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FILED

JAN 08 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 303314

**COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON**

In the Matter of the Estate of

WENDELL K. MILES, Deceased

Joyce Tasker, Petitioner

Colville Valley Animal Sanctuary, Respondent

PETITION FOR REVIEW

FILED
JAN 16 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON 2125

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A. IDENTITY OF PETITIONER

Joyce Tasker, Petitioner asks this court to accept review of the decision designated in Part B of this motion.

B. COURT OF APPEAL DECISION

Petitioner requests that the court review the Unpublished Opinion of Division III of the Court of Appeals filed October 31, 2013, (Reconsideration Denied December 10, 2013) wherein Ms. Tasker's underlying appeal of the trial court decision was dismissed on basis of lack of standing. A copy of the decision dismissing the appeal is in the Appendix at pages A 1 through A 16, and the Order Denying Motion for Reconsideration at pages A 17.

C. ISSUES PRESENTED FOR REVIEW

Petitioner Joyce Tasker requested Special Notice of Proceedings in a Probate action in trial court. She appeared personally and in behalf of Dog Patch Group, her solely-owned Private Operating Foundation. She was formally acknowledged by the court, the Personal Representative, the other and by other attorneys representing the parties interested in the estate throughout the proceedings. Her standing to participate in the contested distribution of the Testator's estate was never questioned or challenged at the trial court level. The Court of Appeals dismissed Ms. Tasker's appeal on the basis of standing.

The Court of Appeals in *Germeau v. Mason County Sheriff's Office*, 166 Wn App 789 (Div II 2012), addressing the standing issue in a similar fact pattern presented in the instant case, ruled favorably for a party in a position similar to that of Ms. Tasker, Petitioner herein.

1. Is the decision of Division III Court of Appeals in conflict with that of Division II in *Germeau v. Mason County Sheriff's Office*?

2. Did the Court of Appeals err in dismissing Petitioner's appeal on the basis of standing?

3. Should respondent Colville Valley Animal Sanctuary be estopped from raising the issue of standing for the first time on appeal when Ms. Tasker's right to participate in the Estate proceeding was never challenged below?

4. Is the ruling of the Court of Appeals on the issue of standing internally inconsistent with its own subsequent ruling on that issue in *Ahmad, Iman, Hatem and Muslim America v. Town of Springdale*, No. 31339-5-III filed December 12, 2013?

D. STATEMENT OF THE CASE

Procedural Background: In the underlying Probate action, the court considered the application of the *cy pres* Doctrine to the distribution of the Estate of Wendell K. Miles. Ms. Tasker's position favoring the doctrine was presented at the trial court level and then on appeal when the

trial court rejected her argument. In the process of the appeal, Respondent Colville Valley Animal Sanctuary (CVAS) raised the issue of standing and moved to dismiss the appeal on that basis. The issue was not raised before. (Unpublished Opinion *In Re: Estate of Miles*, No. 30331-4-III, Page 8 Footnote 3). That Motion to Dismiss was denied by Commissioner's Ruling dated June 14, 2012 as was CVAS's Motion to Modify Commissioner's Ruling on September 28, 2012.

But in its Unpublished Decision, the Court of Appeals dismissed Ms. Tasker's appeal on the basis of her lack of standing to bring the appeal. The court's reasoning was that Ms. Tasker was not an aggrieved party who may seek review by the Appellate Court citing RAP 3.1. (Unpublished Opinion, *In Re: Estate of Miles*, Page 8.) The court went on to say that a party is not entitled to appeal an issue if she has no interest in the subject matter and is not injured or aggrieved by the judgment and concluded that Ms. Tasker was not an aggrieved party. (Unpublished Opinion Page 8.) Dog Patch was not mentioned in her notice of appeal. (Unpublished Opinion Page 9.)

The Appellate Court did not address the substantive issues presented on appeal. For background purposes, they are as follows:

Substantive Facts: When the decedent passed away, the issue arose as to the correct distribution of his real property gifted to the

“Colville human society”. The parties agree such an organization did not exist. At the outset of the Probate, certain contenders to the gift appeared. They agreed to a distribution of this gift among themselves in some equitable proportion based upon their involvement in the Colville area. (CP 37) Ms. Tasker’s participation in the proceeding was triggered by a contact by the sister-in-law of the Personal Representative who knew her. The Estate knew that Ms. Tasker and Dog Patch had an interest in the outcome of the Estate proceeding prompting her to request the special notice. (CP 37, 56-58)

The plan was to form an umbrella group to distribute the property in an equitable manner to the eligible contenders in the Colville area. (CP 37, 56-58)

When the contenders couldn’t agree on a distribution of the Estate, the Estate scheduled a hearing so that the court could learn the facts and make the appropriate distribution. It was scheduled to be held May 3, 2011.

In a complete turn from its earlier stance where the gift would be shared, the Estate took the position shortly before that May 3rd hearing that the gift lapsed and should go to the residuary beneficiary of the will. (CP 27, 37) Among the contenders, the paradigm went from one of sharing the gift to a winner-take-all proposition. The May 3rd hearing was continued

to August and the court ordered the Estate to notify the public through the local paper of the upcoming distribution hearing. The August distribution hearing was decidedly hostile with respondent CVAS trying to terminate the services of its then-attorney Tom Webster before the hearing due to criticisms of his trial strategy. (CP 671-72) The trial court gave the entirety of the Miles' gift to Respondent CVAS.

Petitioner Tasker appealed the decision urging the application of the *cy pres* doctrine. Before its Responsive Brief was filed, CVAS moved the Court of Appeals to dismiss on the basis of Ms. Tasker's lack of standing to appeal.

In the various pleadings in the Estate action, beginning with her Request for Special Notice of Proceedings, Ms. Tasker appeared personally and "in behalf of Dog Patch". (CP 42-44) Dog Patch is her solely-owned private operating foundation, an animal rights organization that she has run by herself for over 20 years. (CP 129-130)

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Review should be accepted by the Supreme Court because Division III's decision on the standing issue is in conflict with that of Division II which favors standing for one in Petitioner's position. (RAP 13.4(3)(2). The dismissal allows a hypertechnical argument to get in the way of a decision on the substantive appeal issues. Furthermore, the

Unpublished Opinion disposing of Ms. Tasker's appeal is in contradiction to the Court's own position on the issue of standing as set forth in *Ahmad v. Town of Springdale*, 31339-5-III.

1. Joyce Tasker Herself Is An Aggrieved Party Under RAP 3.1

a. *Joyce Tasker Has Appeared Individually Without Objection.*

Ms Tasker, for the last twenty years, has fought for the cause of animals. She lives her ethic and devotes her entire waking day to their interests, concentrating on dogs and cats. (CP 129-130). The Appellate Court's dismissal used as part of its rationale that Ms. Tasker is not an "aggrieved party" under RAP 3.1 with standing to bring the appeal. (Unpublished Opinion, Page 8.) But the Appellate Court's decision overlooks that she was before the trial court without objection to ask that the *cy pres* doctrine be applied so that she and her Dog Patch Group could be considered among those who fit within the testamentary intent of Mr. Miles.

The order entered by the trial court on May 3, 2011, required that the Estate publish notice advising "all interested parties" of a hearing that would determine the ultimate recipient of the real property. (CP 288). If the *cy pres* doctrine were to be applied, as urged in the underlying appeal, the gift would be distributed among all worthy claimants who may have had animal rights agendas, not just "organizations".

Cy pres would assume that the named recipient for the bequest of Mr. Miles does not exist, thus an alternative distribution rather than a gift lapse would go into effect. *In Re: Estate of Bergau*, 103 Wash.2d @ 436, 693 P.2d 703. If and only if the doctrine applied would the court endeavor to decide which of the self-nominated contenders for the gift would receive it, and in what proportion. Until the decision was handed down that gave the entire gift to CVAS, it too agreed with the *cy pres* approach. (See Respondent's briefs, CP 67-72 and CP 267-285.)

b. The Decision Is In Conflict With Germeau.

In *Germeau v. Mason County Sheriff's Office*, 166 Wn.App. 789 (Div 2 2012), a representative for a Sheriff's Office Employees Guild (Guild) submitted a Freedom of Information request for one of its members accused of wrongdoing. That representative, Germeau, acted in behalf of the police officer. In his capacity as the police officer's Guild representative, on the Guild's letterhead, Germeau wrote to the Sheriff's office where the deputy was being investigated. Germeau wrote that "I will be representing Martin Borchering (the accused officer) as his Guild representative. . . From this point forward if contact is needed with Martin for investigative purposes either formal or informal arrangements will need to be made through me." *Germeau* at 794.

Germeau later had conversations, meetings, and interactions with

the Sheriff's office and its representatives about the request. When that request was denied by the Sheriff's office, Germeau, but not the Guild itself, filed a complaint under the Public Records Act in Superior Court.

Germeau was not the Guild and not an attorney. However, he acted in behalf of the Guild and the officer in making the FOIA requests. The County challenged Germeau's standing to bring the complaint and alleged he was not the real party in interest. Germeau responded that he gave fair notice to the Sheriff's Office through his written requests and his interaction with it that he was the Guild representative for Borcharding. *Germeau* at 799. The Superior Court ruled that Germeau had no standing to bring a Public Records Act action against Mason County and the Sheriff's Office. Its rationale was that Germeau was not the officer or the Guild, and that the Guild, and not Germeau had requested the information from the County. *Germeau* at 800.

Although upheld on separate grounds, Division II of the Court of Appeals reversed the standing ruling. The court went to the heart of the matter and ruled that it would not allow a form-over-substance standing objection to impede the very important objective of having access to information concerning the conduct of the government. *Id.*, at 803. The court went on to conclude Germeau had a "personal stake" in receiving the requested information even though the court acknowledged that the

Guild itself, and not Germeau, would represent Borcharding. *Id* at 804.

The court added that saying Germeau lacked standing would be a “hypertechnical barrier” that would frustrate the PRA’s goal. *Id* at 804, citing *Wood v. Lowe*, 102 Wn.2d 872, 878 (2000).

c. Comparability Of Germeau To The Case Before The Court.

The preliminary interactions, requests, and correspondence Germeau had with the Sheriff’s office are parallel to the various court appearances, pleadings, and affidavits offered by Ms. Tasker at the trial court level. The outcome in *Germeau* that the FOIA requests from Germeau were tantamount to a request from the Guild or from the officer himself would lead to a conclusion here that Ms. Tasker has the right to urge the application of *cy pres* in court and on appeal. Ms. Tasker’s involvement in the action below was for all purposes an action for Dog Patch. All parties and the court acted accordingly. The appeal she makes, like that of Germeau for the FOIA request, is sufficient for the court to consider the merit of her arguments made below for application of the *cy pres* doctrine that might benefit herself and Dog Patch.

Although not perfectly parallel, Ms. Tasker’s role can be compared to that of Germeau, and the Guild to Dog Patch. The stronger argument Ms. Tasker makes here is that all court personnel knew she was appearing

on behalf of Dog Patch. Moreover, the standing argument was raised at the trial court level in *Germeau*, not so here. (See Argument “2” below.)

The rule in *Germeau* where the court would not permit a hypertechnical standing argument to stand in the way of a FOIA request should be considered applicable to Ms. Tasker’s case. An almost identical parallel relationship among the cast members is in place. Ms. Tasker appeared “in behalf of Dog Patch”. CP 842. All along in the underlying action it was always recognized that it was Ms. Tasker who was appearing in the proceedings. The pleadings were addressed to her. Notice of hearings were sent to attorney of record for “Ms. Tasker”. CP 670, 671. In fact it was always Ms. Tasker who was addressed and acknowledged in this case. She has standing to bring this appeal.

d. Public Policy Favors Giving Ms. Tasker Standing.

So far as the strong public policy that drove the decision in *Germeau*, it can be just as easily said that the public has a strong interest in seeing to it that charitable animal rights organizations be benefitted by benevolent acts such as this Estate gift so that they are not a drain on public budget and can continue to do work which is largely beneficial to society. The strong public policy in favor of Freedom of Information Act requests that was behind the *Germeau* decision is no stronger than various public policy reasons that can be adduced for allowing Ms. Tasker to ask

that Dog Patch be considered by the court for a share of the Miles' gift of real property. As evidenced from the numerous affidavits submitted in behalf of Ms. Tasker, the organization is well loved and deserving of assistance in its charitable work.

Ms. Tasker's representation of her organization went unchallenged below. That fact compares to the facts in *Germeau* where Germeau himself made requests for the Guild member under investigation, and had various interaction with the Sheriff's Office on the officer's behalf. *Germeau* at 795.

Ms. Tasker's act in appealing is in every respect an appeal for Dog Patch. Irrespective of the separate, equally valid argument that she may appeal in her own right – as an interested person who has a right to participate in the Estate proceeding – she has appealed for Dog Patch too. Except for the hypertechnical exclusion of the words, Dog Patch has appealed the Superior Court decision.

In applying the rule in *Germeau* to this case, the same result that obtained there should follow here. Division III's dismissal of Tasker's appeal is inconsistent with that of the neighboring Division of the Court of Appeals.

2. The Respondent Waived The Issue Of Standing And Is Equitably Estopped From Raising The Issue On Appeal.

a. The Court Of Appeal's Citations Of Authority On The Standing Issue Are Inapposite.

The Appellant accepts that the court can review issues of law *de novo*. The issue here is not whether the courts can review the standing issue *de novo* so much as it is that the Respondent has waived the issue of standing below and is estopped from raising it now. *Wolstein v. Yorkshire Ins. Co.*, 97 Wn.App. 201 (1999), cited by the Court of Appeals for the proposition that standing can be reviewed *de novo*, does not have facts comparable to the instant case. In *Wolstein*, the issue of standing was addressed by the trial court, although the ruling was not included in its order on summary judgment. Standing was not addressed by the trial court here.

Similarly inapposite is *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986) and *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 212 n.3, 45 P.3d 186 (2002), relied on by the Court of Appeals in the decision under review. In both cases, challenges to standing were rebuffed by the appellate courts. But both addressed standing in the courts below. Not so here.

b. Acts Of Respondent And By The Trial Court Estop A Standing Challenge On Appeal.

In the instant case all pleadings, notices and addresses of legal

correspondence were directed to Ms. Tasker as the party of interest:

- CVAS's own attorney Mr. Webster, in his Certificate of Service of Ms. Tasker's Interrogatory Answers, notes service upon Robert Simeone, "Attorney for Joyce Tasker". (CP 670);
- The Interim Report filed by the Estate noted that "Joyce Tasker and CVAS have requested special notice" (CP 20);
- Ms. Tasker appeared in the Request for Special Notice in her own behalf and "in behalf of Dog Patch Humane" (CP 842);
- The Notice of Intent to Withdraw by Mr. Webster, former attorney for CVAS was directed to "Bob Simeone, Attorney for Joyce Tasker". (CP 671).

Maybe the most glaring example of CVAS's acceptance of Ms. Tasker's participation in the proceeding is in the Interrogatories submitted to her. There she was identified by CVAS as "Joyce Tasker, an Interested Party". The signature line of these Interrogatories also prepared by CVAS on its attorney's pleading paper, reads "Joyce Tasker, an interested party". (See attached Addendum 18-19.) (Emphasis Added)

The elements of equitable estoppel are (1) admission, statement or act inconsistent with a claim later asserted; (2) action by another in reliance on that act; and (3) injury to the relying party from allowing the first party to contradict or repudiate the prior act. Waiver can occur in two

ways. First, it can occur if a party's assertion of a position is inconsistent with previous behavior. Second, it can occur if the party's counsel is dilatory in asserting a position. *Lybbert v. Grant County*, 141 Wn.2d 29 (2000); *Id* at 42.

Nowhere did CVAS contend that Ms. Tasker was an improper party to participate in the proceedings. It is now equitably estopped from raising that argument when Ms. Tasker can't do anything to change matters.

c. Respondent's Acknowledging Standing Issue Below Creates The Estoppel.

In their briefing to the Court of Appeals, the Respondents brought up the fact that they raised the issue of standing below. CP 783. Respondents raise this point in an attempt to show the standing issue had been raised at the trial level and to invalidate Ms. Tasker's argument that Respondents waived the issue.

However, the Respondent's argument works against it. CVAS's argument is based on a glancing reference made in an affidavit by a non-party witness after the August 29, 2011 disposition hearing. That affidavit by one Lisa Gallagher (CP 783, filed October 18, 2011) was submitted in support of the unsuccessful motion by Mrs. Rose of CVAS to reopen the record. CP 670. That affidavit arguably touched upon the issue of

standing. However, neither the Estate nor CVAS ever developed the issue to the point where Ms. Tasker could have done something about it. CVAS made no motion or took any other action to which Ms. Takser had to respond, or that would have alerted Dog Patch to consider making its own appearance. Had she known there would be a serious challenge to her right to prosecute this appeal she could have taken measures to correct any perceived error.

The Respondent's inaction, Ms. Tasker's reliance upon that inaction, and her obvious injury resulting from that reliance in jeopardizing her appeal fulfill the requisites to apply the equitable estoppel principles. *Lybbert, supra*.

It was error for the Court of Appeals to reward the Respondents for lying in wait with an issue of standing only to spring it on Appellant for the first time on appeal. This was not the case in *Wolstein, supra*, cited by the Appellate Court in support of its decision here, where the issue of standing was previously placed before the trial court. Ms. Tasker could have remedied any technical defect in her and Dog Patch's appearance before the court if the issue has been raised. To allow the argument to be raised late violates the equitable principles of waiver, estoppel, and RAP 2.5(a) which does not allow arguments to be raised first time on review.

While standing is jurisdictional, the cautionary note in *Germeau* trumps this hypertechnical argument that Ms. Tasker can't proceed with this appeal for that reason. For purposes of her appeal Ms. Tasker's position before the trial court and the Court of Appeals was entrenched by her various pleadings below. By way of her participation in court, her acknowledged appearance in the pleadings, she and Dog Patch were participants to the action as much as they could be except for *pro forma* hypertechnical considerations. If there was a challenge to her participation, it should have been raised before.

3. Ms. Tasker Has The Right To Advance The Cause For Herself.

The foregoing arguments that Ms. Tasker appeared in behalf of Dog Patch are separate and apart from Ms. Tasker's position that she herself is an aggrieved party who may seek review under RAP 3.1. In every respect she has an interest in the subject matter. She is injured and aggrieved by the Superior Court's decision. To say that Dog Patch but not Ms. Tasker has rights that are substantially affected here when Ms. Tasker and only she sees to all of the activities of her animal care facility tortures logic. In its Opinion, the Court of Appeals says that the Superior Court judge specifically identified Dog Patch as the organization responding to the notice for distribution. (Unpublished Opinion Page 9.) In fact, the Superior Court Judge's comment was only an adventitious remark raised

during one of the latter hearings on CVAS's Motion to Cancel *Lis Pendens*. That action occurred after the appeal had started, and after Ms. Tasker could remedy the alleged problem. VRP 2/3/12. Never before that point did the court pay any attention to whether Ms. Tasker was appearing in her behalf or in behalf of Dog Patch or if Dog Patch itself was appearing. In short, the issue just never arose.

a. Ms. Tasker's Individual Interest Is Manifest In Her Pleadings.

In its Decision the Appellate Court spent some time addressing the issue of whether or not Ms. Tasker is an aggrieved party as an individual. (Unpublished Opinion, Page 8.)

In response, Ms. Tasker makes the same argument as set forth in section 3 above which will not be repeated here. Further, in its discussion, the court said that Ms. Tasker "never asserted an individual claim in the bequest before the trial court". (Unpublished Opinion, Page 10, Line 4). However, the court does go on to excerpt a quote from Ms. Tasker's Affidavit where she said "I have never argued with the Personal Representative of the Estate that the proceeds *should be all mine*". (Emphasis Added) Unpublished Opinion, Page 10, Lines 11 citing CP 25. That one comment cited by the Appellate Court is self-proving evidence that Ms. Tasker indeed argued her individual interest in the property in the

court below. It demonstrates the point that she makes here: she is individually an aggrieved party.

b. Ms. Tasker Responded To The Court-ordered Notice Inviting All Interested Parties To Present Their Positions.

As mentioned in Ms. Tasker's Responsive Brief to the Motion to Dismiss, the Superior Court in May of 2011 ordered the estate to notice the public of the pendency of the proceedings. (CP 288). The order said notice would be published in a local paper that a hearing would be upcoming to determine the ultimate recipient of the property. The actual notice as published in the Colville Statesman Examiner said that "a hearing shall be held to establish the person(s) or entities whom (sic) shall take the real property of the estate". It went on to say "therefore *anyone or any organization* asserting an interest in or to the real property of this estate shall forth with make their appearance, provide substantiation as to their assertion of interest, and be prepared to present their position to the court." (See attached Addendum 3, Affidavit of Publication.)

"Anyone" was invited by the court to participate in the Estate proceeding. Ms. Tasker's participation in those proceedings was the same as any other interested person who would have appeared in response to the newspaper notice. She just happened to already be involved in the proceedings. Whether it were she, another individual or any other

interested person who made its presence known, the court would have had to entertain their participation. At that point in the estate proceeding, the court or some other interested person could have challenged the correctness of their participation if, say, an undeserving individual had appeared. The same kind of procedural process should have applied to Ms. Tasker. Yet no one including the court ever challenged her presence in the estate proceeding.

The application of the doctrine was what she argued. What happened once the Estate was distributed to the animal rights groups was part two of that proceeding which never came to pass. However, to say that Ms. Tasker couldn't appear below as an interested person to argue to the court that the *cy pres* doctrine should be applied is too exclusive in light of the Notice by the estate to "all interested parties, anyone or any organization".

c. Ms. Tasker's Special Position As "Interested Person" In Probate Proceeding Should Lower The Standing Threshold.

The court should appreciate the impact on Ms. Tasker of being allowed to participate all along before concluding she as an individual does not have standing to bring this appeal. The court should focus on the nature of the proceeding below, too. There are no "parties", *per se*, in the Estate proceeding. Ms. Tasker was an "interested person" by way of her

Special Request for Notice of Proceedings. She did not need to be on any better a footing to have this court honor her participation below, and thus her right to appeal the outcome here.

4. The Decision Of The Court Of Appeals Is Internally Inconsistent With Its Own Ruling On The Standing Issue In *Ahmad v. Springdale*.

In *Ahmad v. Springdale*, No. 31339-5-III, a Published Opinion by Division III of the Court of Appeals the court there considered in part the issue of standing not raised by a party at trial. Citing *State v. Cardenas*, 146 Wn.2d 400, 404-405, 47 P.3d 127, 57 P.3d 1156 (2002), the court in its decision stated that the argument of standing is waived when not raised by a party at trial. (*Ahmad* Published Opinion, Page 5.) In the instant case, the Respondents never raised the issue of standing at the trial court level. No affirmative action was ever taken to challenge Ms. Tasker's participation in the proceeding below. Upon Division III's own statements of the law CVAS should not have been permitted to raise the issue of standing because it was never raised at trial.

F. CONCLUSION

The Court should accept review for the reasons set forth above and reverse the Order Dismissing Ms. Tasker's appeal on the basis of standing. The appeal should then go forward allowing the Appellate Court to address the applicability of the *cy pres* doctrine to the Miles Estate.

Respectfully submitted this 7 day of January, 2014.



ROBERT A. SIMEONE, WSBA #12125
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of January, 2014, I caused to be served a true and correct copy of the foregoing Appellant's Motion for Discretionary Review by the method indicated below, and addressed to the following:

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ATTORNEY AT LAW
PO BOX 383
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Regular Mail
 Certified Mail
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ROBERT A. SIMEONE, WSBA #12125

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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 the Estate of)	No. 30331-4-III
)	
)	
WENDELL K. MILES,)	UNPUBLISHED OPINION
)	
)	
Deceased.)	

KULIK, J. — Wendell Miles died, leaving his real property to the “Colville human[e] Society.”¹ At the time of Mr. Miles’s death, no such organization existed. The trial court held an evidentiary hearing to determine the recipient of the property. Both Colville Valley Animal Sanctuary (CVAS) and Joyce Tasker on behalf of Dog Patch Group, Inc. claimed an interest in the bequest. The court found that Mr. Miles intended to leave the property to a singular organization and concluded CVAS was the intended recipient of the ambiguous bequest. Ms. Tasker appeals. She contends that the court erred by failing to apply the doctrine of cy pres and, consequently, failing to distribute the property among the organizations fulfilling Mr. Miles’s charitable intent of helping

¹ While the actual language of the bequest states “Colville human Society,” the parties agree that Mr. Miles intended to write “Colville humane Society.”

animals in Colville. She also contends that the evidence does not support the trial court's conclusion that Mr. Miles intended to designate CVAS as the recipient. CVAS cross appeals, challenging the court's decision to strike portions of its declarations and to impose sanctions against its director. CVAS also contends that Ms. Tasker lacks standing to appeal the trial court's decision.

The standing of Ms. Tasker to bring this appeal is dispositive and results in dismissal of her appeal. She is not an aggrieved party. Therefore, we affirm the trial court's award to CVAS. We also affirm the trial court's sanctions imposed on Nancy Rose. Because of our disposition on standing, we need not address Ms. Tasker's additional issues in her appeal.

FACTS²

Wendell Miles loved wildlife and cared very passionately about the welfare of animals. In March 2010, one month prior to his death, Mr. Miles executed a valid will on a preprinted form. He included several specific bequests in his own handwriting. The bequests were made to seven individuals and four charities. Two of the charities chosen by Mr. Miles to receive a monetary bequest were "PETA" or People for the Ethical

² We limit our recitation of facts to those necessary to address the issues of standing and sanctions.

No. 30331-4-III
In re Estate of Miles

Treatment of Animals, and "SPEA" that was determined to be the American Society for the Prevention of Cruelty to Animals (ASPCA). Mr. Miles chose a third charity, the "Colville human[e] Society," to receive his real property. The last charity, the "Red Cross," was to receive the residual of Mr. Miles's estate.

Mr. Miles died on April 22. At the time of his death, there was no organization named the Colville Humane Society. The personal representative of the estate filed an amended petition for distribution of real property. She petitioned the court to convey the real property to the estate's residuary beneficiary, the American Red Cross.

Instead, the court ordered an evidentiary hearing to determine the correct method of distribution of the real property. The court stated that it would hear oral testimony at the hearing. Notice was published prior to the hearing.

Four organizations responded to the notice. The two organizations of importance to this appeal are the Dog Patch Group, Inc. and CVAS.

Joyce Tasker, as an interested party to the property distribution, filed on behalf of Dog Patch. Through her attorney, Ms. Tasker asserted that her corporation, Dog Patch, should share in the bequest with other humane societies in Colville. Dog Patch began operating as a humane society in the Colville area in 1991. Since its formation, Ms.

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Tasker has been the sole director with exclusive rights to make decisions on behalf of the corporation. Dog Patch advertised as a humane society in the 1990s.

However, between 2008 and 2010, Dog Patch had no records on new intakes to the facility and no records on adoptions that it facilitated. Nor did Dog Patch have any records of visitors to its facility. The number of dogs at Dog Patch varied between 16 to 25 daily. The number of cats varied from 3 to 5. Dog Patch rarely had openings. Instead, Dog Patch facilitated adoptions through private parties only.

Ms. Tasker performed all duties at Dog Patch. There were no paid employees; Ms. Tasker was its only volunteer. It did not participate in any community events or undertake any presentations, publications, programs, or campaigns. As of March 2010, Dog Patch was marketing a holistic methodology for treating humans and animals.

The other organization, CVAS, began operating as a humane society in the Colville area in 2003. In 2010, CVAS sheltered 202 cats and 103 dogs and adopted out 114 cats and 102 dogs. CVAS also trapped and spayed/neutered 21 cats.

CVAS actively promoted itself as a humane society in Colville and was a highly visible organization. Beginning in 2005, CVAS was involved in numerous public events and fundraising efforts in which it held itself out as Colville's humane society. CVAS's brochure described the organization as a humane society, and its publication listed the

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organization's name as the "Colville Pet Refuge Humane Society." Clerk's Papers (CP) at 247, 390-401. This title was also used in CVAS's business correspondence in late 2009.

The trial court held a hearing on distribution of the property. Lisa Gallagher, a CVAS volunteer who had helped in gathering and preparing documents, wanted CVAS's attorney to present new declarations to rebut Ms. Tasker's contentions. However, the trial court did not allow the parties to present evidence at the hearing, despite its earlier ruling.

The trial court issued findings of fact and conclusions of law. The court found that Mr. Miles had a clear intent in his will to leave property to charitable organizations that protected and cared for animals. Then, the court compared all bequests made by Mr. Miles and found that all designations were to specific individuals, with no designations to a class. The court concluded that the cy pres doctrine did not apply because Mr. Miles intended to leave the property to a specific, singular organization when he designated the "Colville human[e] Society." CP at 248.

However, the trial court concluded that there was ambiguity as to which organization Mr. Miles intended to designate. The court admitted extrinsic evidence to resolve the latent ambiguity in the designation of the "Colville human[e] Society." The court noted that it could use surrounding circumstances and the language of the will to

give effect to the testator's intent. The court also noted that a testator is presumed to know the circumstances that could affect the construction of his will.

The court found that at the time of Mr. Miles's death, Dog Patch was no longer accepting animals from the public and had not broadly accepted animals since at least April 2008. Also, the court found that Dog Patch was marketing a holistic methodology for treating humans and animals in March 2010.

For CVAS, the trial court considered the number of dogs and cats sheltered and adopted in 2010 and the number of cats spayed/neutered in 2010. The court found that CVAS used the designations "The Refuge Humane Society" and "Colville Pet Refuge Humane Society, Inc." as alternative business names. CP at 247.

The court concluded that Mr. Miles intended to leave his property to the "Colville human[e] Society," and that this designation is a close approximation of "The Refuge Humane Society" and the "Colville Pet Refuge Humane Society." The court ordered the estate to convey the real property to CVAS, consistent with the intent of Mr. Miles.

Afterward, CVAS disagreed with its attorney's handling of the evidentiary hearing, particularly the attorney's alleged failure to challenge the court's decision not to allow evidence. Ms. Gallagher expressed to CVAS's attorney that the declarations were

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needed in the record to make the case stronger against an appeal. In response, CVAS's attorney withdrew from the case.

Ms. Tasker informed CVAS of her intent to appeal. In an effort to submit the new evidence before the CR 59 deadline expired, CVAS's director, Ms. Rose, filed a motion to reopen the record and amend the filings to include the declarations that CVAS intended to submit at the hearing. Ms. Tasker opposed the motion on the basis that it was filed by a nonattorney on behalf of a corporation, CVAS. Ms. Tasker also sought CR 11 sanctions against Ms. Rose. The court denied the motion to reopen the record and sanctioned Ms. Rose in the amount of \$1,100.

Ms. Tasker and CVAS appeal. Ms. Tasker, as an interested party, appeals the trial court's decision to convey the property to CVAS. CVAS cross appeals the trial court's decision to strike portions of its declarations and for sanctioning Ms. Rose. CVAS also challenges Ms. Tasker's standing to appeal.

ANALYSIS

Standing. Standing is a question of law that we review de novo. *Wolstein v. Yorkshire Ins. Co.*, 97 Wn. App. 201, 206, 985 P.2d 400 (1999). Without standing, a court lacks the necessary jurisdictional power to entertain a party's claim. *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986). "[S]tanding is a jurisdictional issue

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that can be raised for the first time on appeal.” *Int’l Ass’n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 212 n.3, 45 P.3d 186 (2002).

CVAS challenges Ms. Tasker’s standing to appeal.³ CVAS contends that Ms. Tasker cannot appeal the trial court’s decision because she is not a real party in interest. CVAS also contends Ms. Tasker cannot appeal on behalf of Dog Patch, the real party in interest, because she does not have the legal right to advance a claim for a corporation.

To have standing, a claimant must establish that injury has occurred to a legally protected right. *Sprague v. Sysco Corp.*, 97 Wn. App. 169, 176 n.2, 982 P.2d 1202 (1999). Additionally, the claimant must be the real party in interest, meaning that the claimant is the person who possesses the right to be enforced. *Id.* The claimant must have a personal stake in the outcome of the case. *Sabey v. Howard Johnson & Co.*, 101 Wn. App. 575, 584, 5 P.3d 730 (2000).

“Only an aggrieved party may seek review by the appellate court.” RAP 3.1. A party is not entitled to appeal if he or she has no interest in the subject matter and is not injured, or aggrieved, by the judgment. *Sheets v. Benevolent & Protective Order of*

³ CVAS initially raised the standing/real party in interest issue in a motion to dismiss Ms. Tasker’s appeal. A commissioner of this court denied the motion, reasoning that the appeal was not frivolous because it presented a debatable issue with respect to standing. The commissioner’s decision did not resolve the issue of standing. CVAS is entitled to reassert the standing issue before this court.

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Keglers, 34 Wn.2d 851, 855, 210 P.2d 690 (1949) (quoting *State ex rel. Simeon v. Superior Court*, 20 Wn.2d 88, 90, 145 P.2d 1017 (1944)). “An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected.” *Cooper v. City of Tacoma*, 47 Wn. App. 315, 316, 734 P.2d 541 (1987).

Here, the aggrieved party is Dog Patch. The trial court specifically identified Dog Patch as an organization responding to the notice for distribution. The trial court issued findings that negatively impacted Dog Patch. Dog Patch was not awarded a portion of the bequest as requested. Despite being the aggrieved party, Dog Patch is not mentioned in Ms. Tasker’s notice of appeal.

Ms. Tasker is not an aggrieved party. She does not have a proprietary, pecuniary, or personal right that was affected by the trial court’s decision because she would not benefit from the bequest. Instead, the bequest would financially benefit her corporation, Dog Patch, and its ability to perform humane society activities. Ms. Tasker does not receive income from Dog Patch or own any of its property. While the additional funds would potentially allow Dog Patch to provide more aid to animals, this would not directly affect Ms. Tasker’s individual volunteer work that she already performs for the corporation. Because Ms. Tasker is not an aggrieved party, she has no standing to appeal the decision of the trial court.

Ms. Tasker contends that she is an aggrieved party as an individual, separate from Dog Patch's claim. However, despite her assertion to the contrary, Ms. Tasker never asserted an individual claim in the bequest before the trial court. She continually maintained that her appearance was on behalf of Dog Patch and that organizations like Dog Patch were the intended recipient. In her personal affidavit, she states, "As the Petition pertains to me, and Dog Patch Humane of Colville, . . . I believe this gift was intended for my organization Dog Patch I do not know of any other organization except mine and Colville Animal Sanctuary that could even be serious contenders for the sale proceeds, but I have never argued with the Personal Representative of the Estate that the proceeds should be all mine." CP at 25. She goes on to suggest that the bequest was intended for an organization, stating that it was her position early on that "the proceeds be distributed to the organizations existing in the area that could reasonably be considered within the category of 'Colville Human Society.'" CP at 25-26. Again in a later affidavit, Ms. Tasker states, "Mr. Miles' gift to Colville Humane Society is clearly his intent to make a gift to Colville animal rights groups, Dog Patch included." CP at 38. At no point does Ms. Tasker contend that she should benefit from the bequest as an individual. Nor do the court's findings and conclusions treat Ms. Tasker as a potential recipient. She is not an aggrieved party.

Ms. Tasker also contends that she can represent Dog Patch's interest in this appeal because she can act on behalf of her private operating foundation as its sole incorporator. Thus, acting for Dog Patch was, in fact, acting on her own behalf. This contention fails.

Generally, a party is prohibited from asserting the legal right belonging to another. *West v. Thurston County*, 144 Wn. App. 573, 578, 183 P.3d 346 (2008). When a corporation's right is involved, typically a shareholder cannot sue for wrongs done to a corporation.⁴ *Sabey*, 101 Wn. App. at 584. "The reason for this is that the cause of action accrues to the corporation itself, and the stockholders' rights therein are merely of a derivative character and therefore can be enforced or asserted only through the corporation." *Goodwin v. Castleton*, 19 Wn.2d 748, 761, 144 P.2d 725 (1944). Stated differently, the corporation is a separate entity with its own legal rights and the stockholder's interest is viewed as too removed to meet the standing requirements. *Sabey*, 101 Wn. App. at 584. "Even a shareholder who owns all or most of the stock, but who suffers damages only indirectly as a shareholder, cannot sue as an individual." *Id.*

⁴ As exceptions to the general rule, a stockholder may bring a separate right of action when there is an independent duty owed to the stockholder from a wrongdoer or when the stockholder's injury is separate and distinct from other stockholders. *Sabey*, 101 Wn. App. at 584-85. Neither exception applies here.

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“An individual who chooses to incorporate and thereby enjoy the benefits of the corporate form must also bear the attendant burdens.” *Cottringer v. Emp't Sec. Dep't*, 162 Wn. App. 782, 785, 257 P.3d 667, review denied, 173 Wn.2d 1005 (2011). The individual “cannot employ the corporate form to his advantage in the business world and then choose to ignore its separate entity when he gets to the courthouse.” *Zimmerman v. Kyte*, 53 Wn. App. 11, 18, 765 P.2d 905 (1988) (quoting 12B W. FLETCHER, PRIVATE CORPORATIONS § 5910 (1984)).

Ms. Tasker cannot represent Dog Patch's interest in this appeal. Dog Patch is required to assert its own right to the bequest as a result of its corporate status. Ms. Tasker's sole control of Dog Patch does not give her the authority to appear for her corporation on appeal. Nor does it matter that Dog Patch is a nonprofit corporation rather than a corporation with stockholders. By incorporating Dog Patch, Ms. Tasker chose to enjoy the benefits of the corporate form. She must also bear its attendant burdens. As its own entity, Dog Patch is the proper party to appeal the trial court's decision.

Ms. Tasker cites *Willapa Trading Co. v. Muscanto, Inc.*, 45 Wn. App. 779, 786-87, 727 P.2d 687 (1986) as authority that she is allowed to act on behalf of Dog Patch's interests as the corporation's sole director, officer, and shareholder. Ms. Tasker's reliance on *Willapa* fails. *Willapa* does not create an exception to the rule that allows for

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self-representation for a single member corporation. *Dutch Vill. Mall, LLC v. Pelletti*, 162 Wn. App. 531, 537-39, 256 P.3d 1251 (2011), *review denied*, 173 Wn.2d 1016, *cert. denied*, 133 S. Ct. 339 (2012). The same appeals court that decided *Willapa* also determined that the case could not be read to give trial courts the discretion to allow corporations to be represented by a nonlawyer, even if the nonlawyer is the corporation's sole director, officer, and shareholder. *Id.* at 537. Ms. Tasker cannot appeal on behalf of Dog Patch's interests.

In sum, Ms. Tasker is not the aggrieved party and therefore lacks standing to bring this appeal. The standing issue is dispositive and results in dismissal of Ms. Tasker's appeal. Thus, we will not address the substantive issues that Ms. Tasker raises. We do address the issue of sanctions raised in CVAS's cross appeal.

Sanctions. A trial court's decision to impose CR 11 sanctions is reviewed for an abuse of discretion. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994). A trial court abuses its discretion if it bases its decision on untenable grounds or for untenable reasons, or if the decision is manifestly unreasonable. *Amy v. Kmart of Wash. LLC*, 153 Wn. App. 846, 866, 223 P.3d 1247 (2009) (quoting *In re Estates of Palmer*, 145 Wn. App. 249, 259-60, 187 P.3d 758 (2008)). "In deciding whether the trial court abused its discretion, we must keep in mind that '[t]he purpose behind CR 11 is to deter *baseless*

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filings and to curb abuses of the judicial system.’” *Biggs*, 124 Wn.2d at 197 (quoting *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992)).

CR 11 requires that every pleading, motion, and legal memorandum of a party represented by an attorney be dated and signed by at least one attorney of record. When a pleading is not signed accordingly, it must be stricken “unless it is signed promptly after the omission is called to the attention of the pleader.” CR 11(a). Further, if a pleading is signed in violation of this rule, the court has the discretion to impose appropriate sanctions on the party who signed it. CR 11(a).

Sanctions are proper under CR 11 if (1) the action is not well grounded in fact, (2) the action is not warranted under existing law, or (3) the attorney signing the pleadings failed to make a reasonable inquiry into the factual or legal basis for the claim. *Madden v. Foley*, 83 Wn. App. 385, 389, 922 P.2d 1364 (1996) (quoting *Lockhart v. Greive*, 66 Wn. App. 735, 743-44, 834 P.2d 64 (1992)). Lack of standing is an appropriate basis to award CR 11 sanctions. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 904-05, 969 P.2d 64 (1998).

A corporation can only act through its agents and therefore must be represented by an attorney in legal proceedings. *Finn Hill Masonry, Inc. v. Dep’t of Labor & Indus.*, 128 Wn. App. 543, 545, 116 P.3d 1033 (2005).

Here, the court struck the pleadings and sanctioned Ms. Rose for the unauthorized practice of law for filing and signing the motion for CVAS. As the court noted, Ms. Rose violated the longstanding rule in Washington that a nonattorney may not represent a corporation. *Id.* CVAS's ability to correct Ms. Rose's filing mistake does not remove the damage to Ms. Tasker. Ms. Tasker still needed to respond to the motion.

The trial court mitigated the amount of the sanction. It considered the validity of the parties' arguments and Ms. Rose's limited finances. The court decreased the amount of the sanction from \$1,580 to \$1,100. The trial court did not abuse its discretion in ordering a monetary sanction against Ms. Rose.

Attorney Fees. CVAS requests attorney fees pursuant to RAP 18.1 and RCW 11.96A.150. We find no justifiable reason to award attorney fees on appeal. Ms. Tasker's appeal was not frivolous. A financial burden on CVAS is not an appropriate justification for awarding attorney fees. We decline CVAS's request.

We also decline consideration of CVAS's statement of additional authorities and Ms. Tasker's request for attorney fees based on this filing. Nothing submitted by the parties impacted our decision.

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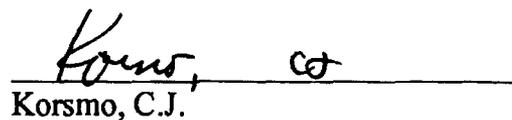
We dismiss Ms. Tasker's appeal for lack of standing. We affirm the trial court's sanction of Ms. Rose. We award no attorney fees.

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.

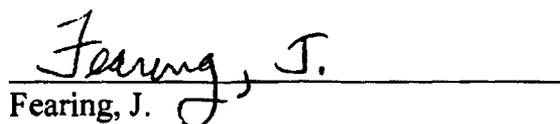


Kulik, J.

WE CONCUR:



Korsmo, C.J.



Fearing, J.

FILED
DECEMBER 10, 2013
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

**COURT OF APPEALS, DIVISION III, STATE OF
WASHINGTON**

In the Matter of the Estate of)	No. 30331-4-III
)	
)	ORDER DENYING
)	MOTION FOR
WENDELL K. MILES.)	RECONSIDERATION
)	
)	

The court has considered Joyce Tasker's motion for reconsideration and is of the opinion the motion should be denied.

IT IS ORDERED the motion for reconsideration of this court's decision of October 31, 2013, is hereby denied.

DATED: December 10, 2013

PANEL: Judges Kulik, Korsmo, and Fearing

FOR THE COURT:



KEVIN M. KORSMO
CHIEF JUDGE

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF STEVENS

9 In the Matter of the Estate of

10 WENDELL K. MILES,

11 Deceased.

No. 2010-4-00043-2

12 FIRST SET OF INTERROGATORIES
13 AND REQUEST FOR PRODUCTION
14 PROPOUNDED TO JOYCE TASKER

15
16 TO: JOYCE TASKER, AN INTERESTED PARTY, AND YOUR ATTORNEY, ROBERT
17 SIMEONE:

18 Pursuant to CR 26, CR 33 and CR 34 of the Superior Court Civil Rules, Colville Valley
19 Animal Sanctuary, herewith submits the following Interrogatories and Requests for Production.

20 These Interrogatories are to be answered separately and fully under oath and signed by
21 the person answering them within thirty (30) days from the date of service of said Interrogatories
22 upon you.

23 **IN ANSWERING THESE INTERROGATORIES, YOU ARE REQUIRED TO**
24 **FURNISH SUCH INFORMATION AS IS AVAILABLE TO YOU, NOT MERELY THE**
25 **INFORMATION WHICH YOU KNOW OF YOUR OWN PERSONAL KNOWLEDGE.**

26 **THIS IS INTENDED TO INCLUDE ANY INFORMATION IN THE POSSESSION**
27 **OF THE AGENT OR ATTORNEY OR ANY INVESTIGATOR FOR THE ANSWERING**
28 **PARTY.**

Court rules require that the Answers to Interrogatories be preceded by the questions and thus extra copies of these Interrogatories are being served upon you in order to expedite the answering thereof. You may type your answers immediately after the question and thus avoid retyping the question. If the space provided is not sufficient to completely answer the

FIRST SET OF INTERROGATORIES AND REQUEST FOR - 1
PRODUCTION OF DOCUMENTS PROPOUNDED TO JOYCE TASKER
x:\probateclients\colvilleanimal\rogs

Webster Law Office, PLLC
116 N. Main St.
Colville, WA 99114
(509) 685-2261
Fax (509) 685-2267

1 ANSWERS AND RESPONSES dated this 9 day of Aug., 2011.

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3
4 Joyce Tasker, Interested Party

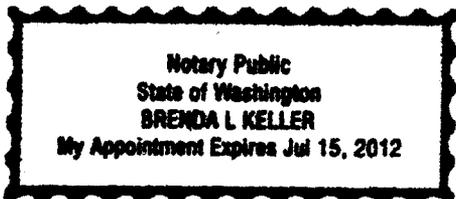
5 STATE OF WASHINGTON)
6) ss.
7 COUNTY OF STEVENS)

8 JOYCE TASKER, having been first duly sworn on oath, deposes and states:

9 I am the Director of the Dog Patch Group, Inc., an interested party herein. I have
10 read the foregoing answer and responses, know the contents thereof, and believe the same to be
11 true and correct.

12
13 Joyce Tasker, Interested Party

14 Signed and affirmed before me this 9 day of Aug, 2011, by BRENDA L KELLER.



15
16
17 Brenda L. Keller
18 NOTARY PUBLIC in and for the State of
19 Washington, Residing at Hunters
20 My Commission Expires: 7/15/12

21 **ATTORNEY CERTIFICATION**

22 The undersigned attorney for the respondent Dog Patch Group, Inc. has read the
23 foregoing answers and responses and any objections thereto, and the answers and responses are
24 in compliance with CR 26(g).

25
26 [Signature]
27 12125, WSBA #