the "Property"). CP 2398. This was to support Elizabeth's equestrian hobby. CP 527, 2404. While the complaint alleges that Elizabeth paid for the purchase with her own separate-property funds (which Shawn disputes), there is no dispute that the funds came from her and Shawn's joint bank account. CP 2332, 2399. There is also no dispute they held title jointly "as husband and wife." CP 2339.

In early 2000, Elizabeth and Shawn got into debt and could not afford to build the home. CP 2402. They deeded the Property to Shawn's parents Robert and Ruth Parman, who built the home and agreed to indemnify Elizabeth and Shawn from their debts. CP 2341, 2343. The arrangement was memorialized in a written "Joint Venture Dissolution Agreement." CP 2343. Along the way Elizabeth alleges she

made certain improvements to the property, e.g., fencing, building a barn, etc. CP 6.

Robert died intestate on February 15, 2005. CP 2380.

Elizabeth and Shawn divorced in 2016. CP 2389. Since Elizabeth was then divorced from her son Shawn, Ruth changed her will to exclude Elizabeth from her estate plan. CP 2406. Elizabeth then sued, alleging unjust enrichment (for improvements she made to the Property), a "joint venture/partnership;" estoppel; negligent / intentional misrepresentation; and tortious interference with inheritance (against Shawn). CP 7-9.[3]

In the course of the litigation, Elizabeth took Ruth's deathbed deposition.[4] Ruth testified that she had previously told

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[3] Early in the case, it seemed that Elizabeth was not asserting breach of contract. CP 172, RP 13-14 (Oct. 9, 2020). She later argued that her complaint included breach of contract. RP 14 (Dec. 10, 2021).

[4] Ruth was in hospice. CP 494.

Elizabeth and Shawn (while they were married) they would someday inherit:

> Q. [attorney Dan Young] And did you ever discuss with Beth Parman putting her in your will?
> A. The way I worded it with Beth was that when -- she was always wanting me to put her name on the mortgage. I said: Beth, you're going to have to trust me. I said: It'll have to work the way that it always works. I said: Shawn and you will live here until Bob and I die; and when Bob and I die, it will be yours and Shawn's; and then we want it to go to the boys, but it'll be a home for all of you.
>
> …
>
> Q. She was asking that her name be put on the mortgage?
> A. Not on the mortgage, but on the deed.
>
> …
>
> Q. You did not agree to put her name on the deed?
> A. No, because I had seen how careless she had been with the money with the horses. I knew the horses would come before the boys.
>
> Q. But you didn't tell her that, did you?
> A. Yes.

…

Q. And so what was -- how did you mean for her to trust you? What trust was she supposed to have in you that you would do?
A. That I would not turn around and will the house to an outsider or a stranger or a relative, another relative.

CP 484.

Elizabeth's attorney asked the same question later in the deposition and received the same answer:

Q. Did you tell Beth and Shawn that they would - … inherit the house at some point?
A. She kept wanting me to put her on the mortgage, and I said no. I said: You'll have to follow normal procedure. I said: When Bob and I die, we will will it to you and Shawn. And then I said: Then it'll go to the boys.

…

Q. Right. But didn't you mention your will to them around the time of that deed, that quit claim deed in the year 2000?
A. I'm not sure, but I believe that we said that: You and Shawn will be in our will.

Q. Right. And they would inherit the property on Renata Lane?
A. They would inherit the property, but our desire was it to go to take care of the boys.

CP 488-89.

Ruth died on June 10, 2019. CP 2391.

On July 16, 2019, the Thurston County Superior Court admitted Ruth's will to probate and appointed Shawn as the personal representative for the estate. CP 1754. Elizabeth then substituted Shawn (in his capacity as personal representative for Ruth's estate) as the defendant. CP 81.

Hoping to bolster her claims, Elizabeth's attorney, Dan Young, went on a search for a will for Robert Parman. RP 19-20 (June 10, 2022). Rather than propounding discovery under Civil Rules 26-37 or Rule 45 (subpoena), he cold-called the Centralia law firm of Althauser, Rayan & Abbarno, which Young thought might possess files previously held by an attorney named John Turner who once represented Robert. CP 689, 771, 840. Young claims that when he called, he identified himself only by name, and stated that he was an attorney looking for a copy of Robert's will; but he did not volunteer

that he was looking for information to help sue Robert's estate. *Id.* Young described the interaction as "ask and you shall receive." CP 1084.

The Althauser firm had a different recollection. According to it, Young identified himself as an attorney who *represented* Robert Parman's estate. CP 648, 680, 822-23. Thinking it was retrieving information in furtherance of a former client's estate, the Althauser firm located a file for Robert and emailed Young a document which purported to be a copy of an old Robert Parman will. *Id.* Elizabeth filed it in court. CP 685, 689, 770.

Elizabeth then tried to obscure how she obtained the will-copy. CP 685. She proffered a declaration stating that the will-copy came from John Turner, but he was not involved. *Id.; see also, Bartlett v. Est. of Parman*, No. 85373-2-I, 2024 WL 16944991, *2 n.4 (Wn. App. Feb. 12, 2024) (unpublished). Neither Elizabeth nor Dan Young had ever spoken with Turner. CP 689, 771, 840. When Shawn's attorneys asked Young about

the document's origin, he offered to help them reach Turner, which furthered the perception that the document came from Turner. CP 654. Once Shawn's attorneys discovered the document's true origin, Shawn filed a motion to strike and seal the ill-gotten document. CP 657.

Hoping to cleanse her methods, Elizabeth cross-filed a motion to compel the will's production even though she already possessed the document. CP 729. The trial court denied her motion and awarded Shawn fees under Rule 37. CP 1087, 1442; RP 12 (Jan. 28, 2022), RP 30 (Mar. 18, 2022).

In granting Shawn's motion to seal the will-copy, the trial court found the following:

> 12. The Court need not make, and does not make, any credibility determinations or resolve the differences between the statements of Mr. Wilkens, Ms. Rohr, or Mr. Young, because even under Mr. Young's version of events, his actions do not constitute a lawful way for him to obtain any document from the attorney file of Robert Parman.
>
> 13. The interest at stake in Defendant's motion to seal/strike is the client-attorney relationship

> between a decedent and his former attorneys, Rule of Professional Conduct 1.6.
>
> 14. Striking the document from the record and sealing it is the least restrictive means available to return Robert Parman's confidential file to status *quo ante*. To do otherwise would be to reward improper action.

CP 1083.[5]

The trial court sealed the will-copy (CP 1083), and over the course of three separate summary judgment motions, dismissed all of Elizabeth's causes of action. CP 641,1553, 1979.

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[5] This order was entered in both the Robert Parman litigation and this case, except in this case the trial court did not "strike" the document; it only sealed it. CP 1083; RP 33-35 (Jan. 28, 2022); RP 26 (June 10, 2022). The trial court reasoned there was nothing to "strike," since in this case, Elizabeth had not submitted it in support of anything; she just filed it. RP 13 (March 18, 2022). Shawn perceived this was intended to increase the cost or difficulty of returning the situation to status *quo ante*, or have it "on file" for later.

Elizabeth appealed the summary judgment orders, an order on a motion *in limine*, the order sealing the will-copy, and the order denying his motion to compel the will-copy. CP 1981.

Division II affirmed everything except the trial court's dismissal of Elizabeth's unjust enrichment claim under the three-year statute of limitations, RCW 4.16.080.

Elizabeth seeks discretionary review to which this Answer responds.

F. THIS COURT SHOULD DENY REVIEW

This Court should deny the Petition because it does not satisfy any of the criteria for review under RAP 13.4(b).

1. Legal Standard for Accepting Review.

This Court accepts review of Court of Appeals decisions that terminate review under Rule of Appellate Procedure 13.4(b), which provides:

> A petition for review will be accepted by the Supreme Court **only**:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Id. (emphasis added).

Elizabeth has not established any of these criteria.

2. Sealing the Robert Parman will-copy does not involve a significant question of law under the Washington Constitution.

Elizabeth does not argue that the Decision decided any issues under Washington's Constitution. Rather, she argues that the Court of Appeals' application of *Seattle Times v. Ishikawa* was incorrect. This is not a challenge to the *constitutionality* of the *Ishikawa* framework itself, but rather its application in this case.

But the Decision adhered to the *Ishikawa* framework. It weighed the *Ishikawa* factors and favored Robert Parman's interest in privacy of documents held by his former attorneys over the public's right to access those documents. CP 1083; *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). Just because Elizabeth's attorneys used trickery to pry a copy of an old will from an attorney file does not then create public interest. Nor is the public interested in it simply because she filed it.

Indeed, there is no question that courts start with the "presumption of openness" and that the public's access to trials and court records may be limited only to protect significant interests." Pet. at 6 (citing cases). But there is also no question that confidentiality between attorneys and clients is also a significant interest. *See, e.g.*, RPC 1.6 (cmt 2) (stating, "[a] fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation."). And

there is no question that confidentiality continues after death. RPC 1.6 (cmt. 20); *see also,* WSBA Informal Opinion no. 2041 (2003) (attorney's duty to maintain client confidences continues after death); *In re Cross*, 198 Wn.2d 806, 819, 500 P.3d 958, 964–65 (2021).[6] The trial court indeed weighed those interests, and the Court of Appeals affirmed. RP 35 (Jan. 28, 2022); CP 1083.

"Courts are empowered to limit the scope of discovery and the use of its fruits "[u]pon motion" and "for good cause

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[6] Stating:

> RPC 1.6(a) does not prevent lawyers from disclosing only client "confidences;" it actually prevents lawyers from disclosing "information *relating to the representation* of a client." RPC 1.6 (emphasis added). This rule covers more than typical privileges or confidences. *Id.* cmts. 3, 21 (" 'information relating to the representation' should be interpreted broadly"). "The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." *Id.* cmt. 3.

shown." *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 541, 114 P.3d 1182 (2005). It follows that courts are also empowered to seal from public view fruits that were not obtained through legitimate discovery, but through deception.

Elizabeth presents no constitutional question. This Court should deny review.

3. The Decision does not conflict with *Greaves v. Medical Imaging Systems, Inc.* and/or *Klinke v. Famous Recipe Fried Chicken, Inc.*

It was undisputed that Ruth once said that Elizabeth and Shawn would inherit the Property. CP488-89. It is well-settled law in Washington that such a statement is not a promise.[7] *See, e.g., Bale v. Allison*, 173 Wn. App. 435, 459, 294 P.3d 789 (2013); *Whiting v. Armstrong*, 23 Wn.2d 290, 294, 160 P.2d

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[7] Elizabeth's attorney conceded at oral argument that Ruth "did not actually come out and say 'I made an agreement ….'" RP 20 (May 6, 2020). Ruth also testified that after Shawn and Elizabeth, their children would receive the Property next. CP 488-89

1014 (1945); *Cook v. Cook*, 80 Wn.2d 642, 644-45, 497 P.2d 584 (1972); *Thompson v. Henderson*, 22 Wn. App. 373, 378 n.3, 591 P.2d 784 (1979). Ruth's statements were therefore not promises to Elizabeth, and the Decision does not conflict with *Greaves* or *Klinke* since a promise is a necessary element of promissory estoppel.

Elizabeth argues that Ruth made a second promise to put her first alleged promise in writing, and that Ruth's will was that writing. Pet. at 15. This is a bootstrap argument.

The "second promise" discussed in *Klinke* must be one "to make a memorandum of a contract in order to satisfy the statute of frauds." *Klinke,* 94 Wn.2d at 259 (emphasis added). A deed or a will is not a promise, memorandum, or a contract; it is a conveyance or a testamentary instrument. For the *Klinke* exception to apply, the promise itself must be promised to be memorialized in writing. *Id*. If it were otherwise the *Klinke* exception would apply in every situation involving real property because conveying or bequeathing real property

always requires a writing. *See* RCW 64.04.020; .101; RCW 11.12.020.

4. The "discoverability" of a Robert Parman will-copy does not involve an issue of substantial public interest.

An issue involves a "substantial public interest" if it has far-reaching effect on the public, i.e., it does not just affect parties to the litigation. *See, e.g.*, *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005).

In *State v. Watson*, a county prosecutor disseminated a memorandum to superior court judges regarding prosecutor-recommended sentencing. *Id.* The defense challenged the memorandum as an impermissible *ex parte* contact, not only in the case at bar, but all other criminal cases that were pending in the county. *Id.* Therefore, this Court deemed it one of "substantial public interest" and accepted review. *Id.*

First, Elizabeth does not articulate how the "discoverability" of a Robert Parman will copy is an issue of substantial public interest. Pet. at 17-18. Instead, she merely

argues the trial court's denial of her motion to compel was error.

Second, this issue does not involve the public interest. She offers no evidence the public has any concern with her prevailing in litigation against her ex-mother-in-law or ex-husband. Or that any other pending cases hinge on the holdings in this case. Or that the Decision affects anybody since it is unpublished.[8] *See* GR 14.1.

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[8] The Court of Appeals did not find the issues sufficiently important to publish its opinion. *See* RAP 12.3(d), stating the criteria for publishing opinions:

> (1) Whether the decision determines an unsettled or new question of law or constitutional principle; (2) whether the decision modifies, clarifies or reverses an established principle of law; (3) whether a decision is of general public interest or importance; or (4) whether a case is in conflict with a prior opinion of the Court of Appeals.

Third, trial courts "are empowered to limit the scope of discovery," which the trial court appropriately did here.

This Court should deny review.

5. The Decision did not make credibility determinations.

The Petition complains that the Court of Appeals "manifestly erred" by making a credibility determination seeks review under RAP 13.4(b)(2), and (4). Pet. at 19.

First, manifest error is not a ground for review under RAP 13.4(b).

Second, the Decision does not make any credibility determinations. While one sentence in the Decision's fact section states that Dan Young identified himself to the Althauser firm as an attorney for the Robert Parman estate, the immediately preceding sentence qualifies the entire

conversation as having been "alleged."[9] 2024 WL 1734727 at *5 (stating, "Dan Young, Elizabeth's attorney, *allegedly* contacted Althauser Rayan & Abbarno ….") (emphasis added). Having first stated that the conversation was *alleged*, it follows that the next sentence about what was said in the conversation was also "alleged."

Further, both sentences are in the Decision's fact section, while there is no discussion of witness credibility in the section of the Decision that devoted to legal analysis. This further demonstrates that the Decision does not make any credibility determinations. It therefore does not conflict with any Court of Appeals published opinions. This Court should not review it under RAP 13.4(b)(2).

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[9] Black's Law Dictionary (12th ed. 2024) defines "allege" as "[t]o assert as true, esp. that someone has done something wrong, though no occasion for definitive proof has yet occurred." *Id.*

The Petition also presents no argument about how this issue possibly involves substantial public interest under RAP 13.4(b)(4).

This Court should deny review.

G. THIS COURT SHOULD AWARD ATTORNEY FEES FOR ANSWERING THE PETITION

Shawn requests an award for attorney fees under RAP 18.1(j), RCW 11.96A.150, and RAP 18.9.

RAP 18.1(j) allows this Court to award fees if applicable law grants them. Here, RCW 11.96A.150 allows fees, including on appeal, in courts' discretion:

> (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.

Id. (emphases added).

RAP 18.9 also allows attorney fees and costs against parties who have abused the appellate rules or filed frivolous appeals. *Millers Cas. Ins. Co. v. Biggs*, 100 Wn.2d 9, 665 P.2d 887 (1983); *Boyles v. Dep't of Retirement Sys.,* 105 Wn.2d 499, 716 P.2d 869 (1986).

> … [A]n appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.

Streater v. White, 26 Wn. App. 430, 435, 613 P.2d 187, *review denied*, 94 Wn.2d 1014 (1980).

This Court should award Shawn fees under RAP 18.1 and RCW 11.96A.150 for answering the Petition. The Petition's main

focus is on Elizabeth's attorney's actions, seemingly in an attempt to legitimize them. In fairness, this should not be an expense to Ruth's estate.

The Petition also does not present debatable issues. It cites various grounds for review under RAP 13.4(b), but then does not address those grounds. Instead, for each issue presented, the Petition retreats to the general argument that the Court of Appeals erred or committed "manifest error" which is not the standard. That is frivolous.

The Court of Appeals is an error correcting court[10] while the Supreme Court is focused on the state of the law and not on particular applications of it,[11] especially for unpublished decisions like this which do not bind anyone but the parties. *See* GR 14.1.

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[10] *See, e.g.*, *Wade v. Rypien*, No. 39172-8-III, 2024 WL 488409, at *2 (Wn. App. Feb. 8, 2024) (unpublished) (persuasive authority per GR 14.1).

[11] WASHINGTON APPELLATE PRACTICE DESKBOOK §18.2(5) at 18-7 (Wash. State Bar Assoc. 4th ed. 2016).

Here, the Petition presents, at best, no more than a request for general error correction based on factual assertions disassociated from how the trial court actually ruled[12] coupled with assertions of law that are contortions and/or mis-readings. The Petition does not present debatable issues since it did not even make arguments germane to the relevant RAP 13.4(b) standards. This Court should therefore award fees and costs not only under RAP 18.1, but also RAP 18.9.

H. CONCLUSION

The Decision does not present questions under Washington's Constitution, does not conflict with any decisions of this Court; and presents no public interest issues requiring determination. This Court should deny the Petition and award the Estate attorney fees under RAP 18.1 and 18.9.

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[12] One example of this is Elizabeth's broad and conclusory declaration, without authority, that the public has an interest in a document from a filed held by Rober Parman's former attorneys. Pet. at 7-8.

This document contains 4,279 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 2nd day of October, 2024.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the State of Washington, that on this day served a true and correct copy of the foregoing by the method indicated below, and addressed to each of the following:

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Appellate Court Case Title:	Elizabeth M. Parman v. Shawn Parman and Estate of Ruth Parman
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