

COURT OF APPEALS OF WASHINGTON STATE  
DIVISION II

FILED  
COURT OF APPEALS  
DIVISION II  
2013 JUL 11 AM 11:43  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

GUY METTLE

Appellant,  
Beneficiary

v.

GREGG M. METTLE

Respondent  
Personal Representative & Trustee

re Dorothy P. Mettle Estate  
Deceased December 10, 2002

Court of Appeals Cause No. 44244-2-II

Trial Cases:  
Pierce Co. Superior Ct. Case #03 4 01245  
(consolidated with No. 08-4-00411-5)

APPELLANT'S SHORTENED OPENNING BRIEF

APPELLANT'S SHORTENED OPENNING BRIEF

Filed by:  
Guy Mettle, Pro Se  
Appellant/Beneficiary  
Son of Dorothy P. Mettle

USPS 7/10/13 Express Mail

## TABLE OF CONTENTS

Table Of Authorities .....	6
Appellant’s Shortened Opening Brief .....	11
This Shortened Brief Is Filed Under Protest .....	11
STATEMENT OF FACTS .....	12
Superior Court Orders Under Appeal .....	14
Previous Discretionary Reviews Denied .....	15
Text Of Superior Court Orders Under Appeal .....	17
Order And Decree Approving Trustee’s Interim Accounting .....	18
Order On Motion For Reconsideration .....	19
Order Denying Guy Mettle’s Motion For Recusal .....	19
Order Denying Guy Mettle’s Motion To Compel Production Of Documents .....	19
Order Denying Motion For Indigency And Striking Motion For Accounting .....	20
Order Recognizing Guy Mettle’s Withdrawal Of His Motion For Accounting And Billing Information.....	20
Order Regarding Guy Mettle’s (1) Motion To Allow Overlength Motion To Compel Discovery, 2012 (2)	
Motion To Compel Discovery, 2012 & (3) Motion For Distribution, 2012 .....	21
Order And Decree Approving Trustee’s Final Accounting .....	21
Standard Of Review Is De Novo .....	23
ASSIGNED ERRORS .....	23
DISCOVERY .....	23
Assigned Error - Discovery Was Denied .....	23
Discovery Statutes And Rules .....	26
Assigned Error – The Court Did Not Apply Discovery Statutes And Rules.....	26
Discovery Is Mandated By Probate And Trust Statutes .....	26
Cr 34(A) And Cr 34(B) Authorize Request For Production Of Documents .....	26
Cr 34(C) Allows Discovery Against Any Person, Who May Have Knowledge Of The Case .....	26
Methods Of Discovery Can Be Used In Any Combination And Sequence .....	26
Cr 26 Governing Discovery Is To Be Taken Liberally In Favor Of Discovery .....	26
Cr 34(B) And Cr 37(A) Allow Guy To Compel Production Of Documents .....	26
No Showing Of Good Cause Is Required To Compel Discovery .....	26
Parties That Do Not Comply With Discovery Admit That Their Case Lacks Merit .....	26
Participation In A Requested Discovery Conference Is Required .....	27
Failure To Cooperate In A Discovery Conference Results In Sanctions .....	27
Denying Discovery Is An Abuse Of Discretion By The Court .....	27
Assigned Error - Specific Items In Controversy That Required Discovery .....	27
Assigned Error --Trustee Had No Legal Standing To Oppose Discovery Or Sanctions .....	28
Assigned Error - \$50,000 Missing From Schwab Account Required Verifiable Accounting .....	29
Assigned Error - The Prudent Man Rule Was Not Applied To Dorothy’s Charles Schwab Account	
.....	30
Assigned Error - Cr 60 Allowed Discovery On The Missing \$50,000 .....	31
Assigned Error – The Court Did Not Pursue Recovery .....	32
Assigned Error - Law Of The Case, Res Judicata, And Collateral Estoppel Did Not Limit Discovery	
.....	32

Assigned Error - Guy's Discovery Plan Was Not Honored By The Court.....	34
Assigned Error - PR/Trustee's Tactical Delays Blocked All Discovery Until The Case Was Closed.....	35
Assigned Error – Cr 11 And Fiduciary Duty Violated By PR/Trustee's Tactical Delays In Discovery .....	37
Mandatory Discovery Sanctions .....	38
Assigned Error - Default Judgement In Favor Of Guy Is The Mandated Discovery Sanction.....	39
DISTRIBUTIONS .....	40
Trustee's Tactical Delays In Distribution .....	41
Assigned Error – Court Approved Trustee's Tactical Delays In Distribution .....	41
Assigned Error – Cr 11 And Fiduciary Duty Were Violated By PR/Trustee's Tactical Delays In Distribution .....	44
Assigned Error - Nonjusticiable Issue Regarding The Interim Distribution.....	45
Assigned Error - Court Did Not Force Trustee To Complete The Interim Distribution Ordered On 6/27/2008.....	47
Assigned Error - \$24,430.87 Was Deducted From Guy's Distribution .....	48
Assigned Error - \$ 53,886.23 Was Deducted From Guy's Distribution .....	49
Assigned Error – Interim Distribution Was Reduced From The Court Ordered Amounts.....	52
ACCOUNTING.....	53
Assigned Error - \$50,000 Missing From Schwab Account Requires Verifiable Accounting And All Source Documents .....	55
Assigned Error - Guardianship Fraud By Guardian/PR/Trustee Gregg Continues Into The Trust.....	57
Assigned Error – Court Approved Trustee's Tactical Delays In Providing Annual Accountings.....	60
Assigned Error – Failure To Comply With Special Notice .....	62
Assigned Error – Beneficiaries Denied Timely Review Of Attorney Fees .....	63
Trustee's Attorney Failed Fiduciary Duty To The Beneficiaries .....	63
Assigned Error - PR/Trustee's Personal Vendetta Required Detailed Accounting.....	64
Assigned Error – Failure To Separate Accountings (And Fees) For The Estate From Those For The Trust .....	65
Assigned Error - Accounting Did Not Provide Names And Addresses Of All Beneficiaries.....	66
INTEREST AND DAMAGES.....	67
Assigned Error – Trustee Should Pay Prejudgment Interest.....	67
Assigned Error - Trustee Should Pay Post Judgment Interest.....	69
Assigned Error – Failure To Impose Treble Damages For Criminal Profiteering.....	70
SUPERSEDEAS BOND .....	72
Assigned Error – Stay On Distrution Ordered Without A Supersedeas Bond .....	72
COURT FORCED GUY TO WITHDRAW HIS MOTION.....	73
Assigned Error – The Court Forced Guy To Withdraw His Motion.....	73
Assigned Error - Guy Did Not Withdraw His Motion; The Court Declared Nonsuit.....	75
Assigned Error – Court Failed To Recognize Unmet Requests For Relief.....	75
Assigned Error – Court Failed To Recognize Unmet Requests For Relief.....	77
Assigned Error - PR/Trustee Failed His Burden Of Proof.....	77

Assigned Error - Court Failed To Presume That Guy's Statements Of Facts Are True .....	77
Assigned Error - Court Failed To Presume That Guy's Statements Of Facts Are True .....	79
Assigned Error - Court Denied Guy's Right To Plead Further .....	79
Guy Can Raise New Facts On Appeal .....	79
Assigned Error - Court Failed To Treat Trustee's Defense As A Motion For Summary Judgment. ....	80
Assigned Error - Court Failed To Recognize That PR/Trustee Waived His Right To Nonsuit Defense .....	81
INDIGENCY DENIED .....	82
Assigned Error – Motion For Indigency Status Was Denied .....	82
Assigned Error – Guy Was And Is Presumptively Indigent But Court Denied Indigency .....	82
Assigned Error – Inheritance Is A Constitutional Right, Which The Court Failed To Recognize .....	83
Assigned Error – Court Denied Constitution Grounds For Waiver Of Fees .....	85
Assigned Error: Traditional Arguments For Fees Cannot Stand In The Way Of Constitutional Access To Courts .....	87
Assigned Error – Court Attempted To Deny Guy's Statutory Right To Review By Imposing Unaffordable Fees And Costs .....	88
Assigned Error – Superior Court Violated The 14 <sup>th</sup> Amendment By Failure To Make Another Procedure Available .....	89
Assigned Error – Court Failed To Honor Rap 15.2(C) Other Cases .....	89
Assigned Error – Court Imposed Too Harsh A Penalty By Forcing Indigent Guy To Pay Unaffordable Court Fees And Cost .....	92
Assigned Error – Court Refused To Waive More Than Just Filing Fees .....	93
Assigned Error – Court Violated Case Law By Denying Indigency Just Because This Was A Probate Case .....	93
Assigned Error – Superior Court Violated The Supreme Court's Own Use Of Rap 15.2(C) .....	95
ESTATE .....	95
Assigned Error – Estate And Personal Representatives Are Distinct Legal Entities From The Trust And Trustee .....	96
Assigned Error – Court Allowed Personal Representative To Omit Filing Estate Appraisal And Inventory .....	97
Assigned Error – Court Approved Personal Representative's Tactical Delays In Closing The Estate .....	97
Assigned Error – Pr's Tactical Delays In Closing The Estate .....	97
Assigned Error - Court Approved 10 Month Delay In Probating The Will .....	97
Assigned Error – Court Approved 3- Year Unwarranted Delay In Closing The Estate .....	99
Assigned Error – Court Approved Excessive Attorney Fees .....	99
Assigned Error – Court Failed To Apply Prejudgment Interest And Sanctions .....	100
ATTORNEY FEES .....	101
Assigned Error - Court Did Not Conduct Substantive Analysis Of Attorney Fees .....	102
Assigned Error - Court Denied 30 Day Continuance To Allow Guy To Exam Final Accounting And Fees .....	102
Assigned Error - The Court Did Not Require Trustee To Break Out Fees That Are Potentially Not Billable To The Estate .....	103
Assigned Error - Trustee's Attorneys Billed For Defending Their Own Fees .....	104
Assigned Error - Trustee's Attorney Billed For A Response That He Withdrew On 4/22/2011.....	105
Assigned Error - Trustee's Attorney Billed For Litigation That Did Not Benefit The Trust .....	105

Assigned Error – Court Did Not Require Trustee To Identify Attorney Fee Items With Case Numbers .....	106
Assigned Error - \$128,000 Attorney’s Fees Are Excessive And Should Be Reduced Or Denied .....	108
Assigned Error – Excessive Attorney Fees That Were Already Paid Should Be Recovered .....	112
Guy Requests Award Of His Attorney Fees And Costs.....	112
<b>REPLACE THE TRUSTEE .....</b>	<b>113</b>
Assigned Error – Court Denied Guy’s Request To Replace The PR/Trustee For Cause .....	113
Assigned Error – Gregg Defrauded The Court About His Appointment As Trustee .....	114
Assigned Error – PR/Trustee’s Tactical Delays Gave Cause To Replace Him .....	116
Cause Remains To Replace The PR/Trustee .....	117
<b>RECUSE JUDGE LARKIN .....</b>	<b>118</b>
Assigned Error – Judge’s Prejudice Allowed PR/Trustee’s Vexatious Litigation And Tactical Delays .....	119
Assigned Error – Judge’s Prejudice Allowed PR/Trustee To Violate Fiduciary Duty .....	120
Assigned Error – Judge’s Prejudice Blocked Discovery .....	120
Assigned Error – Judge’s Prejudice Prohibited Discovery .....	121
Assigned Error – Judge’s Prejudice Penalized Guy \$24,000.....	121
Assigned Error – 11 Years And Dozens Of Legal Errors Are Prima Facie Evidence Of Judge’s Prejudice.....	122
<b>REQUESTS FOR RELIEF .....</b>	<b>123</b>
Discovery Requests For Relief .....	123
Distribution Requests For Relief .....	124
Accounting Requests For Relief .....	124
Interest And Damages Requests For Relief .....	125
Supersedeas Bond Requests For Relief .....	126
Court Forced Guy To Withdraw His Motion – Request For Relief .....	127
Indigency Request For Relief .....	127
Estate Requests For Relief .....	128
Attorney Fee Request For Relief .....	128
Racketeering And Criminal Profiteering Requests For Reilef .....	130
Replace The Trustee Requests For Relief .....	131
Recues Judge Larkin Request For Relief .....	132
Unsworn Declaration .....	132
Certificate Of Service .....	133

## TABLE OF AUTHORITIES

### Cases

. Stanard v. Bolin, 88 Wn.2d 614, 565 P.2d 94 (1977).....	78
Ashley v. Superior Court, 83 Wn.2d 630, 521 P.2d 711 (1974) .....	94
Berge v. Gorton, 88 Wn.2d 756, 567 P.2d 187 (1977).....	78
Berge v. Gorton, 88 Wn.2d 756, 567 P.2d 187 (1977).....	78
Blenheim v. Dawson & Hall, Ltd., 35 Wn. App. 435, 667 P.2d 125 (1983).....	81
Bly v. Pilchuck Tribe No. 42, Improved Order of Red Men, 5 Wn. App. 606, 489 P.2d 937 (1971).....	77
Brown v. MacPherson's, Inc., 86 Wn.2d 293, 545 P.2d 13 (1975).....	78
Bruce v. Byrne-Stevens & Assocs. Eng'rs, 51 Wn. App. 199, 752 P.2d 949 (1988), rev'd on other grounds, 113 Wn.2d 123, 776 P.2d 666 (1989).....	80
Carlsen, Llp, v. American Best Food, 2001 Wash. App. LEXIS 554.....	123
Carter v. University of Washington, [**325] 85 Wn.2d 391, 536 P.2d 618 (1975).....	94
Cf. O Leary, 655 N.W.2d at 642.....	126
Collins v. King County, 49 Wn. App. 264, 742 P.2d 185 (1987), overruled on other grounds, 119 Wn.2d 91, 829 P.2d 746 (1992).....	79
Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 150 (1968).....	123
Contreras v. Crown Zellerbach Corp., 88 Wn.2d 735, 565 P.2d 1173 (1977).....	78
Cook v. King County, 9 Wn. App. 50, 510 P.2d 659 (1973).....	26
Cook v. King County, 9 Wn. App. 50, 510 P.2d 659 (1973); Moore v. Keesey, 26 Wn.2d 31, 173 P.2d 130 (1946).....	26
Corrigal v. Ball & Dodd Funeral Home, 89 Wn.2d 959, 577 P.2d 580 (1978).....	78
Corrigal v. Ball & Dodd Funeral Home, 89 Wn.2d 959, 577 P.2d 580 (1978).....	78
Cutler v. Phillips Petro. Co., 124 Wn.2d 749, 881 P.2d 216 (1994), cert. denied, 513 U.S. 1169, 115 S. Ct. 2634, 132 L. Ed. 2d 873 (1995).....	78
Donald M. Barovic Trust, 88 Wn. App. 823; 946 P.2d 1202; 1997 Wash. App. LEXIS 1921 ..	123
Downtown Traffic Planning Comm. v. Royer, 26 Wn. App. 156, 612 P.2d 430 (1980), superseded by statute on other grounds, Snohomish County v. State, 69 Wn. App. 655, 850 P.2d 546 (1993).....	81
Esmieu v. Schrag, 88 Wn.2d 490, 498, 563 P.2d 203 (1977).....	110
Estate of August Wind V. Alfred Hendrickson, 32 Wn.2d 64 (1948).....	65
Estate of August Wind V. Alfred Hendrickson, 32 Wn.2d 64 (1948).....	122
Estate of Jack DelGuzzi, 2009 Wash. App. LEXIS 1626.....	26, 38, 58, 117, 121, 124
Estate of Jack J. Delguzzi, V. William E. Wilbert, 1999 Wash. App. Lexis 12 .....	65
Estate of Jack J. Delguzzi, V. William E. Wilbert, 1999 Wash. App. Lexis 12, .....	65
Estate Of Leona Fuller v. Donna Taylor, 2006 Wash. App. LEXIS 1278.....	69, 98, 100
Estate of Marcella Louise Jones V. Russell K. Jones, 152 Wn.2d 1; 93 P.3d 147; 2004 Wash. LEXIS 456.....	51, 65
Estrada v. Speno, 2001 U.S. App. LEXIS 10697; 49 Fed. R. Serv. 3d (Callaghan) 50 .....	26
Farmers Ins. Co. v. Miller, 87 Wn.2d 70, 549 P.2d 9 (1976).....	82
Fondren v. Klickitat County, 79 Wn. App. 850, 905 P.2d 928 (1995).....	77
Gain v. Carroll Mill Co., 114 Wn.2d 254, 787 P.2d 553 (1990).....	80
Gold Seal Chinchillas, Inc. v. State, 69 Wn.2d 828, 420 P.2d 698 (1966).....	78
Griswold v. Connecticut, U.S. Supreme Court, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 ..	84
Guardianship of Paula Lasky, 54 Wn. App. 841; 776 P.2d 695; 1989 Wash. App. LEXIS 237 39, 98	

Halvorson v. Dahl, 89 Wn.2d 673, 574 P.2d 1190 (1978).....	78
Halvorson v. Dahl, 89 Wn.2d 673, 574 P.2d 1190 (1978).....	78
Hennings v Hennings 2006 Wash. App. LEXIS 453.....	37, 44, 110, 120
Hofto v. Blumer, 74 Wn.2d 321, 444 P.V2d 657 (1968).....	78
Housing Authority v. Saylor, 87 Wn.2d 732;.....	93
Housing Authroity v. Saylor, in Supreme Court of Washington, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698.....	89
Hubbard Broad., Inc. v. Loescher, 291 N.W.2d 216, 219-20 (Minn. 1980).....	126
In re Brown's Estate, 93 Wash. 324, 160 P. 945 (1916).....	49, 121
In re Estate of Ehlers, Wash. Court of Appeals, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996).....	37, 44, 48, 120
In re Estate of Larson, Supreme Court Of Washington, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985).....	37, 44, 48, 120
In re the Guardianship of: Larry K. Cosby, 2000 Wash. App. LEXIS 882.....	111
In the Estate of August Wind v. Alfred Hendrickson, 32 Wn.2d 64.....	71
In the Matter of the Estate of Jack DelGuzzi, 2009 Wash. App. LEXIS 1626.....	33, 34
Janet Kirchan vs. Fred Schoen, 2007 Wash. App. LEXIS 294.....	62, 63, 65
Lien v. Barnett, 58 Wn. App. 680, 794 P.2d 865 (1990).....	78
Lorraine Bahr V. Vera Hardung; 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS.....	118
Lorraine Bahr V. Vera Hardung; 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS 62 .....	118
Madison v. General Acceptance Corp., 26 Wn. App. 387, 612 P.2d 826 (1980).....	81
Marie S. Ehlers, 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS 62.....	37, 44, 64
Marlene Winchester, as Personal Representative, V. John Kenneth Stein, 135 Wn.2d 835; 959 P.2d 1077; 1998 Wash. LEXIS 572.....	71
McCoy v. Cook, 13 Wash. 158, 42 P. 546 (1895).....	62
Meenakshi S. Petrie V. David Petrie; 105 Wn. App. 268; 19 P.3d 443; 2001 Wash. App. LEXIS 383.....	118
Meyer v. Dempcy, 48 Wn. App. 798, 740 P.2d 383 (1987).....	81
Meyer v. Nebraska, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446 (1923).....	83
Miller v. Badgley, 51 Wn. App. 285; 753 P.2d 530; 1988 Wash. App. LEXIS 197; 6 U.C.C. Rep. Serv. 2d.....	112
Mitchell v. Watson, 58 Wn.2d 206, 361 P.2d 744 (1961).....	40
Murray's Lessee v. Hoboken Co., U.S. Supreme Court, 18 How. [59 U.S.] 276.....	84
Nancy Waits v. Lois Denise Hamlin, 55 Wn. App. 193; 776 P.2d 1003; 1989 Wash. App. LEXIS 268.....	117, 118
O'Connor v. Matzdorff, supra, the United States Supreme Court decided Boddie v. Connecticut, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971).....	94
O'Connor v. Matzdorff, Supreme Court of Washington, 76 Wn.2d 589; 458 P.2d 154; 1969 Wash. LEXIS 689.....	92, 93
O'Connor v. Matzdorff, Supreme Court of Washington, 76 Wn.2d 589; 458 P.2d 154; 1969 Wash. LEXIS 689).....	89
Pamela Ann Porter v. Karen Lee Cover Porter , 107 Wn.2d 43; 726 P.2d 459; 1986 Wash. LEXIS 1272; 68 A.L.R.4th 859.....	117
Park's Trust, 39 Wn.2d 763 (1951).....	59, 62
Park's Trust, 39 Wn.2d 763; 238 P.2d 1205; 1951 Wash. LEXIS 353.....	31, 117
Pearson v. Schubach, 52 Wn.App. 716, 763 P.2d 834 (1988), review denied, 112 Wn.2d 1008 (1989).....	91

Pearson v. Schubach, 52 Wn.App. 716, 763 P.2d 834 (1988), review denied, 112 Wn.2d 1008 (1989).....	51
Pelly v. Behneman, 168 Wash. 465, 12 P.2d 422 (1932); Gray v. Gregory, 33 Wn.2d 713, 207 P.2d 194 (1949).....	79
RCW 11.48.010 .....	45, 48, 67, 71, 101, 109
RCW 11.48.070 .....	27, 28
RhineHart v. Seattle Times, 467 U.S. 20; 104 S. Ct. 2199; 81 L. Ed. 2d 17; 1984 U.S. LEXIS 85 .....	51
Rhonda S. Bowers v. Spokane County, 2007 Wash. App. LEXIS 1366.....	123
Roth v. Bell, 24 Wn. App. 92, 600 P.2d 602 (1979); Fondren v. Klickitat County, 79 Wn. App. 850, 905 P.2d 928 (1995).....	80
Sherwood v. Moxee Sch. Dist. No. 90, 58 Wn.2d 351, 363 P.2d 138 (1961).....	78
Siegrist v. Simpson Timber Co., 39 Wn. App. 500, 694 P.2d 1110 (1985).....	80
Snyder v. Commonwealth of Massachusetts, U.S. Supreme Court, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674.....	85
State ex rel. Evans v. Chapman, 139 Wash. 556, 247 P. 946 (1926).....	132
State Of Washington, v. Perala, 132 Wn. App. 98; 130 P.3d 852; 2006 Wash. App. LEXIS 435 .....	123
State Of Washington, v. Wilson, 2007 Wash. App. LEXIS 2129.....	123
State v. Fitzpatrick, 141 Wash. 638, 251 P. 875 (1927).....	62
State v. Kyle, 14 Wash. 550, 45 P. 147 (1896).....	62
State v. Ra, 175 P.3d 609 142 Wn. App. 868, (2008).....	123
State v. Spiller, 146 Wash. 180, 262 P. 128 (1927).....	62
United States Court of Appeals, 401 F.3d 1136; 2005 U.S. App. LEXIS 4851 .....	27
Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993). Doe v. Gonzaga Univ., 143 Wn.2d 687, 24 P.3d 390 (2001).....	38, 39

**Statutes**

Civil Rules 26(c), 26(f) and 37(d) .....	27, 29
RCW 10.101.010 (1)(a).....	82, 91
RCW 11.96A.115.....	27, 28
RCW 11.02.005 (10).....	67
RCW 11.02.005(10).....	48
RCW 11.106.020 .....	30, 62
RCW 11.20.010 .....	86, 97
RCW 11.24.040 .....	32, 112, 114
RCW 11.24.050 .....	32, 112
RCW 11.28.250 .....	40, 114
RCW 11.44.015 .....	29, 30, 56, 86
RCW 11.48.030 .....	32, 112
RCW 11.48.060 .....	28
RCW 11.48.090 .....	32
RCW 11.48.60 .....	32, 112
RCW 11.76.070 .....	32, 112
RCW 11.94.070 .....	114
RCW 11.94.120 .....	32, 112
RCW 11.95.100 .....	114
RCW 11.95.150 .....	114
RCW 11.96A.020 .....	40, 86

RCW 11.96A.150 .....	112
RCW 11.96A.200 .....	89
RCW 19.36.01 .....	32
RCW 4.56.110 .....	69, 70, 98, 100
RCW 9A.40.100 .....	71
RCW 9A.56.030 .....	28
RCW 9A.60.030 .....	71
RCW 9A.82.060 .....	71
RCW 9A.82.080 .....	71
RCW 9A.82.100 .....	71
RCW Chapter 11.....	119

**Other Authorities**

A First Amendment Right of Access to the Courts for Indigents, 82 Yale L.J. 1055, 1068-69 (1973) .....	88
Federal Accounting Standards Advisory Board .....	31
Michelman, The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights -- Part II, 1974 Duke L.J. 527, 558-63.....	88
Note, 45 Wash. L. Rev. 389, 398, n.47 (1970).....	87
Sources of Our Liberties 21, R. Perry ed. 1959.....	84

**Rules**

(CR 37(d).....	27
26(c) .....	29
CJC 3(D)(1): .....	123
CR 18(b) .....	29, 55
CR 26 (i) .....	27
CR 26(d) .....	26
CR 34(a) .....	26
CR 34(b) .....	26
CR 34(c) .....	26
CR 37 .....	29, 39, 40
CR 37(a) .....	26
CR 37(b) .....	27
CR 60 .....	124
CR 60(b) .....	29, 31, 55
CR 8(c) .....	29, 55
CR 9(b) .....	29, 55
CR12(b) .....	75
CR12(b)(6)]. .....	75
in RAP 15.2(b)(1) .....	95
RAP 12.9(b) .....	29
RAP 15.2(b)(1) .....	85, 90, 94
RAP 15.2(c) .....	90, 95
RAP 15.2(c)(1) .....	90
RAP 18.8 .....	112
Rule 8.1. Supersedeas procedure .....	73

**Constitutional Provisions**

14th Amendment .....	88
----------------------	----

Fifth Amendment.....	84
Fourteenth Amendment.....	84
Ninth Amendment.....	84

## **APPELLANT'S SHORTENED OPENNING BRIEF**

### **THIS SHORTENED BRIEF IS FILED UNDER PROTEST**

COA 44244-2-II order, dated July 26, 2013, required that Guy file an opening brief that was shorted by 43 pages, which is almost exactly the length of the "Racketeering and Criminal Profiteering" section in Guy's original brief. Clearly, said order targeted that section to force Guy to remove that section. However, section titles are for organization and are not determinative as to content. By forcing the removal of said section, the COA forced Guy to omit important evidence, issues, authorities, and arguments, including:

1. That Personal Representative Gregg stole \$70,000 in Dorothy's personal effects from the Estate. (See the list personal property that PR/Trustee Gregg stole from the estate, Exhibit 5 in CP 319 – 343.) Those personal effects should have been sold, and the resulting \$70,000 should have gone into the Trust instead of being stolen by Gregg.

2. That Gregg coerced Dorothy into signing the Estate Codicil and Trust Amendment, which appointed Gregg as the new PR and Trustee, while Dorothy was incompetent due to senile dementia and placed in fear of her life by Gregg.

3. That the Trust amendment, which allegedly appointed Gregg as the new, replacement Trustee, is unproven because Gregg never filed it in court. Hence, the alleged amendment may be a fraud or a forgery.

4. That Gregg is a violent kidnapper and member of a racketeering gang of local attorneys and judges that systematically exploit the elderly, steal their assets, and mulch their estates.

5. That PR/Trustee Gregg intentionally engaged in 11 years (2002 – 2013) of tactical delays to mulch the estate and trust with huge attorney fees, which totaled \$128,000 as of 2012.

6. That PR/Trustee Gregg engaged in 11 years (2002 - 2013) of tactical delays in distributing approximately \$400,000 from the Trust as a means of punishing the beneficiaries and depriving them of the financial ability to hire an attorney for the duration of the case.

Therefore, Guy will file his original brief's section titled "Racketeering and Criminal Profiteering" as Appendix 35. And, Guy files this shortened opening brief under protest, because so many issues, facts, authorities, and arguments have been omitted as to cripple Guy's ability to fully present his case.

#### **STATEMENT OF FACTS**

In 1997, Widow Dorothy P. Mettle executed a Will (CP 212 – 215) and revocable living trust, which appointed Guy as her personal representative and trustee. The Will was a pour over will containing her residence and personal effects. The Will bequeathed its assets to the trust. Dorothy's revocable living trust was constructed to contain all of Dorothy's assets, and distribute them, upon her death, in equal shares to her three sons, Gregg, John, and Guy.

Circa 1998, Gregg secretly moved from Tacoma, WA, to Florida and began buying real estate there. Gregg never revealed this to Dorothy or to Guy. Gregg would simply disappear for several months at a time.

In year 2000, Gregg falsely alleged that he held Dorothy's power of attorney, and Gregg put his name on all of Dorothy's bank accounts. Gregg then deprived Dorothy of any money, falsely imprisoned Dorothy, isolated Dorothy from her family, mentally abused her, and coerced her into doing Gregg's bidding. In 2000, Dorothy Mettle shouted at Gregg's attorney,

David McGoldrick, that Gregg “stole all of my money” and Gregg is “trying to kill me!”

(Evidence.<sup>1</sup>)

On 10/12/2000, Dorothy was diagnosed, by Dr. Kaldstrom, as incapacitated due to senile dementia.

But two weeks earlier on 9/26/2000, while Dorothy was incapacitated by senile dementia and under Gregg’s undue influence, Gregg coerced Dorothy into signing a codicil (CP 216 – 218) to her Will. Said codicil appointed Gregg as Dorothy’s new Personal Representative.

Likewise, on 9/26/2000, while Dorothy was incapacitated by senile dementia and under Gregg’s undue influence, Gregg coerced Dorothy into signing an amendment to her trust, which allegedly appointed Gregg as Dorothy’s new trustee. However, Gregg did not file that amendment in probate court.

In 2001 and 2002, Gregg and John Mettle were co-guardians for Dorothy.

On 12/10/2002, Dorothy died, leaving Gregg as custodian of her Will. Dorothy’s assets totaled about \$900,000, which consisted of a Columbia Bank account in the Estate and a Merrill Lynch account in the Trust.

Gregg delayed 10 months before delivering Dorothy’s Will the Court.

On 9/10/2003, Gregg delivered Dorothy’s Will and codicil to Superior Court, and opened case No. 03-4-01245-1, the Estate of Dorothy P. Mettle.

On 3/10/2008, five years later, Gregg opened Superior Court case 08-4-00411-5, In Re Dorothy P. Mettle Trust. Gregg did not file the trust in court, nor the amendment which allegedly appointed Gregg as trustee.

---

<sup>1</sup> Guy Mettle witnessed this exchange at Shari’s restaurant in year 2000. Discovery will uncover additional evidence. Attorneys David Petrich and David McGoldrick have written evidence that Dorothy Mettle firmly rejected the first attempt by Gregg Mettle (future PR/Trustee) to takeover Dorothy’s person and her estate.

On 3/10/2008, Gregg filed his "Petition to Approve Trustee's Interim Accounting (CP 3 – 5). Therein, footnote #3 in the accounting revealed that Dorothy had a third bank account, her Charles Schwab account, which Gregg had kept secret from the probate court and from the beneficiaries for six years, since Dorothy's death. Gregg's administration of the secret Charles Schwab account has been controversial because the account is missing \$50,000.

On 3/28/2008, the Trust case 08-4-00411-5 was consolidated into the Estate case 03-4-01245-1, which maintained the same case name "Estate of Dorothy P Mettle."

On 6/27/2008, Superior Court closed the estate (CP 494- 496).

From 2008 to 2012, this case has been active, with 10 appeals: COA 38243-1-II, COA 38603-8-II, COA 38733-6-II, COA 41463-5-II, COA 42213-1-II, COA 44244-2-II, Supreme Ct #84705-3, Supreme Ct #84648-1, Supreme Ct #85871-3, and Supreme Ct #86961-8

On 10/26/2012, Superior Court Closed the Trust (CP 1751 – 1754.)

On 11/26/2012, Guy filed this appeal #44244-2-II (CP 1755 – 1775). Important issues under appeal include denied discovery, \$50,000 missing from the Charles Schwab account, \$70,000 in items missing from the Estate, PR/Trustee's tactical delays for 11 years (2002 – 2013), \$128,000 in PR/Trustee attorney fees, Guy's indigency denied, replacement of Trustee Gregg, and recusal of Judge Larkin.

#### **SUPERIOR COURT ORDERS UNDER APPEAL**

Guy Mettle, Beneficiary/Appellant, is appealing Superior Court orders:

- A) ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION, re the Estate, entered on 6/27/2008 (CP 494- 496).
- B) ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING entered on June 27, 2008. ( CP 497 - 498)
- C) ORDER ON MOTION FOR RECONSIDERATION, entered on August 1, 2008

- a. (CP 566 - 567.)
- D) ORDER DENYING GUY METTLE'S MOTION FOR RECUSAL, entered on October 24, 2008. (CP 759 - 760.)
- E) ORDER DENYING GUY METTLE'S MOTION FOR DISTRIBUTION OF UNSEQUESTERED FUNDS, re the trust, entered on 11/14/2008, CP 847 – 848.
- F) ORDER DENYING GUY METTLE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS, entered on December 5, 2008. (CP 890 - 891.)
- G) ORDER DENYING MOTION FOR INDIGENCY AND STRIKING MOTION FOR ACCOUNTING, entered on October 8, 2010. ( CP 918)
- H) ORDER RECOGNIZING GUY METTLE'S WITHDRAWAL OF HIS MOTION FOR ACCOUNTING AND BILLING INFORMATION, entered on May 6, 2011. (CP 1185 - 1186.)
- I) ORDER REGARDING GUY METTLE'S (1) MOTION TO ALLOW OVERLENGTH MOTION TO COMPEL DISCOVERY, 2012 (2) MOTION TO COMPEL DISCOVERY, 2012 & (3) MOTION FOR DISTRIBUTION, 2012, entered on September 21, 2012. ( CP 1592 - 1593)
- J) ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, entered on October 26, 2012. (CP 1751 - 1754.)

**PREVIOUS DISCRETIONARY REVIEWS DENIED**

- A) ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION, re the Estate (CP 494- 496), entered on 6/27/2008. (See Guy's motion for reconsideration, CP 510 – 549.) In COA 38243-1-II review was accepted, briefs filed, case heard, and ruling was against Guy in the COA. Review was denied by the Supreme Ct #84705-3 on 8/26/2010.
- B) ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING (CP 497 – 498), entered on June 27, 2008. (See Guy's motion for reconsideration, CP 510 – 549.) In COA 38243-1-II review was accepted, briefs filed, case heard, and ruling was against Guy in the COA. Review was denied by the Supreme Ct #84705-3 on 8/26/2010

- C) ORDER ON MOTION FOR RECONSIDERATION (CP 566 - 567), entered on August 1, 2008, regarding Final Accounting of Estate and Interim Accounting of Trust. Same as Superior Court order 6/27/2008, above. Motion for reconsideration (CP 510 – 549) delayed the date of Guy's appeal of Superior Ct order dated 6/27/2008. In COA 38243-1-II review was accepted, briefs filed, case heard, and ruling was against Guy in the COA. Review was denied by the Supreme Ct #84705-3 on 8/26/2010.
- D) ORDER DENYING GUY METTLE'S MOTION FOR RECUSAL (CP 759 - 760), entered on October 24, 2008. COA 38603-8 on 2009-11-17, Commissioner's Ruling denying Review
- E) ORDER DENYING GUY METTLE'S MOTION FOR DISTRIBUTION OF UNSEQUESTERED FUNDS, re the trust, entered on 11/14/2008, CP 847 – 848. This order was not appealed in 2008.
- F) ORDER DENYING GUY METTLE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS (CP 890 - 891), entered on December 5, 2008. COA 38733-6 on 2/12/2010, Commissioner's ruling denied review of discovery & supersedeas bond. Also, review denied by Supreme Ct #84648-1 on 8/26/2010.
- G) ORDER DENYING MOTION FOR INDIGENCY AND STRIKING MOTION FOR ACCOUNTING (CP 918), entered on October 8, 2010. COA 41463-5 on 1/11/2011, Commissioner's Ruling dismissed appeal of Indigency denied. Also, review denied by Supreme Ct #85871-3 2011-09-07

- H) ORDER RECOGNIZING GUY METTLE'S WITHDRAWAL OF HIS MOTION FOR ACCOUNTING AND BILLING INFORMATION (CP 1185 - 1186), entered on May 6, 2011. COA 42213-1 on 11/07/2011, Commissioner's Ruling denying review. Also, review denied by Supreme Ct #86961-8 on 4/02/2012.
- I) ORDER REGARDING GUY METTLE'S (1) MOTION TO ALLOW OVERLENGTH MOTION TO COMPEL DISCOVERY, 2012 (2) MOTION TO COMPEL DISCOVERY, 2012 & (3) MOTION FOR DISTRIBUTION, 2012 ( CP 1592 - 1593), entered on September 21, 2012. In COA 44094-6-II, Guy filed a notice of appeal and then withdrew his appeal on 11/05/2012.
- J) ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING (CP 1751 - 1754), entered on October 26, 2012. Currently under appeal COA 44244-2-II.

#### **TEXT OF SUPERIOR COURT ORDERS UNDER APPEAL**

- A) ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION, re the Estate, entered on 6/27/2008 (CP 494- 496).

"THIS MATTER coming before this court upon Petition of the Personal Representative and the court having reviewed the Petition of the Personal Representative, the multiple responses by Guy Mettle, and other files and records herein, and it appearing to the court that this Estate is in a condition to be closed, the court hereby makes the following:

#### **FINDINGS**

1. Jurisdiction: That decedent died on December 10, 2002, and was a resident of Pierce County, Washington, leaving property in this state subject to probate.
2. Last Will: That the decedent's Will dated September 15, 1997 and a First Codicil dated September 26, 2000 was admitted to probate and named the Petitioner as Personal Representative to serve without bond. The Will provides that the Estate be administered without the intervention of the court and an Order of Solvency was entered on September 10, 2003.
3. Notices: Notice of Appointment of the Personal representative and the Notice of Pendency of Probate Proceedings was mailed to the heirs, distributees and persons named in the Will within twenty (20) days of the date of appointment. Notice to Creditors has been published; the time for filing claims has expired; and all timely claims presented and filed have been approved, allowed and paid. Proper notices have been given to the interested parties of the hearing of this Petition.

4. Taxes: There was a Washington Estate Tax Return due and has been filed and accepted by the Washington State Department of Revenue.
5. Heirs: The sole beneficiary of the Estate is Gregg M. Mettle as Trustee of the Dorothy M. Mettle Revocable living Trust dated December 15, 1997 and amended on December 26, 2000.  
Base on these findings the court hereby enters the following:

ORDER AND DECREE

1. That the Estate's Final Accounting and Petition for Distribution of the Personal Representative is approved.
2. That the activities of the Personal Representative are hereby approved.
3. That the professional fees and costs incurred and paid by the Personal Representative are reasonable and approved.
4. That the fees of the Personal Representative in the amount of \$2,000 are reasonable and shall be paid from the Estate; and that the previous guardian fees ordered by the court under cause number 08-4-01533-2 in the amount of \$552.88 shall be paid to Gregg M. Mettle from the Estate.
5. That the balance of the property in the Estate be delivered to Gregg M. Mettle as Trustee of the Dorothy P. Mettle Revocable Living Trust.
6. That the relief sought by Guy Mettle is denied.
7. That \_\_\_\_\_

Done in open court this 27 day of June, 2008  
Honorable Thomas Larkin

B) ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, entered on June 27, 2008, CP 494 – 496:

"THIS MATTER having come before the court upon Petition to Approve Trustee's Interim Accounting filed by Gregg M. Mettle, Trustee of the Dorothy P. Mettle Revocable Living Trust dated September 15, 1997, and amended on September 26, 2000, and the court having reviewed the aforementioned Petition, the multiple responses by Guy Mettle and the other files and records herein, it hereby makes the following:

FINDINGS

1. Jurisdiction: That this court has subject matter jurisdiction over this Trust matter.
2. Notices: That all requisite notices have been provided to the interested parties in this matter as provided by RCW 11.106.
3. Accounting: That the Trustee's accounting for the period of December 10, 2002 through December 31, 2007 is reasonable

Based on the findings, the court hereby enters the following:

ORDER AND DECREE

1. That the Trustee's interim accounting for the Period of December 10, 2002 through December 31, 2007 is hereby approved and the Trustee's activities are also hereby approved.
2. That the trustee may consolidate all trust assets into a non interest bearing trust account at Merrill Lynch.

3. That the trustee's reasonable attorney fees as set forth in the Declaration of David B. Petrich filed with the court are reasonable and approved.

4. That the interim distribution proposed by the Trustee is authorized and that such distribution may be delayed until the statutory period for appealing this Order has expired or until any appeal of this Order has been resolved.

5. That the relief sought by Guy Mettle is denied.

6. That \_\_\_\_\_

Done in open court this 27 day of June, 2008.

Honorable Thomas Larkin"

C) ORDER ON MOTION FOR RECONSIDERATION, entered on August 1, 2008, CP 566 – 567:

"THIS MATTER having come before the court upon Guy Mettle's Motion for Reconsideration of this Court's Order entered on June 27, 2008, and the court having reviewed the Motion and the files and records herein, the court makes the following:

FINDINGS AND CONCLUSIONS

Based on the foregoing Findings and Conclusions, it is hereby, ORDERED that the motion is denied.

Done in open court this 1 day of Aug, 2008.

Honorable Thomas Larkin"

D) ORDER DENYING GUY METTLE'S MOTION FOR RECUSAL, entered on October 24, 2008, CP 759 760:

"THIS MATTER having come before the court upon Guy Mettle's Motion, and the court having reviewed the Motion and the files and records herein, it is, therefore, hereby ORDERED that Guy Mettle's motion for recusal is denied.

Done in open court this 24 day of Oct, 2008.

Honorable Thomas Larkin"

E) ORDER DENYING GUY METTLE'S MOTION FOR DISTRIBUTION OF UNSEQUESTERED FUNDS, re the trust, entered on 11/14/2008, CP 847 – 848

"THIS MATTER having come before the court upon Guy Mettle's Motion for Distribution of Unsequestered Funds, and the court having reviewed the Motion and other files and records herein, it is, therefore, hereby ORDERED that the motion is denied.

Done in open court this 14 day of November, 2008.

Honorable Thomas Larkin"

-F) ORDER DENYING GUY METTLE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS, entered on December 5, 2008, CP 890 – 891:

“THIS MATTER having come before the court upon Guy Mettle’s Motion to Compel Production of Documents, and the court having reviewed the Motion and the files and records herein, and finding that there has been no showing of good cause to grant the motion, it is, therefore, hereby ORDERED that the motion is denied.

Done in open court this 5 day of December, 2008.

Honorable Thomas Larkin”

G) ORDER DENYING MOTION FOR INDIGENCY AND STRIKING MOTION FOR ACCOUNTING, entered on October 8, 2010, CP 918:

“This Court having reviewed the pleading filed in this case by Guy Mettle in support of Mr. Mettle’s Motion for Indigency and Motion for Accounting and the response of Trustee including the Trustee’s Accounting for the Estate of Dorothy P. Mettle and the Dorothy P. Mettle Trust for Period 1/1/08 through 12/31/09, which Mr. Mettle received prior to the October 8, 2010 hearing and the receipt of which was acknowledged, and having considered the oral argument of the parties, it is hereby ORDERED that Guy Mettle’s Motion for Indigency is denied. It is further ordered that Guy Mettle’s Motion for Accounting is stricken.

Dated this 8 day of October, 2010

Judge Thomas P. Larkin”

H) ORDER RECOGNIZING GUY METTLE’S WITHDRAWAL OF HIS MOTION FOR ACCOUNTING AND BILLING INFORMATION, entered on May 6, 2011, CP 1185 – 1186:

“THIS MATTER having come before the court upon Guy Mettle’s Motion for Accounting and Billing Information, and the court having reviewed the Motion, and the files and records herein including all documents filed in support of and opposition to, and having heard the argument of counsel and pro se Guy Mettle, it is, therefore, hereby

ORDERED that Guy Mettle’s Motion for Accounting & Billing Information is recognized as withdrawn as Guy Mettle is in receipt of the personal Representative/Trustee’s Accounting for the period of January 1, 2010 through December 31, 2010 as well as Eisenhower & Carlson’s unredacted billing statements from July 28, 2008 through March 31, 2011. The court further denies Guy Mettle’s request for attorney’s fees and costs and reserves determination of the Personal Representative/Trustee’s request for attorney fees pending the filing of a Declaration supporting said attorney’s fees.

Done in open court this 6 day of May, 2011.

Honorable Thomas Larkin”

I ) ORDER REGARDING GUY METTLE'S (1) MOTION TO ALLOW OVERLENGTH MOTION TO COMPEL DISCOVERY, 2012 (2) MOTION TO COMPEL DISCOVERY, 2012 & (3) MOTION FOR DISTRIBUTION, 2012, entered on September 21, 2012, CP 1592 – 1593:

“THIS MATTER having come before the court upon Guy Mettle’s (1) Motion to Allow Overlength Motion to Compel Discovery, 2012 (2) Motion to Compel Discovery, 2012 & (3) Motion for Distribution, 2012, and the court having reviewed the aforementioned motions and the Trustee’s Responses and the other files and records herein and having heard the argument of counsel and pro se Guy Mettle; it is hereby

ORDERED that Guy Mettle’s Motion to Allow overlength Motion to Compel Discovery, 2012 is denied because it is not necessary as there are no page limits for filing discovery motions;

ORDERED that Guy Mettle’s Motion to Compel Discovery, 2012 is denied; and

ORDERED that Guy Mettle’s Motion for Distribution, 2012 is continued to October 26, 2012, to allow the Trustee to file its Petition to Approve Trustee’s Final Accounting.

Done in open court this 21 day of September, 2012.

Honorable Thomas Larkin”

J ) ORDER AND DECREE APPROVING TRUSTEE’S FINAL ACCOUNTING, entered on October 26, 2012, CP 1751 – 1754:

“THIS MATTER having come before the Court upon the Petition to Approve Trustee’s Final Accounting filed by Gregg M. Mettle, Trustee of the Dorothy P. Mettle Revocable Living Trust dated September 15, 1997, and amended on September 26, 2000 (“Trust”); and the Court having reviewed the aforementioned petition and the other files and records herein, it hereby makes the following:

**FINDINGS**

1. Jurisdiction: That this Court has subject matter jurisdiction over this Trust matter.
2. Notices: That all requisite notices have been provided to the interested parties in this matter as provided by RCW 11.106.
3. Accounting: That the Trustee’s final accounting for the period of January 1, 2008, through September 30, 2012, is reasonable and should be approved.

Based on the findings, the Court hereby enters the following:

**ORDER AND DECREE**

1. That the Trustee’s final accounting for the period of period of January 1, 2008, through August 31, 2012, is hereby approved and that the Trustee’s activities are also hereby approved.
2. That the Trustee’s reasonable attorney fees and costs as set forth in the Declaration of David B. Petrich filed with the Court on October 3, 2012 are reasonable and approved.
3. That the final distribution proposed by the Trustee is authorized as follows:

<u>Trust Balance:</u>	\$ 323,960.25	
Fiduciary Fees:	\$ < 2,552.88 >	
Final Trustee Attorney Fees:	\$ < 11,024.12 >	
Final Trustee Accountant Fees:	\$ < 395.00 >	
Net Amount for Distribution:	\$ 309,988.25	<u>\$309,988.25</u>

Distribution to Beneficiaries:

A. Guy Mettle	\$ 103,329.42
Less	\$ < 53,886.23 >
Less	<u>\$ &lt; 24,430.87 &gt;</u>
Net Distribution:	\$25,012.32

B. John Mettle	\$ 103,329.42
Plus	\$ 26,943.12
<u>Plus</u>	<u>\$ 12,215.43</u>
Net Distribution:	\$142,487.97

C. Gregg Mettle	\$ 103,329.41
Plus	\$ 26,943.11
Plus	<u>\$ 12,215.44</u>
Net Distribution:	\$142,487.96

Total Net Distribution: \$309,988.25

5. That the distributions shall be made by official checks drawn on the Trustee's Merrill Lynch account and sent to each beneficiary by overnight delivery or hand delivery to the following addresses:

<i>John Mettle</i>	<i>Guy Mettle</i>	<i>Gregg Mettle</i>
4046 Yankee Drive	P.O. Box 2491	c/o Eisenhower & Carlson, PLLC
Agoura Hills, CA 91301	Westerville, OH 43086-2491	1201 Pacific Avenue, Ste. 1200
		Tacoma, WA 98402

6. That the distributions approved by this order may be delayed by the Trustee until the statutory period for appealing this order has expired or until any other request for relief filed with an appellate court concerning this case has been resolved.

7. That the Trustee shall be discharged upon order of the Court, without notice to the parties, upon the filing of receipts signed by the Trust beneficiaries that they have received their final distribution as ordered, provided, however, that if any beneficiary does not return his receipt to Trustee's counsel within fifteen (15) days after the Trustee has delivered such distribution as set forth in paragraph 5 above, then the Trustee shall be discharged by order of the Court, without notice to the parties, upon the Trustee's filing of a copy of the official check sent to such beneficiary and proof of mailing of such check to the beneficiary's address.

8. Other: \_\_\_\_\_

Done in open court this 26 day of Oct, 2012.  
Honorable Thomas Larkin”

### **STANDARD OF REVIEW IS DE NOVO**

The standard of review is De Novo for probate appeals. (Estate of *Black*, 116 Wn. App. at 483.

### **ASSIGNED ERRORS**

#### **DISCOVERY**

#### **ASSIGNED ERROR - DISCOVERY WAS DENIED**

Re Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754.)

Assigned Error – re: GUY METTLE’S RESPONSE REGARDING ACCOUNTING DEFICIENCIES AND REQUESTS FOR RELIEF, filed 6/05/2008, CP 294 – 318, CP 319 – 343, in which Guy moved for discovery in requests for relief #11, #12, and #13, on pages 15 and 16, but on 6/27/2008 the Superior Court order (CP 494- 496) denied discovery before any appeal had been filed.

Assigned Error – re: GUY METTLE’S MOTION REGARDING ADMINISTRATION AND ACCOUNTING DEFICIENCIES, AND REQUEST FOR RELIEF, filed 6/18/2008, CP 357 – 382 and CP 395 – 419, in which Guy moved for discovery in requests for relief #11, #12, and #13, on page 17, but on 6/27/2008 the Superior Court order (CP 494- 496) denied discovery before any appeal had been filed.

Assigned Error – re: SUPPLEMENTAL AUTHORITIES #1 AND REQUESTS FOR GUY METTLE’S MOTION REGARDING ADMINISTRATION AND ACCOUNTING DEFICIENCIES, AND REQUESTS FOR RELIEF, filed 6/24/2008, CP 420 - 448, in which Guy moved for discovery in

requests for relief #J on page 26, and again on page 27, but on 6/27/2008 the Superior Court order (CP 494- 496) denied discovery before any appeal had been filed.

Assigned Error – re: MOTION FOR RECONSIDERATION REGARDING MOTIONS DECIDED IN COURT HEARING ON 6/27/2008, filed on 7/10/2008, CP 510 – 549, in which Guy moved for discovery on page 23, page 32, and Items #i and #O on page 37, but on 8/01/2008 Superior Court order (CP 566 – 567) denied discovery before any appeal had been filed.

Assigned Error – re: ADDENDUM #1 FOR MOTION FOR RECONSIDERATION REGARDING MOTIONS DECIDED IN COURT HEARING ON 6/27/2008, filed on 7/29/2008, in which Guy moved for discovery in Item #4 on page 12, and in Item #29 on page 20, but on 8/01/2008 the Superior Court order (CP 566 – 567) denied discovery before any appeal had been filed

Assigned Error -- On June 27, 2008, Superior Court order (ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION, RE THE ESTATE, CP 494 - 496) failed to approve Guy's requests for discovery, which Guy made in the hearing (Verbatim report on 6/27/2008, page 12), and in previous motions listed above.

Assigned Error -- On June 27, 2008, Superior Court (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) failed to approve Guy's requests for discovery, which Guy made in the hearing (Verbatim report on 6/27/2008, page 12) and in previous motions listed above.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of

Distribution, re the Estate, entered on 6/27/2008 (CP 494 496), which failed to approve Guy's requests for discovery, which Guy made in the hearing (Verbatim report on 8/1/2008, page 12) and in previous motions listed above, before any appeal had been filed.

Assigned Error – On 12/5/2008, Superior court order (ORDER DENYING GUY METTLE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS, CP 890 - 891) denied Guy's Motion to Compel Production of Documents, including Guy's addendums and supplements (CP 764 843, CP 697 – 704, CP 751 - 758, CP 859 – 669, CP 892 – 895, CP ).

Assigned Error – On 9/21/2012, Superior court order (ORDER REGARDING GUY METTLE'S (1) MOTION TO ALLOW OVERLENGTH MOTION TO COMPEL DISCOVERY, 2012 (2) MOTION TO COMPEL DISCOVERY, 2012 & (3) MOTION FOR DISTRIBUTION, 2012, CP 1592 - 1593) denied Guy's Motion to Compel Discovery 2012 (CP 1785 - 1894,<sup>2</sup> and CP 1342 - 1524).

Assigned Error – On 10/26/2012, Superior court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved the Trustee's final report, final account, activities, and discharged the Trustee, before compelling the Trustee to participate in discovery

Assigned error – For the following reasons, denying discovery was an error by superior court orders (CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754.)

PR/Trustee ignored Guy's requests for production of Documents and for a discovery conference, which were served on August 6, 2008, and September 17, 2008. (See Guys Appendix 33 containing 46 requests for discovery, already served. See pages 23 & 28. CP 1342 – 1524.)

---

<sup>2</sup> Guy's Motion to Compel Discovery is listed under a Note for Motion Docket, CP 1785 – 1894.

Discovery denied made it impossible for Guy to fully present his evidence and claims in any of the hearings in any court. (Estate of Delguzzi.<sup>3</sup>)

**ASSIGNED ERROR – THE COURT DID NOT APPLY DISCOVERY STATUTES AND RULES**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754

Discovery is mandated by probate and trust statutes RCW 11.48.060, RCW 11.48.070, RCW 11.96A.010, and RCW 11.96A.115(1).

CR 34(a) and CR 34(b) authorize request for production of documents to be served on any party, without leave of the Court, which Guy has done for all parties. (Copies of Guy's discovery requests are in Appendix 33.)

CR 34(c) allows discovery against any person, who may have knowledge of the case, but who is not a party to the case.

Methods of discovery can be used in any combination and sequence [CR 26(d)].

CR 26 governing discovery is to be taken liberally in favor of discovery, including production of documents and taking depositions. (Cook v. King County, 9 Wn. App. 50, 510 P.2d 659 (1973); Moore v. Keeseey, 26 Wn.2d 31, 173 P.2d 130 (1946).)

CR 34(b) and CR 37(a) allow Guy to compel production of documents.

No showing of good cause is required to compel discovery. (Cook v. King County, 9 Wn. App. 50, 510 P.2d 659 (1973))

Parties that do not comply with discovery admit that their case lacks merit. (Estrada v. Speno, 2001 U.S. App. LEXIS 10697; 49 Fed. R. Serv. 3d (Callaghan) 50)

---

<sup>3</sup> Estate of JACK DELGUZZI, 2009 Wash. App. LEXIS 1626

PR/Trustee has no standing to object to discovery. In order to block discovery the PR/Trustee had to file a timely objection within 10 days in Superior Court and be awarded a prohibition on discovery (CR 37(d)), which the PR/Trustee did not do.

Participation in a requested Discovery Conference is required [CR 26 (i)].

Failure to cooperate in a discovery conference results in sanctions [CR 37(b)].

Denying Discovery Is An Abuse of Discretion By The Court (U.S. Court of Appeals, 401 F.3d 1136; 2005 U.S. App. LEXIS 4851.)

Assigned error –Superior court denied discovery in violation of the above rules, laws, and case precedents.

**ASSIGNED ERROR - SPECIFIC ITEMS IN CONTROVERSY THAT REQUIRED DISCOVERY**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754

TEDRA permits discovery when a judicial proceeding placing a specific issue in controversy has commenced, or when good cause is shown. RCW 11 .96A. 115. And, RCW 11.48.070 allows for discovery of concealed or embezzled items. In Superior court, Guy presented many specific issues that were in controversy and that required discovery, including:

- 1) That Trustee Gregg stole \$50,000 from the Trust's Charles Schwab account.
- 2) That Personal Representative Gregg stole \$70,000 in Dorothy's personal effects from the Estate. (See the list personal property that PR/Trustee Gregg stole from the estate, Exhibit 5 in CP 319 – 343.) Those personal effects should have been sold, and that \$70,000 should have gone into the Trust instead of being stolen by Gregg.
- 3) That Gregg coerced Dorothy into signing the Estate Codicil and Trust Amendment, which appointed Gregg as the new PR and Trustee, while Dorothy was incompetent due to senile dementia and placed in fear of her life by Gregg.

- 4) That the Trust amendment, which allegedly appointed Gregg as the new, replacement Trustee, is unproven because Gregg never filed it in court. Hence the alleged amendment maybe a fraud or a forgery.
- 5) That Gregg is a violent kidnapper and member of a racketeering gang of local attorneys and judges that systematically exploit the elderly, steal their assets, and mulch their estates.
- 6) That PR/Trustee Gregg intentionally engaged in 11 years (2002 – 2013) of tactical delays to mulch the estate and trust with huge attorney fees, which totaled \$128,000 as of 2012.
- 7) That PR/Trustee Gregg engaged in 11 years (2002 - 2013) of tactical delays in distributing approximately \$400,000 from the Trust as a means of punishing the beneficiaries and depriving them of the financial ability to hire an attorney for the duration of the case.

In this case, COA 44244-2-II, corrupt COA judges need not repeat their lie (in COA 38243-1-II) that “Guy’s requests for discovery were general at best.” Assigned Error – The court denied discovery in violation of RCW 11 .96A. 115 and RCW 11.48.070, before any appeal had been filed and after appeals had been exhausted.

**ASSIGNED ERROR --TRUSTEE HAD NO LEGAL STANDING TO OPPOSE DISCOVERY OR SANCTIONS**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754

Stolen, embezzled or missing assets are recoverable by statute (RCW 11.48.060, RCW 9A.56.030). Discovery is fully authorized by statutes (RCW 11.48.070, RCW 11 .96A.115) and

rules (CR 26, 27, 34, 37). No justification for discovery is required; it is a right granted by the aforementioned statutes. However, the Court should note that in order to block discovery the PR/Trustee had to file a timely objection (within 10 days) in Superior Court and be awarded a prohibition on discovery, as specified in Civil Rules 26(c), 26(f) and 37(d).

**CR 37(d) ... Quote:** ““The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 26(c).”

Assigned error - The PR/Trustee did not file any pleadings in response Guy’s request for production of documents, which means that the PR/Trustee and racketeering attorneys have no legal standing to oppose discovery, or to oppose sanctions for their noncompliance with previous discovery requests. The court erred in denying discovery requested by Guy.

**ASSIGNED ERROR - \$50,000 MISSING FROM SCHWAB ACCOUNT REQUIRED VERIFIABLE ACCOUNTING**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754

FRAUD – rules referring to fraud: CR 8(c), CR 9(b), CR 18(b), CR 60(b), RAP 12.9(b)

Dorothy Mettle died in 2002, and 11 years later in 2013, there still has not been a verifiable accounting of \$50,000, which is missing from her Charles Schwab brokerage account.

The Charles Schwab account did not appear in the Guardianship’s Inventory (Exhibit 3, CP 319 – 343). The Charles Schwab account never appeared in any Guardianship accounting, and it did not appear in the order approving Guardian’s final report (Exhibit 2, CP 319 – 343).

In the Estate, RCW 11.44.015 requires that all estate assets be included in the Estate inventory, but the PR/Trustee completely omitted Dorothy’s Charles Swab Brokerage account from estate accounting. Neither did Dorothy’s Charles Schwab account appear in the trust

accounting until 2008. Then, in 2008, the Trustee only mentioned the closing balance (\$12,368.25) of the Charles Schwab account in a footnote. (See Petition to Approve Trustee's Interim Accounting, CP 3 - 15, footnote #3 on page 5.)

But, in year 2000, Guy personally witnessed that Dorothy froze her Charles Schwab brokerage account to prevent Gregg from accessing it. At that time Dorothy's Charles Schwab account had over \$62,000 in it. Then, in 2008, Trustee's accounting shows only 12,368.25 in the Charles Schwab account. Obviously, \$50,000 is missing. Said \$50,000 has never appeared in any inventory, which the Personal Representative was required to provide by law (RCW 11.44.015), nor did the missing and stolen \$50,000 appear in any accounting, which the Trustee is required to provide by law (RCW 11.106.020).

The Court should note that said Charles Schwab account never appeared in any Guardianship accounting and the Guardianship did not make the Charles Schwab account res judicata. Assigned error – The court did not require the PR/Trustee to provide a verifiable accounting and source documents to show all funds moving into and out of the Charles Schwab account since the accounts inception.

**ASSIGNED ERROR - THE PRUDENT MAN RULE WAS NOT APPLIED TO DOROTHY'S CHARLES SCHWAB ACCOUNT**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754

The prudent man rule must be applied to every trust account, including Dorothy's Charles Schwab brokerage account. A prudent man would never allow any accounting to omit

the initial balance from the accounting. Standard accounting practice<sup>4</sup> is that every accounting, everywhere, starts with the initial balance, so that the ending balance can be subtracted there from, and reveal monies that have been removed from the account. Anyone who has balanced a checkbook knows this.

Assigned Error – The court allowed the trustee to omit the initial balance from Dorothy’s Charles Schwab brokerage account (CP 3 – 15, page 5, footnote #3), and thereby the Trustee hid the \$50,000 which is missing from that account. That broke the prudent man rule, which this court must apply to every account, including Dorothy’s Charles Schwab brokerage account. The court’s failure to do so is an error by the court in support of the trustee’s theft and perjury.

Case quote: “[HN1] a trustee's duty of care, skill and diligence is that degree of care, skill and diligence that would be exercised by an ordinary prudent man engaged in similar affairs. In administering the trust, the trustee must exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property and, in meeting this standard, the circumstances as they reasonably appear to him at the time of doing an act, and not at some subsequent time when his conduct is called in question, should be considered. The trustee owes to the beneficiaries of the trust the highest degree of good faith, diligence, fidelity, loyalty, and integrity, and the duty to deal fairly and justly with them and solely in their interests. The text books and the cases are so replete with declarations of the foregoing rules that we deem citation of authority unnecessary. Park’s Trust, 39 Wn.2d 763; 238 P.2d 1205; 1951 Wash. LEXIS 353

#### **ASSIGNED ERROR - CR 60 ALLOWED DISCOVERY ON THE MISSING \$50,000**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754

Assigned error - Despite the above evidence of PR/Trustee’s accounting fraud and embezzlement of \$50,000, the Court failed to authorize relief from all previous judgments per

---

<sup>4</sup> Standard practice per General Accepted Accounting Principles, which are followed by all accountants. The principles are set by the Federal Accounting Standards Advisory Board. See <http://www.fasab.gov/accepted.html>

CR 60(b), and a trial de novo to discover and recover the \$50,000 that is missing from Dorothy's Charles Schwab brokerage account and the Trust.

**ASSIGNED ERROR – THE COURT DID NOT PURSUE RECOVERY**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754

PR/Trustee's (and coconspirator attorneys) may be found liable for the entire estate or parts thereof, per RCW 11.48.030, RCW 11.24.040, RCW 11.24.050; recovery of embezzled or missing assets per RCW 11.48.060 and discovery thereof per RCW 11.48.070; contracts they entered into per RCW 11.48.090, RCW 19.36.010; cost of petitions successfully challenging their accounting and actions per RCW 11.94.120, RCW 11.76.070. PR/Trustee Gregg and his attorneys should be personally responsible for excessive attorney fees, and for the \$50,000 missing from the Charles Schwab account. Assigned error - The court failed to pursue recovery of that missing money and those excessive fees, and distribute them to the beneficiaries.

**ASSIGNED ERROR - LAW OF THE CASE, RES JUDICATA, AND COLLATERAL ESTOPPEL DID NOT LIMIT DISCOVERY**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754

Superior court postponed discovery in 2008 because there were some issues under appeal. In 2008, Superior Court and no other court limited discovery. Discovery was merely postponed until after appeals had been completed, which happened on when COA 38243-1-II filed its mandate on September 30, 2011 (CP 1231).

There were no appeals pending on 8/29/2012, when Guy filed his Motion to Compel Discovery, 2012 (CP 1785 – 1894). Assigned error – In 2012, Superior Court orders (CP 1592 – 1593, CP 1751 – 1754) still denied Guy's request for discovery.

Assigned Error -- In 2012, Law of the Case, Res Judicata, or Collateral Estoppel were no reason for the Court to limit discovery. The PR/Trustee had never complied with Guy's discovery requests; there was not an appeal pending; and no court had limited discovery. Therefore, the Court erred in denying discovery in 2012.

Guy never had the opportunity to fully present his evidence and claims in any court, and the Court should compel the PR/Trustee into full compliance with Guy's discovery requests.

For authorities and complete review of this issue, see the Estate of DelGuzzi

Case quote: "¶12 A different superior court judge again dismissed Gary's claim, reasoning that at the 1997 hearings on William's final report and accounting for the Estate, Gary had adequate opportunity to raise all claims and he did not prevail. The trial court reasoned that at the previous probate proceeding the superior court found William's administration fees reasonable and that the personal representative did not breach his fiduciary duty to the Estate (including fraud and self-dealing claims). The trial court did not address how Gary could have effectively mounted a challenge to the estate's administration without the fulfillment of his discovery requests"  
*In the Matter of the Estate of JACK DELGUZZI, 2009 Wash. App. LEXIS 1626*

Case quote: "Gary appealed the dismissal of his July 1996 petitions for William's removal as the personal representative and for damages and the imposition of discovery sanctions on remand from the first appeal. As to the petitions, he argued that the trial court erred in dismissing them on grounds of res judicata, collateral estoppel, and the law-of-the-case [\*11] doctrine. As to the sanctions claim, he argued that the trial court failed to follow our remand instructions.

¶14 In the second appeal, we agreed with Gary on both claims"  
*In the Matter of the Estate of JACK DELGUZZI, 2009 Wash. App. LEXIS 1626*

Case quote: "¶31 We based our decision that the second dismissal was improper on a number of factors. First, ..... "Second, although at the Final Accounting hearing, [Gary] could have alleged that [William] had breached his fiduciary duties, [Gary] had no evidence to support such allegations" because the trial court had previously denied compelling answers to his discovery requests. *DelGuzzi II, 2001 Wash. App. LEXIS 2024, 2001 WL 1001082 at \*7.* Consequently, "because he could not compel discovery and

because he no longer had an active claim, [Gary] could not have offered crucial evidence in the previous proceeding to establish the necessary facts underlying his dismissed claims." *De/Guzzi II*, 2001 Wash. App. LEXIS 2024, 2001 WL 1001082 at \*7. We will not disturb this reasoning in the appeal now before us."

*In the Matter of the Estate of JACK DELGUZZI*, 2009 Wash. App. LEXIS 1626

Therefore, res judicata, collateral estoppel, and the law-of-the-case doctrine do not prohibit Guy's discovery requests at this time, and the Court should compel the PR/Trustee into full compliance with Guy's discovery requests.

### **ASSIGNED ERROR - GUY'S DISCOVERY PLAN WAS NOT HONORED BY THE COURT**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754

Guy Mettle presented his discovery plan in each of his motions to compel discovery (CP 764 – 843, CP 764 – 843) and addendums thereto

. Guy Mettle could not present a discovery schedule because the PR/Trustee did not respond to Guy's request for a discovery conference, and 9 related communications. However, Guy's plan listed the use all of the discovery methods in CR 26. The sequence of Guy's discovery was as follows:

- a) Obtain discoverable documents from relevant persons.
- b) Use document cross reference and analysis to submit requests for interrogatories, admissions, and depositions.

This discovery plan did not delay final resolution of the case because the Trustee had not yet moved to close the Trust. The Trustee had no reliable time frame, because the Trustee has already kept Guy's inheritance in the Trust for 11 years, without cause and in violation of law (RCW 11.48.010). . Assigned error – The court denied Guy the opportunity to implement his discovery plan.

**ASSIGNED ERROR - PR/TRUSTEE'S TACTICAL DELAYS BLOCKED ALL DISCOVERY UNTIL THE CASE WAS CLOSED**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754

The Trustee used tactical delays in discovery to completely block discovery until the case was closed. Simply put, the PR/Trustee tactic was to refuse to participate in discovery. Then the PR/Trustee filed an accounting, which forced Guy to appeal lest the accounting become *res judicata* without discovery. Then, the PR/Trustee blocked discovery because there was an appeal in process. But, after the appeal was completed, the PR/Trustee still refused to participate in discovery. Then, the PR/Trustee claimed there could be no discovery because all issues were *res judicata* after the first appeal. Then, the Trustee successfully petitioned to close the Trust without any discovery at all.

Trustee's tactical delays to block discovery worked as follows:

(1) In 2003, Trustee refused to respond to Guy's requests for special notice, after Guy served and filed request for special notice pursuant to RCW 12.28.240, RCW 11.44.015(2), and RCW 11.106.20 on December 9, 2003 (CP 1783 - 1784).

(2) In 2008, Guy requested Special Notice on 11/13/2008 in his Motion to Compel Production of Documents, on page 68. (CP 764 - 843).

(3) In 2008, Guy served requests for discovery and for a discovery conference. See CP 1342 – 1524, pages 23 and 28.

(4) In 2008, PR/Trustee failed to make any response at all to nine communications regarding Guy's discovery requests.

(5) In 2008, PR/Trustee filed an interim accounting and statement of attorney fees.

(6) In 2008, Superior court orders (CP 494- 496, CP 497 – 498, CP 566 – 567) approved PR/Trustee's interim accounting and attorney fees

(7) In 2008, Guy had to appeal, before the interim accounting an attorney fees became res judicata. That appeal became COA 38243-1-II.

(8) In 2008, PR/Trustee still refused to participate in discovery.

(9) So in 2008, Guy had to file a motion to compel production of documents, which were needed prior to interrogatories and depositions. (CP 859 – 669, CP 697 – 704, CP 859 – 669, CP 751 – 758.)

(10) In 2008, Superior Court order (CP 890 – 891) denied Guy's motion to compel production of documents because the PR/Trustee's accounting and fees were now under appeal.

(11) In 2012, a full year after all of those appeals were completed, the PR/Trustee still refused to participate in discovery.

(12) So in 2012, Guy filed a Motion to Compel Discovery, 2012. (CP 1785 – 1894,<sup>5</sup> and CP 1525 – 1571)

(13) However in 2012, the PR/Trustee opposed discovery, saying that all issues were res judicata.

(14) In 2012, Superior Court order (CP 1592 - 1593) denied Guy's Motion to Compel Discovery, 2012.

(15) In 2012, Trustee petitioned to close the Trust and filed a final report.

---

<sup>5</sup> Guy's Motion to Compel Discovery, 2012, is listed under a Note for Motion Docket, CP 1785 – 1894.

(16) In 2012, Guy opposed closing the trust without discovery (CP 1728 – 1750, pages 13 and 19.)

(17) In 2012, Superior Court order (CP 1751 – 1754) closed the trust, approved final report, and discharged the trustee, without allowing any discovery at all.

Assigned Error – Superior Court orders approved PR/Trustee’s tactical delays in discovery for 4 years (2008 – 2012) and then Superior Court closed the Trust without any discovery at all. And, the Court allowed the PR/Trustee to ignore Guy’s requests for special notice for 9 years (2003 – 2012) until the Estate and the Trust were closed. Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754

**ASSIGNED ERROR – CR 11 AND FIDUCIARY DUTY VIOLATED BY PR/TRUSTEE’S TACTICAL DELAYS IN DISCOVERY**

Re Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754.)

The PR/Trustee owes a fiduciary duty to the beneficiaries. [Estate of Larson,<sup>6</sup> Estate of Ehlers,<sup>7</sup> and Hennings v Hennings.<sup>8</sup>] And, the PR/Trustee’s attorneys, themselves, owe a fiduciary duty to the beneficiaries. [Marie S. Ehlers,<sup>9</sup> Estate of Carl Larson.<sup>10</sup>]

But, instead of simply participating in discovery, the PR/Trustee expended \$128,000 in attorney fees fighting discovery. The PR/Trustee fought against discovery in six Superior Court hearings resulting in Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 - 1754 via hearings, motions, petitions, and replies. The

---

<sup>6</sup> In re Estate of Larson, Supreme Court Of Washington, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985)

<sup>7</sup> In re Estate of Ehlers, Wash. Court of Appeals, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996), at HNI

<sup>8</sup> Hennings v Hennings 2006 Wash. App. LEXIS 453

<sup>9</sup> Marie S. Ehlers, 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS 62

<sup>10</sup> Estate of Carl Larson, Supreme Court Of Washington, 103 Wn.2d 517; 694 P.2d 1051; 1985 Wash. LEXIS 1063

PR/Trustee continued without allowing discovery in 10 appellate and Supreme Court cases: COA 38243-1-II, COA 38603-8-II, COA 38733-6-II, COA 41463-5-II, COA 42213-1-II, COA 44244-2-II, Supreme Ct #84705-3, Supreme Ct #84648-1, Supreme Ct #85871-3, and Supreme Ct #86961-8.

Assigned error – The PR/Trustee breached his fiduciary duty in fighting discovery through 6 Superior Court hearings (listed above) and through 10 higher court appeals (listed above), and expending \$128,000 in attorney fees, rather than simply participating in discovery and a much lower cost to the beneficiaries and to the judicial court system. Not only did the PR/Trustee violate his fiduciary duty, but so did all of his attorneys. Also, the PR/Trustee and his attorneys violated CR 11 because they signed all of those pleadings in bad faith for the purpose of tactical delays. That was particularly wasteful, because the PR/Trustee must still participate in discovery [*Estate of JACK DELGUZZI*<sup>11</sup>].

Assigned error – The court approved the PR/Trustee’s tactical delays for 11 years (2002 – 2013), whereby the PR/Trustee violated his fiduciary to distribute the inheritance trust “as rapidly and quickly as possible.” (RCW 11.48.010).

## **MANDATORY DISCOVERY SANCTIONS**

Discovery sanctions apply to PR/Trustee and their attorneys because the PR/Trustee failed to participate in good faith with a discovery conference to frame a discovery plan, and failed to participate in production of documents. [CR 37(d); CR 37(e); Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993); Doe v. Gonzaga Univ., 143 Wn.2d 687, 24 P.3d 390 (2001).]

---

<sup>11</sup> *In the Matter of the Estate of JACK DELGUZZI*, 2009 Wash. App. LEXIS 1626

Discovery sanctions are mandatory and good faith does not shield the PR/Trustee's failure to participate in discovery. [Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993). Doe v. Gonzaga Univ., 143 Wn.2d 687, 24 P.3d 390 (2001).]

Clear and convincing proof of bad faith or willfulness is not required to apply mandated discovery sanctions for PR/Trustee's failure to participate in discovery. [In Rosenthal Collins Group, LLC v. Trading Techs. Int'l, Inc., No. 05 C 4088, Slip Op. (N.D. Ill. Jul. 17, 2008).]

Assigned Error – The court failed to impose discovery sanctions on the PR/Trustee, which must be sufficient: (1) to compensate the estate and trust. [Guardianship of Paula Lasky.<sup>12</sup>], (2) to prevent wrongdoers from undermining the purpose of discovery [Physicians Ins v. Fisons Corp.<sup>13</sup>]; (3) to prevent wrongdoers from profiting by their violations. (Physicians Ins v. Fisons Corp.<sup>14</sup>); and (4) to prevent such conduct in the future. (Guardianship of Paula Lasky.<sup>15</sup>)

#### **ASSINGED ERROR - DEFAULT JUGEMENT IN FAVOR OF GUY IS THE MANDATED DISCOVERY SANCTION**

Assigned error - The court failed to apply sanctions by striking PR/Trustee's testimony and declarations due to PR/Trustee's willful, intentional, or tactical nondisclosure of discovery items. (CR 37; Allied Fin. Servs. v. Mangum, 72 Wn. App. 164, 864 P.2d 1 (1993), modified on other grounds, 871 P.2d 1075, Wn. App. 1994.)

The Trustee should be replaced (1) for failure to participate in discovery for four years since Guy's request in 2008, (2) frivolous delay of the case four years (2008 – 2012) due

---

<sup>12</sup> In the Matter of the Guardianship of Paula Lasky, 54 Wn. App. 841; 776 P.2d 695; 1989 Wash. App. LEXIS 237

<sup>13</sup> Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858P.2d 1054 (1993)

<sup>14</sup> Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858P.2d 1054 (1993)

<sup>15</sup> In the Matter of the Guardianship of Paula Lasky, 54 Wn. App. 841; 776 P.2d 695; 1989 Wash. App. LEXIS 237

his failure to participate in discovery, (3) intentionally increasing litigation costs as proven by the Trustee's own statements in John Mettle's declaration (CP 901 - 903Error! Bookmark not defined.), and (4) embezzling \$50,000 from the Trust. See \$50,000 Missing From Schwab Account Requires Verifiable Accounting, RCW 11.96A.020, RCW 11.28.250, and Park's Trust at HN5

Case: " [HN5] Wash. Rev. Stat. §§ 11548-2 and 11548-3 (Remington 1941) require the trustee to file an inventory and yearly intermediate reports. Wash. Rev. Stat. § 11548-19 (Remington 1941), provides: When a trustee fails to perform any of the duties imposed upon him by the statute he may be removed, his compensation may be reduced or forfeited, or other civil penalty inflicted, in the discretion of the court." Park's Trust, 39 Wn.2d 763 (1951)

Assigned Error - Default judgment and dismissal is the mandatory sanction: (1) for the PR/Trustee's failure to participate in discovery. This is to be presumed by the court as a matter of law. [ CR 37; Mitchell v. Watson, 58 Wn.2d 206, 361 P.2d 744 (1961)]; and (2) for the PR/Trustee's refusal to respond to Guy's request for production of documents [CR 37; 27 ALR4th 61]. Assigned Error - Default judgment is the required discovery sanction against PR/Trustee, even if Guy had not asked for it. [CR 37(d); Pamelin Indus., Inc. v. Sheen -- U.S.A., Inc., 95 Wn.2d 398, 622 P.2d 1270 (1981).]

### **DISTRIBUTIONS**

Assigned Error -- On June 27, 2008, Superior Court (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) ordered an interim distribution of \$125,000 to each beneficiary, but then placed a stay on the distribution, and the distribution was never completed.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Assigned error - Superior Court Order on Motion for Reconsideration (CP 566 – 567) ordered an interim distribution of \$125,000 to each beneficiary, but then placed a stay on the distribution, and the distribution was never completed.

Assigned Error – On 11/14/2008, Superior Court order (ORDER DENYING GUY METTLE'S MOTION FOR DISTRIBUTION OF UNSEQUESTERED FUNDS), re the trust, CP 847 – 848, denied distribution of unsequestered funds.

Assigned Error - September 21, 2012, Superior Court Order, on (ORDER REGARDING GUY METTLE'S (1) MOTION TO ALLOW OVERLENGTH MOTION TO COMPEL DISCOVERY, 2012 (2) MOTION TO COMPEL DISCOVERY, 2012 & (3) MOTION FOR DISTRIBUTION, 2012, CP 1592 - 1593) failed to complete the interim distribution from 6/27/2008 to the best of the Trust's ability.

Assigned Error - On 10/26/2012, Superior court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) also failed to complete the interim distribution from 6/27/2008 to the best of the Trust's ability.

Assigned Error -List of Superior Court orders with assigned errors regarding distribution. Re Superior Court Orders CP 497 – 498, CP 566 – 567, CP 847 – 848, CP 1592 – 1593, and CP 1751 - 1754

## TRUSTEE'S TACTICAL DELAYS IN DISTRIBUTION

ASSIGNED ERROR – COURT APPROVED TRUSTEE'S TACTICAL DELAYS IN DISTRIBUTION

Re Superior Court Orders CP 497 – 498, CP 566 – 567, CP 847 – 848, CP 1592 – 1593, and CP 1751 – 1754

The Trust is distinct legal entity from the Estate. (Estate of Genevieve McCuen.<sup>16</sup>) And, the Trustee is a distinct legal entity from the Personal Representative, even if Gregg was appointed to both positions. (Estate of Genevieve McCuen.<sup>17</sup>) Therefore, the Trustee cannot use the Estate as an excuse for delays in distribution, because the distribution of beneficiaries' inheritance must be made "as rapidly and quickly as possible." (RCW 11.48.010)

2002 – Dorothy died, and the trust was fully funded, with the statutory obligation to be distributed as rapidly and quickly as possible. (RCW 11.48.010)

2008 – Trustee delayed six years (2002 - 2008) before filing the first accounting for the Trust, and retained approximately \$400,000 in the Trust.

2008 – Trustee delayed six years (2002 – 2008), before Trustee filed a motion to distribute \$125,000 to each of the three beneficiaries. Trustee did not need court approval to make this interim distribution, because the Trustees are fully authorized to make interim distributions without court intervention. (Note that Trustee did not get court approval to make the only previous interim distribution in 2004.) But in 2008, Trustee sought court approval this time as a ploy so that Trustee could force the distribution to wait until Trustee got court approval of Trustee's fraudulent accounting, which hid

---

<sup>16</sup> HN1 in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

<sup>17</sup> HN1 in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

\$50,000 missing from Dorothy's Charles Schwab account. To complete his ploy, Trustee's attorneys drafted the court order which put a stay on the interim distribution that lasted three years. (Superior Ct. orders CP 497 – 498, CP 566 – 567.) Guy Mettle fought that stay in court, but the Trustee insisted on keeping the stay in place. The COA should note that said interim distribution of \$375,000 was a nonjusticiable issue because both parties support said distribution and no one opposed it.

2008 – Because Trustee had arranged a stay on distribution of \$375,000 (\$125,000 to each beneficiary), Guy moved in court to distribute the remaining \$30,000 that was not covered by the previous court orders. However, Trustee opposed even that small distribution. Superior Court denied Guy's motion to distribute the \$30,000 in unsequestered funds (CP 847 – 848.)

2011 – Trustee's stay on distribution expired on 9/30/2011, when the COA 38243-1-II filed a mandate in Superior Court. (CP 1231.) For a full year from that day, Trustee was under direct court orders (CP 497 – 498, CP 566 – 567) to distribute \$125,000 to each of the beneficiaries. However Trustee still did not do it.

2012 – A year after Superior Court's stay on distribution expired, Guy moved in court to force Trustee to complete the court ordered distribution. However, Trustee opposed the distribution. And, Trustee still refused to provide any brokerage account statements to show what happened to the \$50,000 missing from Dorothy's Charles Schwab account. Then in 2012, just as in 2008, Trustee's attorneys drafted a court order which placed another stay on distribution. (CP 1592 – 159.)

During the last 11 years (2002-2013), Trustee could have distributed the beneficiaries' inheritance just by writing a check, but Trustee did not do it. In a common ploy,

the Trustee simply refused to distribute the money until a beneficiary (Guy) moved in court to force a distribution. Then, Trustee had his attorneys fight the distribution because Trustee was holding our inheritance hostage until Trustee got final approval for his accounting fraud. Trustee's attorneys always drafted court orders which made distribution wait until Trustee's fraudulent accounting was approved, so that said accounting still hid the Trustee's theft of \$50,000 from the Charles Schwab account. Assigned error – Superior Court approved the Trustee's tactical delays in distribution, re Superior Court orders CP 497 – 498, CP 566 – 567, CP 847 – 848, CP 1592 – 1593, and CP 1751 – 1754

**ASSIGNED ERROR – CR 11 AND FIDUCIARY DUTY WERE VIOLATED BY PR/TRUSTEE'S TACTICAL DELAYS IN DISTRIBUTION.**

Re Superior Court Orders CP 497 – 498, CP 566 – 567, CP 847 – 848, CP 1592 – 1593, and CP 1751 – 1754.

The PR/Trustee owes a fiduciary duty to the beneficiaries. [Estate of Larson,<sup>18</sup> Estate of Ehlers,<sup>19</sup> and Hennings v Hennings.<sup>20</sup>] And, PR/Trustee's attorneys owe a fiduciary duty to the beneficiaries. [Marie S. Ehlers,<sup>21</sup> Estate of Carl Larson.<sup>22</sup>]

But, instead of simply making timely distributions, the PR/Trustee expended \$128,000 in attorney fees fighting distribution for 11 years (2002 – 2013). The PR/Trustee fought against distributions in five Superior Court hearings resulting in Superior Court orders that stayed all distributions for five years (2008 – 2013) CP 497 – 498, CP 566 – 567, CP 847 – 848, CP 1592 – 1593, and CP 1751 – 175. The PR/Trustee continued his fight against distributions in 10

---

<sup>18</sup> In re Estate of Larson, Supreme Court Of Washington, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985)

<sup>19</sup> In re Estate of Ehlers, Wash. Court of Appeals, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996), at HN1

<sup>20</sup> Hennings v Hennings 2006 Wash. App. LEXIS 453

<sup>21</sup> Marie S. Ehlers, 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS 62

<sup>22</sup> Estate of Carl Larson, Supreme Court Of Washington, 103 Wn.2d 517; 694 P.2d 1051; 1985 Wash. LEXIS 1063

appellate and Supreme Court cases: COA 38243-1-II, COA 38603-8-II, COA 38733-6-II, COA 41463-5-II, COA 42213-1-II, COA 44244-2-II, Supreme Ct #84705-3, Supreme Ct #84648-1, Supreme Ct #85871-3, and Supreme Ct #86961-8.

Assigned errors – The Court erred in failing to compel timely interim distributions Superior Court orders CP 497 – 498, CP 566 – 567, CP 847 – 848, CP 1592 – 1593, and CP 1751 – 175. The Court erred in not finding the Trustee in breach of his fiduciary duty due to Trustee’s tactical delays in distribution, and the Court erred in not applying CR 11 sanctions for the Trustee’s tactical delays.

The Trustee breached his fiduciary duty by fighting actual distributions in five Superior Court hearings (listed above) and through 10 higher court appeals (listed above). In doing so, PR/Trustee expended \$128,000 in attorney fees, rather than simply making the interim distributions, which the Trustee could have done at a much lower cost to the Trust, and to the judicial court system, by simply writing a check. The Trustee never needed a court order to make said interim distributions, because the Trustee is fully authorized to do so simply by writing a check as the Trustee did for an interim distribution in 2004. Not only did the PR/Trustee violate his fiduciary duty, but so did all of his attorneys. Also, the PR/Trustee and his attorneys violated CR 11 because they signed all of those pleadings regarding interim distributions in bad faith for the purpose of tactical delay to starve out the beneficiaries until the beneficiaries could no longer litigate for distributions or discovery. By 11 years of these tactical delays (2002 – 2013), the PR/Trustee violated his fiduciary to distribute the inheritance trust “as rapidly and quickly as possible.” (RCW 11.48.010). And the PR/Trustee violated CR 11 by making bad faith pleadings which created said tactical delays.

## **ASSIGNED ERROR - NONJUSTICIABLE ISSUE REGARDING THE INTERIM DISTRIBUTION**

Assigned Error - There was no controversy regarding the Trustee's proposed distribution of \$125,000 to each beneficiary in 2008. The Trustee proposed it and Guy supported it. Therefore, that issue, and only that issue, was a nonjusticiable issue on which Superior Court should not have ruled (*Coppernoll v. Reed*<sup>23</sup>), and therefore the court should not have placed a stay on distribution during appeal because it was a nonjusticiable issue to begin with. Thereby, Superior Court made an assigned error by ruling on a nonjusticiable issue in the Order And Decree Approving Trustee's Interim Accounting entered on June 27, 2008 (CP 497 - 498) and in the Order On Motion For Reconsideration, entered on August 1, 2008 (CP 566 - 567).

The Trustee always had full authority to make interim distributions without court approval, which the Trustee did by distributing \$600,000 in 2004. By submitting the uncontested interim distribution for the court's approval in 2008, the Trustee engineered a 3-year tactical delay in distribution while the appeal of other issues was resolved (COA 38243-1-II). Thereby, the Trustee is subject CR11 sanctions.

Assigned Error – The court erred by ruling on the interim distribution, which was a nonjusticiable issue supported by both parties. The court further erred by placing a stay on the nonjusticiable interim distribution until the subsequent appeal (COA 38243-1-II) was exhausted, which took 3 more years until 2011.

CO A judges should not lie, again, and say that Guy is claiming that all issues were nonjusticiable, and therefore Guy's arguments are contradictory and not worthy of consideration. The COA should note that the nonjusticiable issue applies only to the \$125,000 interim distribution to each beneficiary, which was proposed by the Trustee in 2008.

---

<sup>23</sup> *Coppernoll v. Reed*, 155 Wn.2d 290; 119 P.3d 318; 2005 Wash. LEXIS 717

**ASSIGNED ERROR - COURT DID NOT FORCE TRUSTEE TO COMPLETE THE INTERIM DISTRIBUTION ORDERED ON 6/27/2008**

Re Superior Court orders CP 497 – 498, CP 566 – 567, CP 847 – 848, CP 1592 – 1593, and CP 1751 – 175

Dorothy Mettle died in 2002. Trustee waited six years, until 2008, to file his Petition to Approve Trustee' S Interim Accounting (CP 3 – 15). Therein, Trustee petitioned to distribute \$125,000 to each beneficiary. Superior Court ordered an interim distribution of \$125,000 to each beneficiary on 6/27/2008. (CP 497 – 498.) However, five years later (2013), said distribution was never made. And, no portion of it was made.

On 9/30/2011, COA 38243-1-II Mandate (CP 1231) confirmed the Superior Court distribution order originally entered on 6/27/2008 (CP 497 – 498). However, the Trustee still did not make the distribution and delayed another full year from September 2011 to September 2012. Finally in September 2012, Guy was forced to file a Motion for Distribution (CP 1572 – 1591).

However, on September 21, 2012, Superior Court Order (CP 1592 – 1593) denied Guy's motion for distribution, which is an ASSIGNED ERROR. Superior court should have compelled said interim distribution, to be completed proportionately to each beneficiary to the best of the Trust's ability. [RCW.76.150. Merlino v. Hamlin, 48 Wn.2d 494, 294 P.2d 941 (1956). Tucker v. Brown, 20 Wn.2d 740, 150 P.2d 604 (1944).] .

When Superior Court refused to compel the interim distribution in September 2012, the Court rewarded Trustee's tactical delay of one more year (Sept. 2011 to Sept 2012), during which the Trustee further impoverished beneficiary Guy and further increased costs of the case. Said cost increases are manifest because the Trustee's delay in distribution forced Guy to

motion in court for distribution (CP 1572 — 1591), which the Trustee chose to oppose and to appear at the hearing. The Trustee caused further costs, when Superior Court order (CP 1592 – 1593) allowed the Trustee’s delays in distribution and forced Guy to appeal.

The COA should note that the Trustee has now delayed distribution for 11 years (2002-2013), since Dorothy Mettle’s death in 2002. With the exception of stays during appeal, the Trustee had eight years free and clear to make the distribution (2002-2008 and 2011-2013), but the Trustee did not do so. And, the stay during appeal (COA 38243-1-II) originated because the Trustee frivolously sought court approval of an interim distribution, which no one opposed and which was a nonjusticiable issue.

Assigned error – Superior Court did not compel the Trustee to complete interim distribution, ordered by the court on 6/27/2008, to the best of the trust’s ability. The Trustee and his attorneys owe a fiduciary responsibility to the beneficiaries (Estate of Larson <sup>24</sup> and Estate of Ehlers <sup>25</sup>), which includes distribution the inheritance “as rapidly and quickly as possible” per RCW 11.48.010 and RCW 11.02.005(10).

**ASSIGNED ERROR - \$24,430.87 WAS DEDUCTED FROM GUY’S DISTRIBUTION.**

Assigned Error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE’S FINAL ACCOUNTING, CP 1751 - 1754) deducted an additional \$24,430.87 Guys distribution.

In one prior decision, COA 38243-1-II ordered Guy to pay \$53,886.23 in appeal costs. (Mandate, CP 1231.). The COA and the Supreme Court denied all other PR/Trustee requests for Guy to pay other appeal costs and attorney fees.

---

<sup>24</sup> *In re Estate of Larson*, Supreme Court Of Washington, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985)

<sup>25</sup> *In re Estate of Ehlers*, Wash. Court of Appeals, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996), at HN1

However, PR/Trustee Petition to Approve Trustee's Final Accounting, filed 10/03/2012, argued that Guy should pay appeal related attorney fees and costs in the amount of \$24,430.87 that the higher courts had denied to the PR/Trustee.

Assigned Error - Superior Court ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754, erred in approving the additional deduction of \$24,430.87 from Guy's distribution, because the Trustee cannot tax Guy with attorney fees denied to the PR/Trustee during the appeals. By doing so, the Superior Court attacked prior decisions by the Court of Appeals and the Supreme Court.

Case citation: "Executor cannot attack prior judgment refusing to tax appeal costs on losing parties, by setting off such costs on final account against such party's share." In re Brown's Estate, 93 Wash. 324, 160 P. 945 (1916).

#### **ASSIGNED ERROR - \$ 53,886.23 WAS DEDUCTED FROM GUY'S DISTRIBUTION**

Assigned Error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) deducted \$53,886.25 from Guy's distribution.

COA 38243-1-II ordered Guy to pay \$53,886.23 for the PR/Trustee's attorney fees during the appeal (CP 1231.). Then, this Superior Court order ( CP 1751 – 1754) deducted said amount from Guy's distribution.

Both courts (Superior and the COA) erred in deducting \$53,866.23 from Guy's distribution for the following reasons:

1. PR/Trustee refused to participate in discovery after he was served with discovery requests in 2008. (See Guy's Appendix 33 containing 46 requests for discovery already served, pages 23 & 28. CP 1342 – 1524.) After refusing to participate in discovery, the PR/Trustee opposed Guy's Motion to Compel Production of Documents, which Guy filed November 13, 2008 (CP 764 - 843), along with Addendum 1 (CP 697 - 704), Addendum 2 (CP 859 – 669), and

Appendix (CP 751 – 758). Superior Court denied Guy’s motion for production of documents on December 5, 2008. (CP 890 – 891.) Then, the PR/Trustee opposed Guy’s appeal of discovery denied, with the result that COA 38733-6 –II denied Guy’s request for discovery (CP 1231), because an appeal had been in process.

2. However, PR/Trustee must now participate in discovery (See above section titled: ASSIGNED ERROR - DISCOVERY DENIED), which proves that PR/Trustee engaged in tactical delays and vexatious litigation for five years (2008 – 2013), with the objective of delaying discovery, delaying distributions, and increasing litigation cost until beneficiary Guy was so impoverished that Guy could no longer present his case. Indeed, Clerk’s Papers were late in this appeal (COA 44244-2-II), because Guy did not have money to pay the Court’s invoice, which almost caused Guy’s appeal to be dismissed. (See COA 44244-2-II Clerk’s letter dated 4/1/2013.)

3. PR/Trustee’s tactical opposition to discovery made it impossible for Guy to fully present his evidence and claims in any court. (*Estate of JACK DELGUZZI*, 2009 Wash. App. LEXIS 1626.) Since Guy could not fully present his evidence, Guy was doomed to lose in Superior Court and in the Court of Appeals due to the PR/Trustee’s tactical delays in discovery. Regardless of which party won the appeals, Guy should no longer be charged for the \$53,866.23 in appeal costs and fees. The COA should reverse that charge because the PR/Trustee must now participate in discovery, which proves that his previous opposition was merely a tactical delay for 5 years (2008 – 2013) and over 10 appellate cases previously listed.

4. PR/Trustee is liable for litigation costs incurred by his tactical delays in discovery and for his vexatious litigation.

“HN28 A court may award attorney fees as justice may require. Former Wash. Rev. Code § 11.96.140 (1994). .... The overriding consideration must be whether the litigation

benefited the estate and whether the conduct of the parties or counsel was vexatious or litigious."

Estate of Marcella Louise Jones V. Russell K. Jones, 152 Wn.2d 1; 93 P.3d 147; 2004 Wash. LEXIS 456

Also, Rhinehart v. Seattle Times, 467 U.S. 20; 104 S. Ct. 2199; 81 L. Ed. 2d 17; 1984 U.S. LEXIS 85

5. COA 38243-1-II should never have charged \$53,866.23 against Guy in the first place.

The Respondent filed a motion on the merits, which the COA denied on October 1, 2010.

Therefore, the COA proved that Guy's Appellant's brief, Guy's reply brief, and Guy's arguments were not frivolous, but that there were debatable issues. Thus, the PR/Trustee was never entitled to award of fees.

**Case Citation:** There were debatable issues, as evidenced by an order denying respondent's motion on the merits; thus, respondent was not entitled to an award of fees against appellant for a frivolous appeal. Pearson v. Schubach, 52 Wn.App. 716, 763 P.2d 834 (1988), review denied, 112 Wn.2d 1008 (1989).

It is the PR/Trustee that engaged in tactical delays in discovery for 5 years (2008-2013), tactical delays in distribution for 11 years (2002 - 2113), and vexatious litigation (all the way up to the Supreme Court) to defend the PR/Trustee's tactical delays. Hence, the COA should charge the \$53,866.23 in appeal costs and fees against the PR/Trustee (instead of against Guy), and deduct it from the Trustee's distribution. The COA may do so at this time because estate, trust, and probate appeals are *de novo* (*Black*, 116 Wn. App. at 483), and because interlocutory decisions may be modified upon termination of the case as required to effect a just and equitable outcome.

The COA should note that the COA can reverse its charge of \$53,866.23 in appeal costs and fees against Guy. The Supreme court never accepted review of any interlocutory appeal in the case, and now that the Superior Court case has been terminated, all Superior Court orders

are subject to review [RAP 13.5(d)], and all Court of Appeals interlocutory decisions are subject to change [RAP 12.7(d)].

**ASSIGNED ERROR – INTERIM DISTRIBUTION WAS REDUCED FROM THE COURT ORDERED AMOUNTS**

Assigned error: On 9/21/2012, Superior Court order (ORDER REGARDING GUY METTLE'S (1) MOTION TO ALLOW OVERLENGTH MOTION TO COMPEL DISCOVERY, 2012 (2) MOTION TO COMPEL DISCOVERY, 2012 & (3) MOTION FOR DISTRIBUTION, 2012, CP 1592 - 1593) failed to enforce the interim distribution order on 6/27/2008 (CP 497- 498) and confirmed by COA Mandate on 9/30/2011 (CP 1231).

Assigned error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee Report and revised distributions, without enforcing the interim distribution order on 6/27/2008 (CP 497- 498) and confirmed by COA Mandate on 9/30/2011 (CP 1231).

For 11 years, since 2002, the Trustee has refused to distribute Guy's inheritance from the Trust. That kept Guy in a continual state of poverty and prevented Guy being able to pay for an attorney throughout the case.

The Trustee made a circular argument when Trustee refused to distribute Guy's inheritance. Trustee's circular argument was that the Trustee should not distribute Guy's inheritance because Guy could not afford to pay attorney fees or cost that the court may assess against Guy. That became a self fulfilling prophesy because the Trustee kept Guy's money.

If the trustee had made the interim distribution of \$125,000 as ordered by the superior Court on 6/27/2008 and confirmed by COA 38243-1I mandate on 9/30/2011, then Guy would be able to pay any cost, fees, and fines by himself, without intervention by the Trustee. Trustee's

continuous refusal to distribute the beneficiaries' inheritance for eleven years (2002 – 2013) increased the costs of the case by requiring beneficiaries to file motions to force distributions (CP 577- 581 on 8/14/2008; CP 602 – 606 on 9/22/2008; and CP 1572 — 1591 on 8/29/2012). Litigation costs were increased because the Trustee always opposed actual distributions on one pretext or another, which force hearings in Superior Court and appeals to higher courts.

The Trustee engaged in vexatious opposition to every beneficiary request for special notice, annual reports, discovery, or distribution. That placed the beneficiary at a constitutionally unfair disadvantage because indigent or impoverished beneficiaries have no defense against estate administrators that can deploy professional counsel and the entire wealth of the estate against the indigent beneficiary. Indeed, the Trustee used the beneficiary's own inheritance to fight every request made by the beneficiary for 11 years (2002-2013).

Assigned Error – Contrary to Superior Court order (CP 1751 – 1754), Trustee's intervention to reduce Guy's share of distribution should be denied. Guy should immediately receive \$71,113.77, which equals the full \$125,000 distribution ordered by Superior Court on 6/27/2008 (CP 497 - 498), reduced by \$53, 886.23 ordered by the Mandate on 9/30/2011 (CP 1231). Then, Guy, himself, can pay other fees and cost that may be assessed against Guy. Further, the COA should reverse the charge of \$53,866.25 that COA 38243-1-II placed against Guy, and place that charge against the PR/Trustee, so that Guy should receive his complete \$125,000 distribution.

### **ACCOUNTING**

Assigned Error -- On June 27, 2008, Superior Court ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION, Re the Estate, CP 494 – 496, was entered without denying

Personal Representative's wasteful attorney fees, but denying discovery, allowing unwarranted delays in closing the estate, and denying Guy's request for an accounting by an accounting professional.

Assigned Error -- On June 27, 2008, Superior Court (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) was entered without denying Trustee's wasteful attorney fees, but denying discovery, allowing unwarranted delays in distribution, denying Guy's request for an accounting by an accounting professional, and without requiring source documents to explain why \$50,000 is missing from the Trust's Charles Schwab account.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498): and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court Order on Motion for Reconsideration (CP 566 – 567) was entered without denying PR/Trustee's wasteful attorney fees, but denying discovery, allowing unwarranted delays in distribution, denying Guy's request for an accounting by an accounting professional, and without requiring source documents to explain why \$50,000 is missing from the Trust's Charles Schwab account

Assigned Error – On 12/5/2008, Superior court order (ORDER DENYING GUY METTLE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS, CP 890 - 891) was entered denying Guy's request for discovery, denying Guy's request for accounting by an accounting professional, and without requiring source documents to explain why \$50,000 is missing from the Trust's Charles Schwab account.

Assigned Error – On 9/21/2012, Superior court order (ORDER REGARDING GUY METTLE’S (1) MOTION TO ALLOW OVERLENGTH MOTION TO COMPEL DISCOVERY, 2012 (2) MOTION TO COMPEL DISCOVERY, 2012 & (3) MOTION FOR DISTRIBUTION, 2012, CP 1592 - 1593 ) was entered without denying Trustee’s wasteful attorney fees, but denying discovery, allowing unwarranted delays in distribution, denying Guy’s request for an accounting by an accounting professional, and without requiring source documents to explain why \$50,000 is missing from the Trust’s Charles Schwab account

Assigned Error – On 10/26/2012, Superior court order (ORDER AND DECREE APPROVING TRUSTEE’S FINAL ACCOUNTING, CP 1751 - 1754) was entered without denying Trustee’s wasteful attorney fees, but denying discovery, allowing unwarranted delays in distribution, denying Guy’s request for an accounting by an accounting professional, and without requiring source documents to explain why \$50,000 is missing from the Trust’s Charles Schwab account.

Summary list of Superior court orders in this section: CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.

**ASSIGNED ERROR - \$50,000 Missing From Schwab Account Requires Verifiable Accounting and All Source Documents**

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

[Rules referring to fraud: CR 8(c), CR 9(b), CR 18(b), CR 60(b), RAP 12.9(b).]

In year 2000, Guy personally witnessed that Dorothy froze her Charles Schwab brokerage account to prevent Gregg from accessing it. At that time, Dorothy’s Charles Schwab account had over \$62,000 in it. Eight years later, in 2008, Trustee’s accounting shows only

12,368.25 in the Charles Schwab account. Obviously, \$50,000 is missing. Said \$50,000 has never appeared in any inventory, which the Personal Representative was required to provide by law (RCW 11.44.015), nor did the missing and stolen \$50,000 appear in any accounting, which the Trustee is required to provide by law (RCW 11.106.020, 11.106.030).

Dorothy Mettle died in 2002, and 11 years later in 2013, there still has not been a verifiable accounting of funds, which are missing from her Charles Schwab brokerage account.

The Charles Schwab account did not appear in the Guardianship's Inventory (Exhibit 3, CP 319 – 343). The Charles Schwab account never appeared in any Guardianship accounting, and it did not appear in the order approving Guardian's final report (Exhibit 2, CP 319 – 343).

In the Estate, RCW 11.44.015 requires that all estate assets be included in the Estate inventory, but the PR/Trustee Gregg completely omitted Dorothy's Charles Swab Brokerage account from estate accounting. Neither did Dorothy's Charles Schwab account appear in the trust accounting until 2008. Then, in 2008, the Trustee only mentioned the closing balance (\$12,368.25) of the Charles Schwab account in a footnote. (See page 5, footnote #3, in Petition to Approve Trustee's Interim Accounting, CP 3- 15.)

Eventually, the Trustee presented source documents (monthly statements) on all Estate and Trust accounts, known to the beneficiaries, except for one account, which is Dorothy Mettle's Charles Schwab account. Assigned error – Superior Court approved the Trust final accounting, Trustee activities, and discharged the Trustee without requiring the Trustee to present the source documents (all monthly statements and checks since the account's inception) for the Charles Schwab account, including evidence of the purpose of all disbursements and expenditures from the account. Hence, the missing \$50,000 remains unexplained and stolen by the Trustee.

**Assigned Error - Guardianship Fraud By Guardian/PR/Trustee Gregg Continues Into The Trust**

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

In 2008, Trustee's Interim Report (CP 3-15, footnote #3 on page 5) revealed the Charles Schwab account for the first time, which was six years after Dorothy's death in 2002. When Guy detected the previously secret account in 2008, the Trustee claimed that the Charles Schwab account was not subject to review because it had appeared in the Guardianship, which had been closed in 2004. (Superior Court No. 00-4-01533-2).

That is a false claim by the Trustee for the following reasons:

The Charles Schwab account did not appear in the Guardianship's Inventory (Exhibit 3, CP 319 – 343). The Charles Schwab account never appeared in any Guardianship accounting, and it did not appear in the order approving Guardian's final report (see Exhibit 2, CP 319 – 343).

However, on 9/14/2001, Superior Court "Order on Non Compliance Hearing" found that Guardian/Trustee Gregg was in non compliance . (See Exhibit 1, Appendix 34 in COA 44244-2-II). In order for the Trustee to become compliant, the Superior Court ordered that:

- a) Trustee Gregg was not allowed to invade the proceeds of the Charles Schwab account.

- b) Trustee was to transfer proceeds from the Charles Schwab account into the Trust's Merrill Lynch account
- c) Trustee was to terminate the Charles Schwab account
- d) Trustee was to file proof of compliance with the above requirements.

However, Trustee Gregg violated every requirement imposed upon him by said court order. Then six years after Dorothy's death (2002 - 2008), the Trustee's interim report (CP 3-15) showed that the Charles Schwab account had not been terminated and the funds had not been transferred into the Merrill Lynch Account. The Trustee had not filed proof that he was in compliance with Guardianship court order. Further, the Trustee had invaded the Charles Schwab account to the tune of \$50,000, which is still missing and stolen by the Trustee.

Assigned Error - When considering Guy's request for discovery, the Court did not take into consideration the Trustee showed by faith by defrauding the Guardianship court about the Charles Schwab account, and closed the Guardianship while Guardian/Trustee Gregg was still in non compliance. The Trustee was and is fully liable for the \$50,000 missing from the Trust.

Nothing that the Guardianship court did took the Charles Schwab account out of the Trust or gave the Charles Schwab account Res Judicata status. Further, Res judicata, collateral estoppel, and the law-of-the-case doctrine do not limit discovery. [Estate of Jack DelGuzzi.<sup>26</sup> ]

---

<sup>26</sup> Estate of JACK DELGUZZI, 2009 Wash. App. LEXIS 1626

In the face of such fraud on the Guardianship court, the Estate court, the Trust Court, and the Appellate court, this Court of Appeals should order discovery and a forensic accounting on the Charles Schwab account back to the account's inception.

The Court should note that the Trustee has never presented an accounting performed by an accounting professional. Every accounting filed by the PR/Trustee has been his own work or that of his attorneys, none of which are accounting professionals, and all of which are perpetrating the accounting fraud regarding the Charles Schwab account. This Court should note that In re Park's Trust<sup>27</sup> the Court ordered the Trustee to pay for a CPA to perform a professional accounting because (as in this case) the Trustee delayed accounting for several years and because (as in this case) of apparent irregularities in accountings filed by the Trustee.

Assigned error – Superior Court failed to require the Trustee to present source documents for the entire life of the Charles Schwab account, which explain what happened to \$50,000 missing from the Charles Schwab account. In the face of apparent and uncontroverted grand larceny and accounting fraud, Superior court failed to require an accounting by an accounting professional, such as a CPA. And the court denied Guy's request for discovery. Thus, the Court allowed Trustee's grand larceny and accounting fraud to continue for 10 more years (2002 – 2012).

---

<sup>27</sup> Park's Trust, 39 Wn.2d 763 (1951)

ASSIGNED ERROR – COURT APPROVED TRUSTEE’S TACTICAL DELAYS IN PROVIDING ANNUAL ACCOUNTINGS

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

The Trustee is required to provide annual accountings per RCW 11.106.020 and per Guy’s multiple requests for special notice (RCW 12.28.240, RCW 11.44.015(2), and RCW 11.106.20. For 6 years (2002 - 2008), the PR/Trustee ignored Guy requests for special notice. The PR/Trustee also ignored and opposed Guy’s petitions for accounting and review of PR/Trustee attorney fees.

1. On 12/09/2003, Guy requested special notice pursuant to RCW 12.28.240, RCW 11.44.015(2), and RCW 11.106.20.
2. On 11/01/2004, Guy filed a Petition for Accounting and Approval of fees. (CP 239 – 240).
3. On 6/14/2005. Guy requested special notice on 14 listed categories, including (a) Intent to distribute estate assets, and (b) Intent to pay attorney’s fees. (CP 241 – 242)
4. On 11/13/2008, Guy requested special notice in his Motion to Compel Production of Documents, page 68. (CP 764 - 843).

The Trustee never provided an annual accounting in this case since its inception in 2002, not for the Estate, nor for the Trust, except one instance in which the Trustee was forced to provide an annual accounting because beneficiary Guy filed a motion to compel the annual accounting. So, the PR/Trustee failed to provide annual accountings for 6 years (2002 – 2008). Then the Trustee failed for two more years (2008 & 2009) to provide annual accountings. So Guy had to file a motion to compel an accounting for those years. (Superior Ct. order CP 918.) Then in 2010, the Trustee failed again to provide the annual accounting. So, Guy had to file

another motion to compel that accounting. (Superior Ct. orders CP 1058 – 1059, CP 1185 – 1186.) Then for 2011, the Trustee failed to provide an annual accounting. It was not until Guy filed motions to compel discovery and distributions, that the Trustee produced an accounting for 2011 and 2012. (Superior Ct. order 1592 – 1593)

Trustee's failures to provide annual accountings were particularly grievous because \$50,000 is still missing after it disappeared from the Trust's Charles Schwab brokerage account. And for 6 years (2002 – 2008), the PR/Trustee attorneys billed \$27,000 without giving the beneficiaries an opportunity to review the billings during those 6 years.

Then for the next two years (2008, 2009), the PR/Trustee did not file an annual report, while his attorneys billed another \$38,000 in legal fees without giving the beneficiaries an opportunity to review the billings. Beneficiary Guy had to force the Trustee to file an accounting for 2008 and 2009 by filing a motion in court. (Superior Ct. order CP 918.)

Then, again the Trustee did not file an annual report for 2010, while his attorneys billed another \$34,000 without giving the beneficiaries a timely opportunity to review the billings. So, Beneficiary Guy had to file a Motion for Accounting and Billing Information (CP 976 – 984) to force the Trustee to submit and annual report for 2010. (Superior Ct. orders CP 1058 – 1059, CP 1185 – 1186.)

Then once again, the Trustee did not file an annual report for 2011, while his attorneys billed another \$29,000 without filing an annual report or giving the beneficiaries a timely opportunity to review the billings. It was not until after Beneficiary Guy filed a Motion for Distribution, 2012, (CP 1572 – 1591) that the Trustee filed an accounting in 2011.

Assigned error - In total, in the last 11 years, 2002 – 2013, the PR/Trustee paid \$128,000 in attorney fees without giving the beneficiaries a timely opportunity to review those billings in

advance (Kirchan v. Schoen at HN6<sup>28</sup>), but which the court approved years after the actual expenditures.

Regarding the Trust of Dorothy P. Mettle, RCW 11.106.020 requires annual accounting, and this requirement is supported by the Washington Supreme Court in Park's Trust, 39 Wn.2d 763 (1951). The need for accounting is well established law and the statute provides prima facie presumption that accounting is required.

[1] State v. Anderson, 5 Wash. 350, 31 P. 969 (1892);

[2] McCoy v. Cook, 13 Wash. 158, 42 P. 546 (1895);

[3] State v. Kyle, 14 Wash. 550, 45 P. 147 (1896);

[4] State v. Fitzpatrick, 141 Wash. 638, 251 P. 875 (1927);

[5] State v. Spiller, 146 Wash. 180, 262 P. 128 (1927).

*Assigned error* - Trustee circumvented the requirement for annual accounting and for special notice, and the court failed to enforce those requirements. PR/Trustee thereby denied beneficiaries their right and opportunity to object to excessive and unwarranted attorney fees and delays in distribution.

#### **ASSIGNED ERROR – FAILURE TO COMPLY WITH SPECIAL NOTICE**

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

*Assigned error* – Respondent failed to comply with multiple requests for special notice and accounting filed by Guy, and the court failed to enforce compliance with special notice.

- December 9, 2003, Guy requested special notice pursuant to RCW 12.28.240, RCW 11.44.015(2), and RCW 11.106.20. (CP 1783 – 1784)

---

<sup>28</sup> Janet Kirchan vs. Fred Schoen, 2007 Wash. App. LEXIS 294

- June 14, 2005. Guy requested special notice on 14 listed categories, including (a) Intent to distribute estate assets, and (b) Intent to pay attorney's fees. (CP 241 – 242)
- November 13, 2008, Guy requested special notice in his Motion to Compel Production of Documents, page 68. (CP 764 - 843).
- On April 6, 2011, Guy filed a Motion for Accounting and Billing Information (CP 976 – 984)

#### **ASSIGNED ERROR – BENEFICIARIES DENIED TIMELY REVIEW OF ATTORNEY FEES**

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

The beneficiaries have the right to review attorney billings and object to the billings before payment. (Kirchan v. Schoen at HN6.<sup>29</sup>) Assigned error - PR/Trustee failed to submit attorney billings in a timely manner to allow review and objection by the beneficiaries, and the Court failed to enforce timely filing of attorney's fees, which the court allowed to accumulate up to 6 years at a time and to accrue between \$30,000 and \$40,000 at a time.

#### **ASSIGNED ERROR - TRUSTEE'S ATTORNEY FAILED FIDUCIARY DUTY TO THE BENEFICIARIES**

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

Assigned Error - PR/Trustee's attorney owes a fiduciary duty to the beneficiaries, not just to the Trustee. By all the above tactical delays in accounting, the PR/Trustee attorney failed in his fiduciary duty to the Estate, the Trust, and the beneficiaries, and the court erred in approving said the above listed delays in accounting.

---

<sup>29</sup> Janet Kirchan vs. Fred Schoen, 2007 Wash. App. LEXIS 294

**Case Citation:** [HN10] As with trustees, personal representatives owe a fiduciary [\*762] duty to the heirs of the estate and must conform to the laws governing trustees.  
Marie S. Ehlers, 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS 62

**Case Citation:** [HN1] An attorney for an estate stands in a fiduciary capacity to the personal representative and to the heirs or distributees of the estate. The reasonableness of the fee for [\*\*\*2] probating the estate must be determined in the light of the fiduciary obligations.  
Estate of Carl Larson, Supreme Court Of Washington, 103 Wn.2d 517; 694 P.2d 1051; 1985 Wash. LEXIS 1063

**Case Citation:** the fiduciary duties of the attorney run not only to the personal representative but also to the heirs.  
Estate of Carl Larson, Supreme Court Of Washington, 103 Wn.2d 517; 694 P.2d 1051; 1985 Wash. LEXIS 1063

Assigned error -- The Personal Representative's and the Trustee's attorneys failed in their fiduciary duty to the beneficiaries, and the Court failed to enforce the PR/Trustee's fiduciary duty.

#### **ASSIGNED ERROR - PR/TRUSTEE'S PERSONAL VENDETTA REQUIRED DETAILED ACCOUNTING**

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

Beneficiary John Mettle's sworn declaration (CP 901 – 903) proves that Respondent/Trustee Gregg Mettle is intentionally mulching the Trust to punish the beneficiaries.

John's sworn declaration stated:

"2. Gregg M. Mettle (trustee) has repeated said in conversations with me (John) that he is refusing to distribute any funds so that all the funds are fully consumed by legal expenses as punishment to Guy L. Mettle for creating legal challenges.

PR/Trustee's personal vendetta is a conflict of interest that requires special scrutiny, including annual accountings.

Case citation: “A conflict of interest arises in estate matters whenever the interest of the personal representative is not harmonious with the interest of an heir.”

In the Estate of Jack J. Delguzzi, V. William E. Wilbert, 1999 Wash. App. Lexis 12,

Case citation: “[HN3] Equity can and does protect legatees from the dilatory behavior of estate administrators.

Estate of Carl L. Carlson v. Washington Mutual Savings Bank, 40 Wn. App. 827; 700 P.2d 771; 1985 Wash. App. LEXIS 2404

Case citation: “We cannot believe that the legislature, in enacting the statute, intended it to apply to a situation such as this, where the respondent would be permitted to mulct the estate by continually keeping it in litigation, and thus prolonging the progress of the settlement of the estate. It would be against a sound public policy to construe the statute in such a manner.”

Estate of August Wind V. Alfred Hendrickson, 32 Wn.2d 64 (1948)

“Where ill will exists which would result in more litigation the court may appoint any suitable person even if that person is outside of the family.

Estate of Marcella Louise Jones V. Russell K. Jones, 152 Wn.2d 1; 93 P.3d 147; 2004 Wash. LEXIS 456

Assigned Error: Therefore, it was necessary to obtain timely, detailed, and regular accounting and fee statement from the Trustee, which he failed to provide and which the court failed to enforce, as the Trustee continued to violate the beneficiaries’ right to review accounting and attorney fees in a timely manner (Kirchan v. Schoen at HNG<sup>30</sup>) and as the Trustee proceed with 11 years of tactical delays (2002 – 2013).

#### **ASSIGNED ERROR – FAILURE TO SEPARATE ACCOUNTINGS AND FEES FOR THE ESTATE FROM THOSE FOR THE TRUST**

(Re Court Orders CP 494- 496, CP 497 – 498, CP 566 – 567, CP 890 – 891, CP 1592 – 1593, CP 1751 – 1754.)

PR/Trustee Gregg fills two legally distinct roles: 1) the Personal Representative, and 2) the Trustee. Further, Estate is a legally distinct entity from the Trust. (Estate of Genevieve

---

<sup>30</sup> Janet Kirchan vs. Fred Schoen, 2007 Wash. App. LEXIS 294

McCuen.<sup>31</sup>) Assigned error – The PR/Trustee failed to provide accounting and billing which was separate and distinct for each entity: (1) the Estate and (2) the Trust, and the court failed to enforce said requirement.

**ASSIGNED ERROR - ACCOUNTING DID NOT PROVIDE NAMES AND ADDRESSES OF ALL BENEFICIARIES**

Assigned Error -- On June 27, 2008, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) approved Trustee's Interim Report (CP 3 – 15) and distributions without including the addresses of all the beneficiaries.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496).

Assigned error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee Report and distributions without including the addresses of all the beneficiaries.

Beneficiary Gregg Mettle's address was omitted from all intermediate and final accountings, in violation of RCW 11.106.030(6). The court should order that the final accounting to include Gregg Mettle's current address, so that beneficiary/Trustee Gregg may be contacted, notified or served regarding matters of the estate and trust after Trustee Gregg releases his attorney/agent.

---

<sup>31</sup> HNI in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

## INTEREST AND DAMAGES

### **ASSIGNED ERROR – TRUSTEE SHOULD PAY PREJUDGMENT INTEREST TO THE BENEFICIARIES**

Assigned Error -- On June 27, 2008, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) approved Trustee's Interim Report (CP 3 – 15), distributions, and activities without applying pre judgment interest against the Trustee.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court order (CP 566 – 567) approved Trustee's Interim Report (CP 3 – 15), distributions, and activities without applying pre judgment interest against the Trustee

Assigned error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee Report (CP 1598 – 1655), distributions, and activities without applying pre judgment interest against the Trustee.

See "Addendum 1 to Motion for Discovery, 2012 - Detailed Evidence of Racketeering Attacks on Dorothy Mettle's Person and Estate," filed August 29, 2012, CP 1525 – 1571.

Per RCW 11.48.010, the personal representative must settle the estate as "rapidly and quickly as possible without sacrifice to the probate or nonprobate estate." And per RCW 11.02.005(10), that applies to the Dorothy P. Mettle Revocable Living Trust. The law is clear that

the trust must be settled as rapidly and quickly as possible, which means that distributions to the beneficiaries must be made as rapidly and quickly as possible, without unwarranted delays.

Trustee upon advice of his attorneys has intentionally failed at every one of their simple duties. Example #1: Trustee's never provided an annual report in 11 years (2002 – 2013), except when Guy forced them to by filing a motion in court. Then the Trustee opposed every motion by Guy that asked for said reporting. Example #2: Trustee opposed every motion by Guy for distribution of Guy's inheritance, which has not been completed in 11 years (2002 – 2013). Example #3: The Trustee committed fraud on the Guardianship court and on the Trust beneficiaries by keeping the Charles Schwab account unreported and secret for 6 years (2002 – 2008). Example #4: For 6 years (2002 – 2008), the Trustee tried to extort a signed release from liabilities out of the beneficiaries before the Trustee would release our inheritance, all the while Trustee held the Charles Schwab account in secret, and said account is still missing \$50,000. Example #5: For 5 years (2008-2013) Trustee refused to participate in discovery. Example #6: For 10 years (2003-2013), Trustee refused to provide with any items required by Guy's request for Special Notice.

Assigned error - Trustee Gregg Mettle violated RCW 11.48.010 and RCW 11.02.005(10), when Trustee Gregg used tactical delays, obstruction and vexatious litigation to oppose and thwart distribution for 11 years, (2002-2013), at a huge increase in cost to the trust and beneficiaries, which includes \$128,521.31 in Trustee's attorney fees.<sup>32</sup> Thereby, Trustee Gregg violated his fiduciary duty to the beneficiaries, and his tactical delays in distribution should not have been approved by Superior Court.

---

<sup>32</sup> Even deducting \$53,886.23 charged to Guy by COA 38243-1-II, Trustee's attorney fees total \$74,635.08.

On 6/27/2008, Superior Court ordered distribution of \$375,000 to the beneficiaries i.e. \$125,000 to each of Dorothy's three sons (CP 497 - 498). To date, said distribution has not been made.

"[HN1] Prejudgment interest is permitted if the amount claimed is liquidated or otherwise capable of calculation with exactness, without reliance on opinion or discretion. The interest rate applicable to prejudgment interest is generally set at 12 percent by statute. Prejudgment interest accrues from the date the claim arose to the date of judgment."

Estate of Leona Fuller v. Donna Taylor, 2006 Wash. App. LEXIS 1278

The Trustee should personally pay 12% pre judgment interest to the beneficiaries on all inheritance not yet distributed since Dorothy's death in 2002

On 6/27/2008, the Court should have ordered prejudgment interest of \$375,000 x 12% x 6 years (2002-2008) = \$270,000. . [RCW 4.56.110, RCW 19.52.020.]

On 10/26/2012, the Court should have ordered prejudgment interest of \$375,000 x 12% x 10 years (2002-2012) = \$450,000. . [RCW 4.56.110, RCW 19.52.020.]

Assigned error – Superior court erred by not requiring the Trustee to pay prejudgment interest for the Trustee's unwarranted or tactical delays in distribution.

**ASSIGNED ERROR - TRUSTEE SHOULD PAY POST JUDGMENT INTEREST TO THE BENEFICIARIES**

Assigned error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee Report, distributions, and activities, without applying post judgment interest against the Trustee.

See Guy's Superior Court pleading: Addendum 1 to Motion for Discovery, 2012 - Detailed Evidence of Racketeering Attacks on Dorothy Mettle's Person and Estate, filed August 29, 2012, CP 1525 – 1571

On 6/27/2008, Superior Court ordered distribution of \$375,000 to the beneficiaries (\$125,000 to each of Dorothy's three sons), and placed a stay on distribution until any appeal was resolved (CP 497 - 498). The appeal was resolved when the COA filed its mandate on 9/30/2011 (CP 1231), which automatically removed Superior Court's stay on distribution. However, the Trustee still did not complete the ordered distribution.

Assigned error – Superior Court failed to require the Trustee to pay 12% post judgment interest to the beneficiaries on the \$375,000 that should have been distributed upon resolution of appeal COA 38243-1-II on 9/30/2011. [RCW 4.56.110, RCW 19.52.020, In re Johnston's Estate,<sup>33</sup> and Sharbono v. Universal Underwriters Ins. Co.<sup>34</sup>] Said post judgment interest should be calculated from 9/30/2011.

#### **ASSIGNED ERROR – FAILURE TO IMPOSE TREBLE DAMAGES FOR CRIMINAL PROFITEERING**

Assigned Error – On 6/27/2008, Superior court order (ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION re Estate, CP 494 496) failed to impose treble damages for criminal profiteering by the PR/Trustee.

Assigned Error -- On June 27, 2008, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) failed to impose treble damages for criminal profiteering by the PR/Trustee.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting,

---

<sup>33</sup> In re Johnston's Estate, 107 Wash. 25, 181 P. 209 (1919)

<sup>34</sup> Sharbono v. Universal Underwriters Ins. Co., 161. P.3d 406 (2007)

entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior court order (CP 566 – 567) failed to impose treble damages for criminal profiteering by the PR/Trustee.

Assigned error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 – 1754 failed to impose treble damages for criminal profiteering by the PR/Trustee.

See Guy's Superior Court pleadings: (1).Motion To Compel Production of Documents, filed November 13, 2008, CP 764 – 843; and (2) Addendum 1 To Motion For Discovery, 2012 - Detailed Evidence of Racketeering Attacks on Dorothy Mettle's Person and Estate, filed August 29, 2012, CP 1525 – 1571

Judge Thomas Larkin and local attorneys (including Trustee's attorneys) habitually promote, protect, or perpetrate the theft and mulching of estate assets. They, along with the Trustee, have done so in this case. They comprise a gang of criminal profiteers. (See previously herein, but now Appendix 35 Racketeering and Criminal Profiteering.)

RCW 9A.82.100 provides for treble damages for Criminal Profiteering.

Case Citation: “[HN12] The legislature intended the sanctions contained in Washington Criminal Profiteering Act, Wash. Rev. Code § 9A.82.100, which include the civil penalty, the treble damages to the victim, and reimbursement for the costs of investigation and prosecution, to be civil in nature.” Marlene Winchester, as Personal Representative, V. John Kenneth Stein, 135 Wn.2d 835; 959 P.2d 1077; 1998 Wash. LEXIS 572

Assigned Error - This gang criminal profiteers violated: RCW 9A.40.100, RCW 9A.60.030, RCW 9A.82.060, RCW 9A.82.080, RCW 11.48.010, and cases: Winchester v. Stien,<sup>35</sup> Wind v. Hendrickson,<sup>36</sup> and Estrada v. Speno. The Trustee and his attorneys are liable the \$250,000

---

<sup>35</sup> Marlene Winchester, as Personal Representative, V. John Kenneth Stein, 135 Wn.2d 835; 959 P.2d 1077; 1998 Wash. LEXIS 572

<sup>36</sup> In the Estate of August Wind v. Alfred Hendrickson, 32 Wn.2d 64.

civil penalty and treble damages. Treble damages apply to \$50,000 in missing from the Charles Schwab account, prejudgment interest, post judgment interest, cost of investigation, and attorney fees.

### **SUPERSEDEAS BOND**

#### **ASSIGNED ERROR – STAY ON DISTRIBUTION ORDERED WITHOUT A SUPERSEDEAS BOND**

Assigned Error -- On June 27, 2008, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) ordered distributions, but then put a stay on distributions pending appeal, without requiring the Trustee to post a supersedeas bond.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court order (CP 566 – 567) ordered distributions, but then put a stay on distributions pending appeal, without requiring the Trustee to post a supersedeas bond.

Assigned error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) ordered distributions, but then put a stay on distributions pending appeal, without requiring the Trustee to post a supersedeas bond.

See Guy's Superior Court Pleadings: (1) Supplemental Authorities #1 And Requests For "Guy Mettle's Motion Regarding Administration And Accounting Deficiencies, And Requests For Relief, filed June 24, 2008, CP 420 – 448; (2) Motion For Trustee's Surety, filed October 6, 2008, CP 626 – 630; (3) Addendum #1 To Guy Mettle's Motion For Trustee's Surety, filed 10/21/2008, CP 690 – 696; and (4) Addendum 1 To Motion For Discovery, 2012 - Detailed Evidence Of Racketeering Attacks On Dorothy Mettle's Person And Estate, filed August 29, 2012, CP 1525 – 1571;

Assigned error – Due to the Trustee's tactical delays in distribution for 10 years (2002 – 2012) including nonjusticiable issues, Superior Court erred by failing to require the Trustee to post a supersedeas bond sufficient to cover the ordered distributions that were stayed during appeals. [Supersedeas procedure RAP 8.1(2)] Trustee's supersedeas bond should have been sufficient to cover potential damages to the beneficiaries, and potential liabilities of the PR/Trustee, which include the treble damages as applied to \$50,000 in missing from the Charles Schwab account, prejudgment interest, post judgment interest, cost of investigation, and attorney fees.

### **COURT FORCED GUY TO WITHDRAW HIS MOTION**

#### **ASSIGNED ERROR – THE COURT FORCED GUY TO WITHDRAW HIS MOTION**

Assigned Error -- On May 6, 2011, Superior Court (ORDER RECOGNIZING GUY METTLE'S WITHDRAWAL OF HIS MOTION FOR ACCOUNTING AND BILLING INFORMATION, CP 1185 - 1186) ordered that Guy had withdrawn his motion during the hearing, even though Guy had not done so, and Guy profusely protested during the hearing that he had not withdrawn his motion.

On April 6, 2011 in Superior Court, Guy filed his "Motion for Accounting and Billing Information." Guy requested that the Trustee provide an Annual Statement for the year 2010

for the Dorothy P. Mettle Trust. Guy requested billing information (a) for the Personal Representative's attorney fees, and (b) for the Trustee's attorney fees, which they had not provided for the 3 ½ years.

On April 12, 2011, the PR/Trustee filed the Personal Representative & Trustee's response.<sup>37</sup> Therein, the PR/Trustee cited COA 38243-1-II and refused to provide the Trust's Annual Statement requested by Guy. PR/Trustee's attorney also filed a declaration<sup>38</sup> demanding \$1,000 in attorney fees for responding to Guy's motion.

Then, prior to the hearing on May 6, 2011, the PR/Trustee did an about face and voluntarily filed some accounting information. However, that information was not responsive to Guy's requests for relief.

In the hearing on May 6, 2011, PR/Trustee's attorney read aloud a draft order, which stated that Guy had involuntarily "withdrawn" his motion. That was the first time that the PR/Trustee made that statement, and the PR/Trustee made it without supporting arguments. Then Superior Court signed that order (CP 1185 – 1186), which Guy is now appealing.

In said order, Judge Larkin stated that he was recognizing Guy's involuntarily withdrawal of his motion. However, Guy made no such withdrawal. In the hearing, Guy strongly protested the use of the term "withdrawn" by the Judge. Guy also raised his unmet requests for relief, for example Guy's opposition to the PR/Trustee's declaration and pleading which demanded \$1,000 in attorney fees. However, Judge Larkin unilaterally declared that Guy was involuntarily withdrawing his motion anyway

---

<sup>37</sup> See "Personal Representative & Trustee's Response to Guy Mettle's Motion for Accounting and Billing Information."

<sup>38</sup> See "Declaration Of Jennifer A. Wing In Support Of Personal Representative & Trustee's Response To Guy Mettle's Motion For Accounting & Billing Information."

**ASSIGNED ERROR - GUY DID NOT WITHDRAW HIS MOTION; THE COURT DECLARED NONSUIT (CP 1185 – 1186)**

The Judge's only possible basis for declaring that Guy had involuntarily withdrawn his motion is if Guy had failed to state a claim upon which relief could be granted. That is the very definition of a nonsuit, and the principles of nonsuit apply. [CR12(b)(6)].

**Rule 12. Defenses and objections**

CR12(b) *How presented.* Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ..., (6) failure to state a claim upon which relief can be granted, ... .. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

Assigned error – Superior court persisted with its nonsuit ruling against Guy (CP 1185 – 1186), even though there remained several claims in Guy's motion upon which relief could be granted, but which the court did not address.

**Assigned Error – Court failed to recognize unmet requests for relief (CP 1185 – 1186)**

Guy's motions made the follow requests for relief:

1. "Guy Mettle requests the Court to order accounting statements from the Dorothy P. Mettle Trust to be mailed to beneficiaries within 5 days.
2. Sources and uses of funds should be detailed since the last accounting in March 2008"
3. PR/Trustee's attorney fees and cost should be detailed for 2008, 2009, 2010, and 2011 to date, which he has not provided.

4. The accounting should not be combined for both distinct legal entities: (1) the Estate and (2) the Trust. (Estate of McCuen.<sup>39</sup> ) Each distinct legal entity requires separate accounting (which also includes billing and detailed sources and uses of funds). PR/Trustee should provide this for 2008, 2009, 2010, and 2011 to date, which he has not provided in the past. Each year should be separate as required for accounting purposes, or such years and separation as determined by the court.

5. Guy requests that his attorney fees (if any) and costs for this motion (and related litigation in Superior Court) should be paid by the PR/Trustee

6. PR/Trustee should be denied his attorney fees and cost related to this motion, because this motion would not have been needed if the PR/Trustee fulfilled his legal duties in a timely manner, and in accordance with Guy's several requests (as listed above).

7. Guy requests that the PR/Trustee provide a complete description and purpose of the secret work being done and billed under the redacted attorney fee items listed above.  
(Requested in Addendum 1 to Guy's motion.)

8. Guy requests the same for any other attorney work that has not been revealed to the beneficiaries in writing by the PR/Trustee. (Requested in Addendum 1 to Guy's motion.)

Guy's Request for Relief #7 – "Guy requests that the PR/Trustee provide a complete description and purpose of the secret work being done and billed under the redacted attorney fee items listed above."

However, the PR/Trustee failed to provide unredacted descriptions of work for:

7/01/08 DBP <-- REDACTED DESCRIPTION OF WORK
7/02/08 DBP .20 <-- REDACTED DESCRIPTION OF WORK
7/07/08 DBP .60 <-- REDACTED DESCRIPTION OF WORK
7/07/08 DBP .60 <-- REDACTED DESCRIPTION OF WORK

<sup>39</sup> HN1 in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

Assigned Error – Superior Court erred by failing to recognize Guy’s unmet requests for relief when the court ruled that Guy had withdrawn his motion due to nonsuit. (CP 1185 – 1186)

**ASSIGNED ERROR - PR/TRUSTEE FAILED HIS BURDEN OF PROOF**  
(CP 1185 – 1186)

The PR/Trustee made no argument or showing of fact at all to support a contention of nonsuit, when the PR/Trustee declared that Guy had involuntarily “withdrawn” Guy’s motion.

Case citation: While plaintiffs should bear the burden at trial of proving fraud, perjury or other corrupt means, for the purposes of a motion made pursuant to subdivision (b)(6) of this rule, the defendants must show that no set of facts would entitle the plaintiffs to the relief they seek. *Fondren v. Klickitat County*, 79 Wn. App. 850, 905 P.2d 928 (1995).

When a motion to dismiss made under subdivision (b)(6) or subdivision (c) of this rule is treated as one for summary judgment, the burden is on the moving party to show by competent evidence that no material fact is in issue. *Bly v. Pilchuck Tribe No. 42, Improved Order of Red Men*, 5 Wn. App. 606, 489 P.2d 937 (1971).

Assigned Error – Superior Court erred by ruling that Guy had withdrawn his motion even though the PR/Trustee failed his burden of proof to support a defense of nonsuit. (CP 1185 – 1186)

**ASSIGNED ERROR - COURT FAILED TO PRESUME THAT GUY’S STATEMENTS OF FACTS ARE TRUE**  
(CP 1185 – 1186)

When applying nonsuit against Guy, the court must presume that Guy’s statements of fact are true, which means the Court could have, but did not grant Guy’s unmet requests for relief. The Court is required to consider even hypothetical facts which support Guy’s unmet requests for relief.

Case citation: In considering a motion to dismiss for failure to state a claim upon which relief can be granted, the plaintiff's factual allegations are presumed to be true; furthermore, the court may consider hypothetical facts not part of the formal record. *Lien v. Barnett*, 58 Wn. App. 680, 794 P.2d 865 (1990).

Case citation: In ruling on a subdivision (b)(6) motion, the court may consider specific allegations by the plaintiff to aid in evaluation of the legal sufficiency of the plaintiff's claim. *Halvorson v. Dahl*, 89 Wn.2d 673, 574 P.2d 1190 (1978).

Case citation: Any hypothetical situation conceivably raised by the complaint defeats a subdivision (b)(6) motion if it is legally sufficient to support plaintiff's claim. *Halvorson v. Dahl*, 89 Wn.2d 673, 574 P.2d 1190 (1978).

Case citation: Factual allegations of complaint must be accepted as true for purposes of a subdivision (b)(6) motion. *Berge v. Gorton*, 88 Wn.2d 756, 567 P.2d 187 (1977).

Case citation: Factual contentions of complaint dismissed under subdivision (b)(6) must be accepted as true for purposes of review. *Stanard v. Bolin*, 88 Wn.2d 614, 565 P.2d 94 (1977).

Case citation: Courts should dismiss a claim under subdivision (b)(6) only if it appears beyond a reasonable doubt that no facts exist that would justify recovery. *Cutler v. Phillips Petro. Co.*, 124 Wn.2d 749, 881 P.2d 216 (1994), cert. denied, 513 U.S. 1169, 115 S. Ct. 2634, 132 L. Ed. 2d 873 (1995).

Case citation: Actual allegations of complaint must be accepted as true for purposes of a subdivision (b)(6) motion. *Corrigal v. Ball & Dodd Funeral Home*, 89 Wn.2d 959, 577 P.2d 580 (1978).

Case citation: Complaint cannot be dismissed upon a subdivision (b)(6) motion if it is found to adequately allege a claim based upon some theory even if that theory is other than that advanced by plaintiff. *Berge v. Gorton*, 88 Wn.2d 756, 567 P.2d 187 (1977).

Case citation: Under subdivision (b)(6), the only issue before the trial judge is whether it can be said there is no state of facts which the plaintiff could have proven entitling him to relief under his claim. *Contreras v. Crown Zellerbach Corp.*, 88 Wn.2d 735, 565 P.2d 1173 (1977).

Case citation: In passing upon a motion to dismiss for failure to state a claim upon which relief may be granted, a complaint should not be dismissed unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Sherwood v. Moxee Sch. Dist. No. 90*, 58 Wn.2d 351, 363 P.2d 138 (1961); *Gold Seal Chinchillas, Inc. v. State*, 69 Wn.2d 828, 420 P.2d 698 (1966); *Hofto v. Blumer*, 74 Wn.2d 321, 444 P.2d 657 (1968); *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 545 P.2d 13 (1975); *Berge v. Gorton*, 88 Wn.2d 756, 567 P.2d 187 (1977); *Corrigal v. Ball & Dodd Funeral Home*, 89 Wn.2d 959, 577 P.2d 580 (1978).

Assigned Error – Superior Court erred by failing to presume that Guy’s statements of facts were true when Guy claimed that his requests for relief were unmet by the Trustee, and therefore Guy claimed the Trustee’s defense of nonsuit did not apply. (CP 1185 – 1186)

**ASSIGNED ERROR – SUPERIOR COURT DENIED GUY’S RIGHT TO PLEAD FURTHER**  
(CP 1185 – 1186)

Assigned error - Superior Court dismissed Guy’s motion by declaring that Guy had involuntarily “withdrawn” his motion, which violated Guy’s right to plead further. The court did that suddenly, and persisted in doing so despite Guy’s profuse protestations that Guy had not withdrawn his motion. (Verbatim report of hearing on 5/6/2011, CP 1218 – 1230.) Thereby, the court curtailed Guy’s pleading, and violated Guy’s right to plead further, which negate the Trustee’s defense of nonsuit.

Case citation: Order for dismissal entered at the same time as order overruling demurrer is premature unless the demurring party has refused to plead further. Pelly v. Behneman, 168 Wash. 465, 12 P.2d 422 (1932); Gray v. Gregory, 33 Wn.2d 713, 207 P.2d 194 (1949).

**GUY CAN RAISE NEW FACTS ON APPEAL**  
(CP 1185 – 1186)

Guy has the right to state claims upon which relief could be granted, even if they are hypothetical claims which Guy raises for the first time on appeal. But, the Court did not allow Guy to plead his claims.

Case citation: A dismissal of an action for failure to state a claim upon which relief can be granted should not be upheld on appeal if any state of facts could be proved under the complaint which would entitle the plaintiff to relief. A hypothetical situation asserted by the complaining party, not part of the formal record, may be considered by a court in making its determination, including facts alleged for the first time on appellate review. Collins v. King County, 49 Wn. App. 264, 742 P.2d 185 (1987), overruled on other grounds, 119 Wn.2d 91, 829 P.2d 746 (1992).

Case citation: In determining whether there is any state of facts plaintiffs could prove entitling them to relief under their claim, appellate court accepts as true the factual allegations of the complaint and, if necessary, facts raised for the first time on appeal. Roth v. Bell, 24 Wn. App. 92, 600 P.2d 602 (1979); Fondren v. Klickitat County, 79 Wn. App. 850, 905 P.2d 928 (1995).

Therefore, any of these facts that the PR/Trustee may claim were not raised in Superior Court, Guy has the right to raise them during appeal in defense of the PR/Trustee's claim that a nonsuit justified Superior Court forcing Guy to withdraw his motion.

**ASSIGNED ERROR - COURT FAILED TO TREAT TRUSTEE'S DEFENSE AS A MOTION FOR SUMMARY JUDGMENT.**

(CP 1185 – 1186)

Superior Court asked Guy to stipulate to his receipt of unredacted work descriptions from the PR/Trustee's attorney. But, PR/Trustee's attorney did not file the unredacted work descriptions in court. (See Exhibit A in "Supplemental Declaration of David B. Petrich Regarding Guy's Mettle's Motion for Accounting. Said Exhibit referred to the unredacted work descriptions but does not actually file them.) Per authorities below, that forces the Court to treat the PR/Trustee's defense as a motion for summary judgment. [CR 56(b)(6) and CR 56(c).] But instead, Superior Court declared that Guy had involuntarily "withdrawn" his motion.

Case citation: Where trial court considered stipulated facts, defendant's motion, styled as a motion to dismiss for failure to state a claim upon which relief could be granted, was properly treated by the trial court as a motion for summary judgment. Gain v. Carroll Mill Co., 114 Wn.2d 254, 787 P.2d 553 (1990).

Case citation: A motion to dismiss for failure to state a claim will be treated as a motion for summary judgment when matters outside the pleadings are presented to and not excluded by the trial court. Bruce v. Byrne-Stevens & Assocs. Eng'rs, 51 Wn. App. 199, 752 P.2d 949 (1988), rev'd on other grounds, 113 Wn.2d 123, 776 P.2d 666 (1989).

Case citation: When motions for dismissal for failure to state a claim upon which relief can be granted or for a judgment on the pleadings are supplemented by matters outside the pleadings, they are treated as motions for summary judgment. Siegrist v. Simpson Timber Co., 39 Wn. App. 500, 694 P.2d 1110 (1985).

Case citation: Motion to dismiss for failure to state a claim will be considered as a motion for summary judgment when made after filing of answer. *Madison v. General Acceptance Corp.*, 26 Wn. App. 387, 612 P.2d 826 (1980)

Assigned error - At the end of Superior Court hearing on May 6, 2011, the PR/Trustee first stated that Guy had involuntarily “withdrawn” his motion, which is the same as the PR/Trustee presenting a defense of nonsuit . Because the PR/Trustee already filed an answer prior to his verbal statement that Guy had involuntarily “withdrawn” his motion, then the Court was obligated to treat the PR/Trustee’s defense as a Motion for Summary Judgment. Instead, the Court declared that Guy had involuntarily “withdrawn” his motion.

Case citation: If an answer is filed prior to a motion to dismiss for failure to state a claim upon which relief may be granted and the court considers matters outside the pleadings, the motion to dismiss is considered a motion for summary judgment. *Meyer v. Dempcy*, 48 Wn. App. 798, 740 P.2d 383 (1987).

Case citation: Where court considers matters outside the pleadings in dismissing complaint, motion ruling must be treated as one on a motion for summary judgment. *Downtown Traffic Planning Comm. v. Royer*, 26 Wn. App. 156, 612 P.2d 430 (1980), superseded by statute on other grounds, *Snohomish County v. State*, 69 Wn. App. 655, 850 P.2d 546 (1993).

Assigned error - Therefore, Superior Court was obligated to give Guy a chance file a reply, which the court did not do before the Court declared that Guy had involuntarily “withdrawn” his motion.

Case citation: Where a trial court treats a motion to dismiss for failure to state a claim or a motion for judgment on the pleadings as one for summary judgment, it should ordinarily ask all parties if they wish to present materials, but where the appealing party in fact presented materials and argued the motion as one for summary judgment, the trial court was not required on its own initiative to ask the question. *Blenheim v. Dawson & Hall, Ltd.*, 35 Wn. App. 435, 667 P.2d 125 (1983).

**ASSIGNED ERROR - COURT FAILED TO RECOGNIZE THAT PR/TRUSTEE WAIVED HIS RIGHT TO NONSUIT DEFENSE**  
(CP 1185 – 1186)

Assigned error - The PR/Trustee failed to affirmatively plead his defense that Guy had involuntarily "withdrawn" his motion. The PR/Trustee's defense was not pleaded or supported in any manner. The PR/Trustee failed to show that Guy made no request for relief that could be granted. The PR/Trustee did not even argue nonsuit. Instead the Court declared that Guy and involuntarily "withdrawn" his motion.

Case citation: If an affirmative defense is not affirmatively pleaded, asserted by motion or tried by express or implied consent of the parties, it is waived. *Farmers Ins. Co. v. Miller*, 87 Wn.2d 70, 549 P.2d 9 (1976).

For the above reasons, Superior Court ORDER RECOGNIZING GUY METTLE'S WITHDRAWAL OF HIS MOTION FOR ACCOUNTING AND BILLING INFORMATION (CP 1185 - 1186) was in error by "recognizing Guy Mettle's withdrawal of his motion for accounting and billing information."

#### **INDIGENCY DENIED**

##### **ASSIGNED ERROR – MOTION FOR INDIGENCY STATUS WAS DENIED**

(Re: Court Order CP 918)

Assigned Error – On October 8, 2010, Superior Court (ORDER DENYING MOTION FOR INDIGENCY AND STRIKING MOTION FOR ACCOUNTING, CP 918), denied Guy's motion for indigency status (CP 904 909, 910 – 917).

##### **ASSIGNED ERROR – GUY WAS AND IS PRESUMPTIVELY INDIGENT BUT COURT DENIED INDIGENCY**

(Re: Court Order CP 918)

Guy became presumptively indigent because Guy gets food stamps. RCW 10.101.010 (1)(a). Guy filed a motion for indigency status in Superior Court. Guy did not request free legal

counsel. Guy only requested waiver of appellate court fees, including future court fees and costs, but Superior Court order (CP 918) denied Guy's motion (CP 904 – 909).

Guy's motion included the "Determination of Indigency" form published by Washington Courts, which shows that Guy meets presumption of indigency because Guy receives food stamps. In Addendum 1 (CP 910 – 917) to the motion, Guy filed an Ohio State government document proving that Guy received food stamps, which Guy still receives.

Assigned Error – Superior Court order (CP 918) denied Guy's indigency even though Guy was (and is) presumptively indigent

**ASSIGNED ERROR – INHERITANCE IS A CONSTITUTIONAL RIGHT, WHICH THE COURT FAILED TO RECOGNIZE**

(Re: Court Order CP 918)

In the context of civil litigation, a constitutional right to appeal at public expense will arise where a fundamental liberty is at risk. The right of a son to receive inheritance given by his parents is a fundamental liberty and a Constitutional right.

The fundamental nature of parental rights as a "liberty," protected by the due process clause of the Fourteenth Amendment, was given expression in *Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446 (1923), wherein the Court stated:

While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint [\*\*\*4] but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

*Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446 (1923)

The right of a child (adult or minor) to receive inheritance given by his parents is one of the unenumerated rights of the U.S. Constitution, which is true even if it was not specifically enumerated the Federal or State constitutions.

Case citation: "In sum, the Ninth Amendment simply lends strong support to the view that the 'liberty' protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments. Cf. *United Public Workers v. Mitchell*, 330 U.S. 75, 94—95, 67 S.Ct. 556, 566, 567, 91 L.Ed. 754." *Griswold v. Connecticut*, U.S. Supreme Court, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510

The right of inheritance goes back into antiquity. Inheritance is engraved on the Pharaohs' tombs. Inheritance is an important theme in Judeo/Christian tradition, e.g. in the Biblical parable of the Prodigal Son.

The right to inheritance is codified in Clause #2 of the Magna Carta, which is the historical root of our liberties. (*See Sources of Our Liberties* 21, R. Perry ed. 1959). At the time of the Magna Carta, the shares of wife and children were called their *pars rationabilis*. This *pars rationabilis* is expressly recognized in the Magna Carta and was sued for by the writ de rationabili parte.

That fundamental liberty and right to inheritance was addressed by the first session the Continental Congress, which proposed for adoption the first ten amendments to the constitution, the fifth of which declares that "no person shall be deprived of life, liberty, or property, without due process of law" -- words which Justice Curtis, delivering the opinion of the United States supreme court in *Murray's Lessee v. Hoboken Co.*, 18 How. [59 U.S.] 276, said "were undoubtedly intended to convey the same meaning as the words 'by the law of the land' in Magna Carta."

Principles of justice so rooted in the traditions and conscience of our people must be ranked as fundamental

Case citation: "The commonwealth of Massachusetts is free to regulate the procedure of its courts in accordance with its own conception of policy and fairness, unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

Snyder v. Commonwealth of Massachusetts, U.S. Supreme Court, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674

In Colbert's Estate, the Supreme Court of Montana stated in its own words:

"In their brief counsel for appellants state their position as follows: '...The heirs at law of the deceased intestate became vested with the constitutional right of inheritance immediately upon the [\*266] death of the deceased, and [\*\*793] this right is not based upon conditions, and legislative bodies cannot take [\*\*\*12] away this right granted by the Constitution...'"

The Supreme Court of Montana continued in its own words:

"That the right of the heir to take vests at once upon the death of the intestate cannot be doubted. This we believe is the rule everywhere."

" HN5: "Section 2 of Article IV of the Constitution of the United States declaring that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

In re Colbert's Estate, Supreme Court of Montana, 44 Mont. 259; 119 P. 791; 1911 Mont. LEXIS 95

All of the above determines that inheritance is a constitutional right and fundamental

Assigned Error – Superior Court order (CP 918) denied Guy's indigency and waiver of appeal filing fees even though inheritance given by parents is a constitutional right.

#### **ASSIGNED ERROR – COURT DENIED CONSTITUTION GROUNDS FOR WAIVER OF FEES**

(Re: Court Order CP 918)

The Court's decision violated constitutional grounds for waiver of fees, because the Court limited indigency waivers to only those cases listed in RAP 15.2(b)(1), which qualify for free legal counsel.

Case citation: The plurality opinion in the first [\*\*\*13] *Carter* case was rested upon two grounds -- the inherent power of the court (citing *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969)), and a constitutional right to appeal all meritorious cases, found either in article 1, section 12, or article 1, section 4 of the state constitution.

[HN2] Const. art. 1, § 12, provides:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

*Housing Authority v. Saylor*, Supreme Court of Washington, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS

The U.S. Supreme Court established the Boddie doctrine, which mandated waiver of fees for indigents as a Constitutional right in cases where the State monopolized all avenues of dispute resolution. *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)

By statute Title 11 Probate and Trust Law, the State of Washington monopolized the sole avenue to settle estates, trusts, and probate disputes. RCW 11.20.010 requires that all Wills must be filed in probate court within 40 days of death of the testator. RCW 11.44.015 requires an Estate inventory to be filed within three months. RCW 11.44.015 requires that a Declaration of Completion of Probate and an accounting report to be filed before the Estate is closed. In between, RCW 11.20.010 and 11.44.015, numerous duties and requirements are specified by statute. And RCW 11.96A.020 states:

“(1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle: (a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; (b) All trusts and trust matters. ” RCW 11.96A.020

Clearly, the one and only avenue available, to the public and to Guy in particular, for settling estate matters is through Washington courts. Thereby, and by the following cases, Guy

has a Constitutional right to indigent appeal of the probate matters regarding his mother's estate, which warrants waiver of court fees.

Case citation: A state may not, consistent with the due process clause of the Fourteenth Amendment, pre-empt the right to dissolve marriages without affording all citizens access to the means it has prescribed for doing so. *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)

Case citation: Douglas, J., concurred in the result on the ground that the equal protection clause rather than the due process clause was the proper basis of decision. *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)

Case citation: Brennan, J., concurred on the ground that while denying indigents access to the courts for nonpayment of a fee is a denial of due process, it is also a denial of equal protection of the laws, and no distinction can be drawn between divorce suits and other actions  
*Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)

Assigned Error – Superior Court order (CP 918) denied Guy's indigency even though there is no distinction between the Constitutional right to divorce, in *Boddie v. Connecticut*, and Guy's appeal of probate matters in his mother's estate. Both cases are entitled to indigent access to the courts and waiver of fees, since State statutes make State courts the only avenue to settle an estate or to resolve disputes in probate matters.

**ASSIGNED ERROR: TRADITIONAL ARGUMENTS FOR FEES CANNOT STAND IN THE WAY OF CONSTITUTIONAL ACCESS TO COURTS**

(Re: Court Order CP 918)

The traditional arguments justifying filing fees are: (1) they raise revenue which helps maintain the cost of the court system; and (2) they deter frivolous suits. It seems clear that allegedly recouping court costs via filing fees is makeweight at best, since it is now well established that only a small percentage of court expenses is met by this method. See Note, 45 Wash. L. Rev. 389, 398, n.47 (1970). Additionally, an alternate type of *legislative* funding, less

onerous to the poor, is certainly a viable possibility. Nor can the usage of filing fees to deter frivolity be justified, for such fees will have only a marginal impact upon the affluent, [\*\*\*19] whereas they will likely dissuade or entirely preclude the poor from asserting *even meritorious claims* in the courts. Thus, with respect to the poor, employing filing fees as a mechanism for deterring frivolous cases or controlling the workload of the courts is clearly overbroad. See generally Note, *A First Amendment Right of Access to the Courts for Indigents*, 82 Yale L.J. 1055, 1068-69 (1973); Michelman, *The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights -- Part II*, 1974 Duke L.J. 527, 558-63."

Pierce County Superior Court failed to demonstrate a countervailing state interest of significance to override Guy's constitutional right to indigent waiver of filing fees.

Case citation: [HN1] Due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)

Case citation: Moreover, other alternatives exist to fees and cost requirements as a means for conserving the time of courts and protecting parties from frivolous litigation, [\*382] such as penalties for false pleadings or affidavits, and actions for malicious prosecution or abuse of process, to mention only a few. *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)

Assigned Error – Superior Court order (CP 918) denied Guy's indigency even though by the above cited cases, traditional arguments cannot block indigent access to the courts by requiring filing fees, which violated the U.S. 14<sup>th</sup> Amendment by failure to make another procedure available, not requiring the payment of Court fees by indigent beneficiary Guy.

**ASSIGNED ERROR – COURT ATTEMPTED TO DENY GUY'S STATUTORY RIGHT TO REVIEW BY IMPOSING UNAFFORDABLE FEES AND COSTS.**

(Re: Court Order CP 918)

Assigned Error – Superior Court order (CP 918) denied Guy’s indigency even though probate cases have a statutory right to appellate review. RCW 11.96A.200 gives statutory right to appellate review in trust cases, which applies to the estate and trust of Dorothy P. Mettle. Also, via RAP 15.2(c), Guy’s statutory right to review applies to this case. Therefore, an indigent’s statutory right to review cannot be denied because an indigent cannot afford to pay Court fees and costs.

(The fact that Guy eventually paid court fees is not a counter argument to Guy’s indigent right to waiver of court fees and costs, because Guy was not required to become completely destitute and deprived of a portion of his basic needs in order to pay court fees and costs. O’Connor v. Matzdorff, Supreme Court of Washington, 76 Wn.2d 589; 458 P.2d 154; 1969 Wash. LEXIS 689)

**ASSIGNED ERROR – SUPERIOR COURT VIOLATED THE 14<sup>TH</sup> AMENDMENT BY FAILURE TO MAKE ANOTHER PROCEDURE AVAILABLE.**

(Re: Court Order CP 918)

Assigned error - Guy’s right to receive his inheritance is a fundamental liberty and constitutional right, but even were that not so, Superior Court erred when it failed offer Guy and alternative procedure, not requiring the payment of fees, through which redress can be sought by Guy. Therefore this violated the 14<sup>th</sup> Amendment, U.S. Constitution.

Case citation: [HN3] The Fourteenth Amendment does not require a waiver of court fees for indigents, if the interest involved in the indigent’s claim is not a fundamental one and there is another procedure available, not requiring the payment of fees, through which redress can be sought.

Housing Authority v. Saylor, in Supreme Court of Washington, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698

**ASSIGNED ERROR – COURT FAILED TO HONOR RAP 15.2(C) OTHER CASES**

(Re: Court Order CP 918)

Assigned Error – Superior Court order (CP 918) erred in denying Guy’s indigency, because the court only considered cases listed in RAP 15.2(b)(1), in which the indigent litigant is entitled to free legal counsel at government expense. But, other cases permit indigency status under “RAP 15.2(c) Other Cases... not governed by subsection (b) of this rule”.

RAP 15.2(h) is not limited to RAP 15.2(b)(1) because (h) clearly offers review under RAP 15.2(c)(1).

And, RAP 15.2(c) states:

(c) Other Cases. In cases not governed by subsection (b) of this rule, the trial court shall determine in written findings the indigency, if any, of the party seeking review. The party must demonstrate in the motion or the supporting affidavit that the issues the party wants reviewed have probable merit and that the party has a constitutional or statutory right to review partially or wholly at public expense.

(c)(1) Party Not Indigent. The trial court shall deny the motion if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

**ASSIGNED ERROR -- COURT ORDER FAILED TO CONTAIN FINDINGS REQUIRED BY RAP 15.2(C)(1)**

(Re: Court Order CP 918)

Assigned error - The Superior Court order deny indigency (CP 918) failed to meet the requirements of RAP 15.2(c)(1), when they denied Guy’s motion to waive court fees due to indigency.

RAR 15.2(c)(1) states:

Party Not Indigent. The trial court shall deny the motion if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review

Guy is presumptively indigent. RCW 10.101.010 (1)(a). However, both orders, from Superior Court and the COA, failed to contain findings designating the funds or source of funds available to Guy to pay the expenses of review.

**ASSIGNED ERROR - COURT DENIED INDIGENCY AFTER GUY DEMONSTRATED GOOD FAITH AND PROBABLE MERIT (Re: Court Order CP 918)**

COA #38243-1-II denied Respondent/PR/Trustee's motion on the merits. Thereby, the COA found that Guy was litigating in good faith and that Guy's arguments raised substantive, debatable issues.

**Case Citation:** There were debatable issues, as evidenced by an order denying respondent's motion on the merits; thus, respondent was not entitled to an award of fees against appellant for a frivolous appeal. Pearson v. Schubach, 52 Wn.App. 716, 763 P.2d 834 (1988), review denied, 112 Wn.2d 1008 (1989).

Actually winning the appeal is not required to meet standard of RAP 15.2 for review of indigency.

**Case Citation:** RAP 15.2(c) reads in part: If the Supreme Court determines that the party is seeking review in good faith, that an issue of probable merit is presented, and that the party is entitled under the state or federal constitution to review partially or wholly at public expense, the Supreme Court will enter an order directing the trial court to enter an order of indigency. Housing Authority v. Saylor, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698 in the Supreme Court of Washington

Assigned error: After COA 38243-1-II denied PR/Trustee's motion on the merits, and thereby determined that Guy had raised debatable issues, then Superior Court denied Guy's motion for indigency. Thereby, Superior Court was in violation of RAP 15.2(c), because the COA had already determined that Guy's arguments met the requirements of good faith and probable merit.

**ASSIGNED ERROR – COURT IMPOSED TOO HARSH A PENALTY BY FORCING INDIGENT GUY TO PAY UNAFFORDABLE COURT FEES AND COST**

(Re: Court Order CP 918)

COA 38243-1-II, billed Guy for a court fee of \$38.91, plus threatening Guy with a fine of \$150, which was four times greater than the fee due, if Guy did not pay immediately. (See COA Clerk's letter dated March 25, 2011 in COA 38243-1-II.) This is too harsh a penalty for an indigent person. Also, COA 44244-1-II, forced Guy to pay a \$290 filing fee and \$891 for Clerk's Papers, and pay \$400 fine for being late, or the case would be dismissed. (See COA Clerk's letter dated 4/01/2013 in COA 44244-1-II.)

Assigned error: The double bind, of a) forcing an indigent person to pay unaffordable court fees, costs, and fines, or b) having his case dismissed and losing his right to review, is too harsh a penalty to be constitutional.

Case Citation: The assets of the applicant were insufficient to permit her to pay the costs of pursuing her remedy without depriving her children of a portion of their basic needs. The court held that it had the inherent power to waive the requirements of its rules and to waive the prepayment of a filing fee prescribed by statute.

O'Connor v. Matzdorff, Supreme Court of Washington, 76 Wn.2d 589; 458 P.2d 154; 1969 Wash. LEXIS 689

Case citation: As the annotation reveals, it was the custom, or at least was said to be the custom, to punish a poor man whose suit was unsuccessful. That was not found to be a very satisfactory [\*601] method of discouraging frivolous litigation for the obvious reason that it was too harsh; and it is now generally thought that it is sufficient to require an affidavit that the suit is brought in good faith, or if possible an attorney's affidavit that it has apparent merit, if the court has no means of making an independent investigation

O'Connor v. Matzdorff, Supreme Court of Washington, 76 Wn.2d 589; 458 P.2d 154; 1969 Wash. LEXIS 689

Case citation: "But where a case appears to have been brought in good faith and to have probable merit, the exercise of a sound discretion dictates that a litigant should not be

denied his day in court simply because he is financially [\*\*\*27] unable to pay the court fees."

"In the matter presently before the court, we need only determine whether the petition is urged in good faith and presents an issue of probable substance, and we are convinced that it does. The motion for leave to proceed in this court in forma pauperis is therefore granted."

O'Connor v. Matzdorff, Supreme Court of Washington, 76 Wn.2d 589; 458 P.2d 154; 1969 Wash. LEXIS 689"

### **ASSIGNED ERROR – COURT REFUSED TO WAIVE MORE THAN JUST FILING FEES**

(Re: Court Order CP 918)

Assigned error - Superior court erred by denying Guy's motion for indigency, and the Court refused to waive appeal filing fees. But, Superior Court should have also waived the cost of Clerk's Papers. For example, the Supreme Court waives more than just filing fees.

Case Citation: Quote the Supreme Court of Washington: "Obviously, waiving the statutory or court rule filing fee is hardly adequate to enable an indigent to appeal an adverse determination of a good faith claim of a civil nature of probable merit. There is the cost of the transcript, statement of facts, briefs, attorney's fees, and miscellaneous expenses which must be incurred in the successful prosecution of an appeal."  
Housing Authority v. Saylor, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698 in the Supreme Court of Washington

Case Citation: Quote the Supreme Court of Washington; "To recognize a discretionary right to waive filing fees for an indigent in a civil case of probable merit urged in good faith (even though with no limitation of subject matter) without making provision for more than waiver of the filing fee is, in effect, to deny any effective access to the courts by a substantial segment of our population. "  
Housing Authority v. Saylor, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698 in the Supreme Court of Washington

### **ASSIGNED ERROR – Court Violated Case Law by Denying Indigency Just Because This Was a Probate Case**

(Re: Court Order CP 918)

**Assigned Error:** Superior Court denied indigency based on the type of case, i.e. because this is a probate case.

Superior Court's decision would only allow waiver of court fees in the cases listed in RAP 15.2(b)(1) in which free legal counsel would be provided by the government. Assigned Error: This Superior Court order (CP 918) conflicts with previous appellate decisions which waived fees for indigents in divorce cases, employment termination cases, and replevin cases.

**Divorce cases waived fees for Indigents:**

Case citation: Subsequent to our (Washington Supreme Court) decision in *O'Connor v. Matzdorff, supra*, the United States Supreme Court decided *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971). It held that due process of law requires that, where a state has preempted the right to dissolve the marriage relationship, it cannot place a barrier of court filing fees before an indigent [\*\*\*7] seeking a divorce. *Housing Authority v. Saylor*, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698 in the Supreme Court of Washington

Case citation: In a divorce action, filing fees had been waived, *Ashley v. Superior Court*, 83 Wn.2d 630, 521 P.2d 711 (1974),

**Termination of Employment Case waived fees for Indigents:**

Case citation: The appellant in that case was a civil service [\*\*\*12] employee of the university's trucking service. His employment having been terminated because of his alleged violation of state and institutional regulations, he sought and was [\*738] granted review by the Higher Education Personnel Board, which upheld the termination. The superior court affirmed the board, and the appellant petitioned this court for leave to appeal in forma pauperis. Five judges agreed that the fees and appeal bond should be waived if the appellant was a bona fide indigent and if the appeal had probable merit. *Carter v. University of Washington*, [\*\*325] 85 Wn.2d 391, 536 P.2d 618 (1975).

**Replevin Case waived fees for Indigents:**

Case citation: Quoting the Supreme Court of Washington: ".It is true, the majority opinion reaffirms *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969), involving an indigent's claim of replevin. The court there recognized the power of the court to waive court filing fees imposed by statute or court rule." *Housing Authority v. Saylor*, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698 in the Supreme Court of Washington

The Estate of Dorothy P. Mettle is a probate case, which is very similar to the replevin case (O'Conner v. Matzdorff) because Guy is trying to recover money that was rightfully Guy's but which the Trustee kept for 11 years (2002-2013) and counting.

**ASSIGNED ERROR – SUPERIOR COURT VIOLATED THE SUPREME COURT'S OWN USE OF RAP 15.2(C).**

(Re: Court Order CP 918)

Assigned error - Superior Court order (CP 918) ignored RAP 15.2(c), even though it was cited numerous times by Guy. Instead, the COA limited waiver of fees, for indigents, only to cases listed in RAP 15.2(b)(1). This directly conflicts with the Supreme Court's own use of RAP 15.2(c).

Case citation: "Later this court itself adopted rule 15.2 of the Rules of Appellate Procedure (RAP), effective July 1, 1976, dealing [\*748] with indigency and the rights of an injured party. **RAP 15.2(c)** reads in part: If the Supreme Court determines that the party is seeking review in good faith, that an issue of probable merit is presented, and that the party is entitled under the state or federal constitution to review partially or wholly at public expense, the Supreme Court will enter an order directing the trial court to enter an order of indigency."

Housing Authority v. Saylor, 87 Wn.2d 732; 557 P.2d 321; 1976 Wash. LEXIS 698 in the Supreme Court of Washington

**ESTATE**

Assigned Error -- On June 27, 2008, Superior Court ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION, RE THE ESTATE, CP 494 – 496, was entered without substantial analysis of Personal Representative's attorney fees, and without denying Personal Representative's wasteful attorney fees, but denying discovery without explanation of \$70,000 worth of items missing in Dorothy's personal effects,<sup>40</sup> denying Guy's request for an accounting by an accounting professional, approving 6 years of unwarranted delays in closing the estate

---

<sup>40</sup> See the list personal property that PR/Trustee Gregg apparently stole from the estate, Exhibit 5 in CP 319 – 343

(2002 – 2008), approving excessive attorney fees, and allowing PR's attorney fees to be comingled with Trustee's attorney fees.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court Order on Motion for Reconsideration (CP 566 – 567) was entered without substantial analysis of Personal Representative's attorney fees, and without denying Personal Representative's wasteful attorney fees, but denying discovery without explanation of \$70,000 worth of items missing in Dorothy's personal effects,<sup>41</sup> denying Guy's request for an accounting by an accounting professional, approving 6 years of unwarranted delays in closing the estate (2002 – 2008), approving excessive attorney fees, and allowing PR's attorney fees to be comingled with Trustee's attorney fees.

**ASSIGNED ERROR – ESTATE AND PERSONAL REPRESENTATIVES ARE DISTINCT LEGAL ENTITIES FROM THE TRUST AND TRUSTEE.**

Re Superior Court orders CP 494 – 496, CP 566 – 567

Assigned error - Superior Court failed to recognize that The Estate is distinct legal entity from the Trust, and the Personal Representative is a distinct legal entity from the Trustee, even if Gregg was appointed to both positions. (Estate of Genevieve McCuen.<sup>42</sup>) Therefore, the

---

<sup>41</sup> See the list personal property that PR/Trustee Gregg apparently stole from the estate, Exhibit 5 in CP 319 – 343  
<sup>42</sup> HN1 in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

Personal Representative cannot use the Trust as an excuse for delays in closing the Estate. And the Personal Representative's attorneys cannot comingle their fee billings with the Trustee's attorney fee billings.

**ASSIGNED ERROR – COURT ALLOWED PERSONAL REPRESENTATIVE TO OMIT FILING ESTATE APPRAISAL AND INVENTORY**

Re Superior Court orders CP 494 – 496 and CP 566 – 567

Per RCW 11.42, the Personal Representative (PR) had to file an estate appraisal and true inventory within three months of the death of Dorothy Mettle. Assigned error: Assigned error - The court allowed the PR to omit filing an appraisal and true inventory.

**ASSIGNED ERROR – COURT APPROVED PERSONAL REPRESENTATIVE'S TACTICAL DELAYS IN CLOSING THE ESTATE**

Re Superior Court orders CP 494 – 496 and CP 566 – 567

Dorothy died in 2002. Her estate consisted of a single bank account at Columbia bank, but the Personal Representative (PR) caused unwarranted, tactical delays to consume 6 years (2002-2008) before closing the estate:

- a) Assigned Error - Court Approved 10 Month Delay In Probating The Will
- b) Assigned Error – Court Approved 3- Year Unwarranted Delay In Closing The Estate
- c) Assigned error – the Court approved the PR's activities and closed the estate in 2008, despite the PR's tactical delays which mulched the estate for \$27,000 in attorney fees.

**ASSIGNED ERROR - COURT APPROVED 10 MONTH DELAY IN PROBATING THE WILL**

Re Superior Court orders CP 494 – 496 and CP 566 – 567

Dorothy died on 12/10/2002. But, the Personal Representative delayed 10 months in bringing the Will to probate court, which violated RCW. RCW 11.20.010 requires delivery of the

Will to court by its custodian (Personal Representative Gregg) within 30 days of Dorothy's death. The first entry into Court docket is 9/10/200, which is an elapsed time span of 10 months after Dorothy's death. Gregg Mettle (Custodian/Guardian/P.R./Trustee) violated RCW 11.20.010 and delayed this entire case by 9 months, which has increased cost and delayed the distribution of the Estate and Trust. It also allowed time for the P.R./Trustee conduct their mulch the estate without court oversight for 9 more months. Assigned Error: Superior Court order approved PR's 10 month delay in delivering the Will to court. ( CP 494 – 496 and CP 566 – 567)

Corrupts COA judges should not repeat their lie (in COA 38243-1-II) that this delay did not damage Guy, so that the Personal Representative's violation of RCW 11.20.010 should be forgiven by the Court. Clearly the legislature considered said delay to be damaging because the legislature enacted RCW 11.20.010, RCW 11.48.010, and the Courts award 12% interest for delays in delivering money or assets [RCW 4.56.110, RCW 19.52.020, Estate of Fuller.<sup>43</sup>]. Similar delays are widely considered to be damaging by common law and the public and institutions at large. The IRS charges interest and penalties for late payment, as do landlords, creditors, credit cards, and banks, among others. Said delay was one in a string of tactical delays by the PR/Trustee, which deliberately disregarded said statutes, and which have prevented distribution of \$400,000 of inheritance from the Trust for 11 years (2002 – 2013). That has caused indisputable damage to the all beneficiaries, including Guy.

Assigned error -The court failed to impose sanctions on the Personal Representative sufficient to (1) to compensate the estate and trust. [Guardianship of Paula Lasky.<sup>44</sup>], (2) to

---

<sup>43</sup> Estate Of Leona Fuller v. Donna Taylor, 2006 Wash. App. LEXIS 1278

<sup>44</sup> In the Matter of the Guardianship of Paula Lasky, 54 Wn. App. 841; 776 P.2d 695; 1989 Wash. App. LEXIS 237

prevent wrongdoers from undermining the purpose of the statute [Physicians Ins v. Fisons Corp.<sup>45</sup>]; (3) to prevent wrongdoers from profiting by their violations. (Physicians Ins v. Fisons Corp.<sup>46</sup>); and (4) to prevent such conduct in the future. (Guardianship of Paula Lasky.<sup>47</sup>)

#### **ASSIGNED ERROR – COURT APPROVED 3-YEAR UNWARRENTED DELAY IN CLOSING THE ESTATE**

Re Superior Court orders CP 494 – 496 and CP 566 – 567.

On 10/06/2004, Personal Representative (PR) filed his Declaration of Completion of Probate (CP 227 – 231). Therein, PR stated that administration of the Estate was complete, assets had been transferred to the Trust/Trustee, and the PR sought to retain authority only to deal with tax issues (regarding a possible tax refund).

Said tax refund occurred in 2005. However, the PR took another 3 years, until 6/27/2008 to close the estate. (Superior Court orders CP 494 – 496 and CP 566 – 567.)

Assigned error - Those three years (2005 – 2008) were unwarranted delays in closing the estate, which allowed the PR to mulch the estate for another three years after the last item of the PR's responsibility was completed, i.e. after receiving the tax refund in 2005.

#### **ASSIGNED ERROR – COURT APPROVED EXCESSIVE ATTORNEY FEES**

Re Superior Court orders CP 494 – 496 and CP 566 – 567.

Assigned error – In 2004, PR's declaration of completion of probate (CP 277 – 231) requested \$10,269.53 in attorney fees. But when the PR actually closed the estate four years later in 2008, the PR/Trustee received \$27,272.02 in attorney fees. Superior Court orders (CP

---

<sup>45</sup> Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858P.2d 1054 (1993)

<sup>46</sup> Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858P.2d 1054 (1993)

<sup>47</sup> In the Matter of the Guardianship of Paula Lasky, 54 Wn. App. 841; 776 P.2d 695; 1989 Wash. App. LEXIS 237

494 – 496 and CP 566 – 567) approved PR's attorney fee statement.<sup>48</sup> Those four years (2004 – 2008) from the PR's Declaration of Completion of Probate to PR's closing of the estate have cost the estate and beneficiaries another \$17,002.49 in PR's attorney fees. (\$17,002.49 = \$27,272.02 fees paid in 2008 minus \$10,269.53 fees requested in 2004.) In that four year span (2004 -2008), the PR incurred excessive attorney fees, when his only duty was to receive a tax refund, which he did in 2005. Assigned error - the Court approved the unwarranted delay in closing the estate and the court approved the excessive attorney fees, over beneficiary Guy's objections without doing a substantive analysis of attorney fees.

**ASSIGNED ERROR – COURT FAILED TO APPLY PREJUDGMENT INTEREST AND SANCTIONS**

Re Superior Court orders CP 494 – 496 and CP 566 – 567.

Personal Representative (PR) Gregg was the guardian of Dorothy and custodian of her Will. Upon Dorothy's death in 2002, Gregg already had custody of the estate and already had a team of attorneys, paid for by the Estate. Therefore, Gregg had no excuse for the 10 month delay in bringing Dorothy's Will to court.

Assigned error – Superior Court order orders (CP 494 – 496 and CP 566 – 567) failed to require custodian of the Will and Personal Representative Gregg to pay prejudgment interest of 12% on the Estate assets for his 10 month delay in bringing the Will to court. [RCW 4.56.110, RCW 19.52.020, Estate of Fuller.<sup>49</sup>] Superior Court also failed to require Custodian/PR Gregg to pay 12% prejudgment interest on Estate assets for his three year delay (2005 – 2008) in closing the Estate after completing his last duty, which was receiving a tax refund in 2005. There must be some incentive given to custodians of the Will to discourage them from engaging

---

<sup>48</sup> "Declaration Of David B. Petrich Regarding Attorney Fees," for fees charged to the estate prior to 12/31/2007. Said declaration was filed on 3/10/2008

<sup>49</sup> Estate Of Leona Fuller v. Donna Taylor, 2006 Wash. App. LEXIS 1278

in tactical delays in bringing the Will to court and for tactical delays in closing the estate, and that incentive is prejudgment interest. Per RCW 11.48.010, the personal representative must settle the estate as “rapidly and quickly as possible without sacrifice to the probate or nonprobate estate.” . Also, the Court erred in not holding Gregg and his attorneys in contempt of court or applying other sanctions to Gregg and his attorneys for their inexcusable delays in delivering the Will and in closing the Estate.

### **ATTORNEY FEES**

Assigned Error – On 6/27/2008, Superior court order (ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION re Estate, CP 494 496) approved Personal Representative’s attorney fees without substantive analysis, or any analysis at all. . [Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986).]

Assigned Error – On 6/27/2008, Superior court order (ORDER AND DECREE APPROVING TRUSTEE’S INTERIM ACCOUNTING re Trust, CP 497 - 498) approved Trustee’s attorney fees without substantive analysis, or any analysis at all. . [Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986).]

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy’s Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee’s Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court order (CP 566 – 567) approved Trustee’s attorney fees without substantive analysis, or any analysis at all. . [Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986).]

Assigned error: On 10/26/2012 Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee attorney fees on 10/26/2012, without substantive analysis, or any analysis at all. *Dunn v. Rainier Nat'l Bank*.<sup>50</sup>

**ASSIGNED ERROR - COURT DID NOT CONDUCT SUBSTANTIVE ANALYSIS OF ATTORNEY FEES**

Re Superior Court orders CP 494 - 496, CP 497 - 498, CP 566 – 567, CP 1751 – 1754.

The court is required to conduct a substantive analysis of Trustee attorneys' fees, which is more than a rubber stamp approval of whatever the attorneys submitted. [*Dunn v. Rainier Nat'l Bank*, 44 Wn. App. 795, 723 P.2d 1161 (1986).]

**ASSIGNED ERROR - COURT DENIED 30 DAY CONTINUANCE TO ALLOW GUY TO EXAM FINAL ACCOUNTING AND FEES**

Assigned Error: On 10/26/2012, Superior court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) denied Guy's request (CP 1731<sup>51</sup>) for a 30 day continuance to examine the Trustee's final accounting documents in detail because said documents comprise hundreds of pages. And, said continuance would have facilitated the requirement that the court "undertake a substantive analysis culminating in an explicit finding that the requested fees were reasonable," or not reasonable. [*Dunn v. Rainier Nat'l Bank*, 44 Wn. App. 795, 723 P.2d 1161 (1986).]

---

<sup>50</sup> *Dunn v. Rainier Nat'l Bank*, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>51</sup> On page 4 of Beneficiary Guy's Reply To Petition To Approve Trustee's Final Accounting (CP 1728 – 1750)

**ASSIGNED ERROR - THE COURT DID NOT REQUIRE TRUSTEE TO BREAK OUT FEES THAT ARE POTENTIALLY NOT BILLABLE TO THE ESTATE**

Assigned Error – On 6/27/2008, Superior court order (ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION re Estate, CP 494 496) approved Personal Representative’s attorney fees without requiring the Trustee to break out fees that are not billable to the estate, and without undertaking a substantive analysis culminating in an explicit finding that the requested fees were reasonable. [Dunn v. Rainier Nat’l Bank.<sup>52</sup>]

Assigned Error -- On June 27, 2008, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE’S INTERIM ACCOUNTING, CP 497 – 498) approved Trustee attorney fees without requiring the Trustee to break out fees that are not billable to the estate, and without undertaking a substantive analysis culminating in an explicit finding that the requested fees were reasonable. [Dunn v. Rainier Nat’l Bank.<sup>53</sup>]

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy’s Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee’s Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court order (566 – 567) approved Trustee attorney fees without requiring the Trustee to break out fees that are not billable to the estate, and without undertaking a substantive analysis culminating in an explicit finding that the requested fees were reasonable. [Dunn v. Rainier Nat’l Bank.<sup>54</sup>]

---

<sup>52</sup> Dunn v. Rainier Nat’l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>53</sup> Dunn v. Rainier Nat’l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>54</sup> Dunn v. Rainier Nat’l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

Assigned error: On 10/26/2012 Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee attorney fees on 10/26/2012, without requiring the Trustee to break out fees that are not billable to the estate, and without undertaking a substantive analysis culminating in an explicit finding that the requested fees were reasonable. [Dunn v. Rainier Nat'l Bank.<sup>55</sup>]

For example:

**(a) Assigned Error - Trustee's billed attorney fees for tax work.** Estate and Trust attorneys cannot bill attorney fees for preparing tax documents because that is a job for accountants. [Dunn v. Rainier Nat'l Bank.<sup>56</sup>] But Trustee's attorney did bill attorney time and rates for tax preparation, which the court approved.

**(b) Assigned Error - Trustee's attorneys billed for defending their own fees.** Attorneys cannot bill for defending their own fees [Estate of Carl Larson.<sup>57</sup>], but Trustee's attorney did so, and it was approved by the Court. Trustee attorneys billed for defending their own fees in (1) Order Approving Final Account And Decree Of Distribution Re Estate, Cp 494 496; (2) Order And Decree Approving Trustee's Interim Accounting, Cp 497 – 498; (3) Order On Motion For Reconsideration, Cp 566 – 567; (4) Order And Decree Approving Trustee's Final Accounting, Cp 1751 – 1754; (5) Order Continuing Guy Mettle's Motion For Accounting And Billing Information, CP 1058 – 1059; (6) Order Denying Motion For Indigency And Staying Motion For Accounting, Cp 918; (7) Court Of Appeals 38243-1-li; (8) Court Of Appeals 42213-1; (9) Supreme Court 84705-3; and (10) Supreme Court 86961-8

---

<sup>55</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>56</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>57</sup> Estate of Carl Larson, Supreme Court Of Washington, 103 Wn.2d 517; 694 P.2d 1051; 1985 Wash. LEXIS 1063

**(c) Assigned Error – Superior Court approved Trustee’s attorney for a response that he withdrew on 4/22/2011.** On 4/12/2011, Trustee filed response opposing Guy requests for annual accounting for the year 2010. The Trustee also filed a declaration requesting \$1,000 in attorney fees for preparing their response and attending the hearing. Then in the hearing, on 4/22/2011, the Trustee withdrew his response and opposition to said accounting. Trustee’s attorney should be denied his billing for his withdrawn and frivolous response, opposition, and appearance at said hearing. Trustee’s attorney has the burden of proving that the hours charged to estate were necessary. [Estate of Carl Larson.<sup>58</sup> ]

**(d) Assigned Error – Superior Court approved Trustee attorney fees for litigation that did not benefit the Trust.** Assigned error – Superior court approved Trustee attorney’s fees for litigation that did not benefit the Trust or the beneficiaries. Trustee’s attorneys did, but should not, bill the Trust for opposing Guy’s motion for indigency in Superior Court, in Court of Appeals # No. 41463-5-II, Washington Supreme Court #85871-3, and U.S. Supreme Court #11-7817. Said opposition could not and did not benefit the estate. Said opposition was in service to the Trustee’s tactic of using Trust moneys to exhaustively litigate any issue, even though Trustee’s litigation would not benefit the estate or trust. Trustee’s opposition was also in service Gregg’s personal animosity towards Guy. [Fred Hutchinson Cancer Research Center v. Holman.<sup>59</sup> ]

Trustee’s attorney should identify all fee items of the types listed above, including 1) tax related work, 2) work to defend against challenges to the attorneys’ bill, 3) preparing a response and attending the hearing for the Trustee’s response that the Trustee withdrew, and 4) work on litigation that did not benefit the estate, such as opposing Guy motion for indigency.

---

<sup>58</sup> Estate of Carl Larson, Supreme Court Of Washington, 103 Wn.2d 517; 694 P.2d 1051; 1985 Wash. LEXIS 1063

<sup>59</sup> Fred Hutchinson Cancer Research Center v. Holman, Washington Supreme Court, 107 Wn.2d 693; 732 P.2d 974; 1987 Wash. LEXIS 1036

**ASSIGNED ERROR – COURT DID NOT REQUIRE TRUSTEE TO IDENTIFY ATTORNEY FEE ITEMS WITH CASE NUMBERS**

Assigned Error – On 6/27/2008, Superior court order (ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION re Estate, CP 494 496) approved Personal Representative's final attorney fees on 6/27/2008, without identifying which case numbers were associated with each attorney fee item. Hence, there is no way to tell whether PR's attorney work was even for a relevant case that benefited the beneficiaries. That thwarts analysis of the attorneys' fee claims. [Dunn v. Rainier Nat'l Bank.<sup>60</sup>]

Assigned Error -- On June 27, 2008, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) approved final Trustee attorney fees on 6/27/2008, without identifying which case numbers were associated with each attorney fee item. Hence, there is no way to tell whether PR's attorney work was even for a relevant case that benefited the beneficiaries. That thwarts analysis of the attorneys' fee claims. [Dunn v. Rainier Nat'l Bank.<sup>61</sup>]

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498): and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court order (CP 566 – 567) approved Personal Representative's final attorney fees on 6/27/2008, without identifying which case numbers were associated with each attorney fee item. Hence, there is no way to

---

<sup>60</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>61</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

tell whether PR's attorney work was even for a relevant case that benefited the beneficiaries.

That thwarts analysis of the attorneys' fee claims. [Dunn v. Rainier Nat'l Bank.<sup>62</sup>]

Assigned error: On 10/26/2012 Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee attorney fees on 10/26/2012, without identifying which case numbers were associated with each attorney fee item. Hence, there is no way to tell whether Trustee's attorney work was even for a relevant case that benefited the beneficiaries. That thwarts analysis of the attorneys' fee claims. [Dunn v. Rainier Nat'l Bank.<sup>63</sup>]

This is important because there are twelve case numbers, and each case has its own separate issues. The twelve cases are: Superior Court 03 4 01245, Superior Court 08-4-00411-5, COA 38243-1-II, COA 38603-8-II, COA 38733-6-II, COA 41463-5-II, COA 42213-1-II, COA 44244-2-II, Supreme Ct #84705-3, Supreme Ct #84648-1, Supreme Ct #85871-3, and Supreme Ct #86961-8. And, each case has its own separate merits and separate attorney work.

The Trust and Estate are distinct Legal Entities. (Estate of McCuen.<sup>64</sup>) The attorney fees should not be combined for both distinct legal entities: (1) the Estate and (2) the Trust. (Estate of McCuen.<sup>65</sup>) As a distinct legal entity, the Estate requires separate accounting from the Trust, and they both require separate billing of fees and costs. But, the PR/Trustee and the Court combined all the attorney fees, without making any distinction between the two legal entities, 1) the Estate, and 2) the Trust, which would facilitate analysis of each distinct legal entity's attorney fees.

---

<sup>62</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>63</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>64</sup> HN1 in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

<sup>65</sup> HN1 in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

We know that it is no problem for Trustee's attorney to identify each billed item with the associated case number because Trustee's attorneys were perfectly capable of identifying a sum of \$24,430.87 in additional fees for appeal work that they billed against Guy (CP 1751 – 1754.)

Assigned error - The court failed to order Trustee's attorneys to identify every fee item with its relevant case number. This is required to conduct a substantive analysis of Trustee attorneys' fees, which is more than a rubber stamp approval of whatever the attorneys submitted. [Dunn v. Rainier Nat'l Bank.<sup>66</sup>]

**ASSIGNED ERROR - \$128,000 ATTORNEY'S FEES ARE EXCESSIVE AND SHOULD BE REDUCED OR DENIED**

Assigned Error – On 6/27/2008, Superior court order (ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION re Estate, CP 494 496) approved Personal Representative's attorney fees, which are excessive.

Assigned Error -- On June 27, 2008, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) approved Trustee attorney fees, which are excessive.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498); and 2) Order Approving Final Account And Decree Of

---

<sup>66</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior court order (CP 566 – 567) approved PR/Trustee's attorney fees which are excessive.

Assigned error: On 10/26/2012, Superior Court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) approved final Trustee Report and attorney fees, which are excessive.

This is a simple trust, and the assets have been liquid money in two bank accounts since 2002. All the trustee had to do was to distribute the money as rapidly and quickly as possible (RCW 11.48.010, RCW 11.02.005 (10) ), provide annual reports per RCW 11.106.020 and per Guy's request for special notice, provide a final report (RCW 11.106.030) and provide the source documents to support the Trustee's accounting.

However, the Trustee upon advice of his attorneys has intentionally failed at every one of their simple duties. Example #1: Trustee's never provided an annual report in 11 years (2002 – 2013), except when forced to do so by Guy's motion, and they opposed every motion by beneficiary Guy that asked for said reporting. Example #2: Trustee opposed every motion by Guy for distribution of Guy's inheritance, which has not been completed in 11 years (2002 – 2013). Example #3: The Trustee committed fraud on the Guardianship court and on the beneficiaries by keeping the Charles Schwab account separate and a secret for 6 years (2002 – 2008). Example #4: For 6 years (2002 – 2008), the Trustee tried to extort a signed release from liabilities out of the beneficiaries before the Trustee would release our inheritance, all the while Trustee held the Charles Schwab account in secret, and said account is still missing \$50,000. Example #5: For 5 years (2008-2013) Trustee refused to participate in discovery. Example #6: For 10 years (2003-2013), Trustee refused to provide with any items required by Guy's request for Special Notice.

Thus, the Trustee violated his fiduciary and common law responsibilities to the beneficiaries.

Case quote: "[HN7] "[A] trustee is a fiduciary who owes the highest degree of good faith, diligence and undivided loyalty to the beneficiaries." In re Estate of Ehlers, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996). A trustee's duties are governed by the [\*20] common law and by statute. Id. A trustee's "dut[ies] include[] the responsibility to inform the beneficiaries fully of all facts which would aid them in protecting their interests." Esmieu v. Schrag, 88 Wn.2d 490, 498, 563 P.2d 203 (1977). [Hennings v Hennings 2006 Wash. App. LEXIS 453.]

All the failures of the Trustee were not accidental, they were intentional efforts to increase litigation cost and deprive the beneficiaries of their inheritance. We know this from first person testimony by beneficiary John Mettle. John's declaration was filed in Superior Court on 12/01/2009 and in COA 38243-1-II, Appendix 13. John's declaration stated:

"2. Gregg M. Mettle (trustee) has repeated said in conversations with me (John) that he is refusing to distribute any funds so that all the funds are fully consumed by legal expenses as punishment to Guy L. Mettle for creating legal challenges.

As a result of the PR/Trustee vexatious opposition to reporting, accounting, and distribution, the PR/Trustee has billed \$128,521.31 in attorney fees to the Estate and Trust over the last 11 years.

SOURCE PLEADINGS FOR GRAND TOTAL OF TRUSTEE'S ATTORNEY FEES:

#1 - Filed 3/10/2008 "DECLARATION OF DAVID B. PETRICH REGARDING ATTORNEY FEES" Period - fees charged to Estate prior to 12/31/2007	\$	27,272.02
#2 - FILED 12/14/2010 ACCOUNTING FOR THE ESTATE OF DOROTHY P. METTLE AND THE DOROTHY P. METTLE TRUST FOR PERIOD 1/1/08 THROUGH 12/31/09	\$	38,173.72

#13 - FILED 4/28/2011		
Accounting for the Estate of Dorothy P. Mettle and the Dorothy P. Mettle Trust for the period of January 1, 2010 through December 31, 2010	\$	34,028.16
#4 - FILED 10/03/2012		
PETITION TO APPROVE TRUSTEE'S FINAL ACCOUNTING	\$	29,047.41
Period 1/1/2011 - 9/30/2012		
		=====
TOTAL OF PR/TRUSTEE'S ATTORNEY FEES BILLED TO ESTATE & TRUST	\$	128,521.31
Fees deducted from Guy's distribution by COA Mandate on 9/30/2011 (CP 1281)	\$	(53,886.23)
		-----
Net Total feels billed by PR/Trustee's attorneys to the Estate and Trust	\$	74,635.08

Even reducing the \$128,521.31 fee total by \$53,886.23, which COA Mandate (CP 1231) charged to Guy, it means that PR/Trustee's attorneys have billed \$74,635.08 to the Estate and Trust.

By any standard, PR/Trustee attorney fees of \$74,635.08 are excessive for this simple estate and trust that consisted of three bank accounts: 1) Columbia Bank account in the Estate, 2) Merrill Lynch account in the Trust, and 3) the hidden Charles Schwab account in the Trust. \$74,635.08 is prima facie evidence that said fees should be drastically reduced.

Case citation: An award of fees is not simply payment for "work actually performed". [Guardianship of: Larry K. Cosby. <sup>67</sup>] The test for awarding FEES in an estate or trust case is whether the litigation and the participation of the party seeking attorney fees causes a benefit to the trust. [Dunn v. Rainier Nat'l Bank, <sup>68</sup> Fred Hutchinson Cancer Research Center v. Holman. <sup>69</sup>]

Assigned error - Trustee attorneys' fees failed that test and their hours must be drastically reduced by 75% or more to be commensurate with actual performance of their

<sup>67</sup> In re the Guardianship of: Larry K. Cosby, 2000 Wash. App. LEXIS 882

<sup>68</sup> Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

<sup>69</sup> Fred Hutchinson Cancer Research Center v. Holman, Washington Supreme Court, 107 Wn.2d 693; 732 P.2d 974; 1987 Wash. LEXIS 1036

duties in benefit to the trust. The Trustee could have distributed all of the inheritance in first two years (2002 – 2004), but instead he chose to litigate for 11 years (2002 – 2013).

Trustee attorneys must bear the cost of their fee reductions.

Case citation: "An attorney's "blind reliance" on a client will seldom constitute a reasonable inquiry for purposes of Wash. Super. Ct. Civ. R. 11." Guardianship of Paula Lasky.<sup>70</sup>

Case citation: - "[HN20] As amended, Wash. Super. Ct. Civ. R. 11 imposes several independent and affirmative duties on the attorney or party signing the pleading or motion, including .... (3) the duty not to interpose the motion for purposes of delay, harassment, or increasing the costs of litigation." Miller v. Badgley.<sup>71</sup>

### **ASSIGNED ERROR – EXCESSIVE ATTORNEY FEES THAT WERE ALREADY PAID SHOULD BE RECOVERED**

Re Superior Court orders CP 494 - 496, CP 494 - 496, CP 566 – 567, CP 1751 – 1754.

Assigned Error – Superior Court approved \$128,000 in attorney fees, without undertaking recovery of excessive attorney fees paid by the Trustee. The PR/Trustee (and coconspirator attorneys) may be found liable for the entire estate or parts thereof, per RCW 11.48.030, RCW 11.24.040, RCW 11.24.050; recovery of embezzled or missing assets per RCW 11.48.060 and recovery thereof per 11.48.070; contracts they entered into per RCW 11.48.090, RCW 19.36.010; cost of petitions successfully challenging their accounting and actions per RCW 11.94.120, RCW 11.76.070. Assigned error – The court erred in not holding PR/Trustee Gregg and his attorneys should personally responsible for excessive attorney fees. Those excessive fees should be recovered and distributed to the beneficiaries, which the Court failed to do.

### **GUY REQUESTS AWARD OF HIS ATTORNEY FEES AND COSTS**

Guy requests that the respondent pay appellant Guy's attorney fees (if any) and costs. (RCW 11.76.070, RCW 11.96A.150, and RAP 18.8.)

---

<sup>70</sup> In the Matter of the Guardianship of Paula Lasky, 54 Wn. App. 841; 776 P.2d 695; 1989 Wash. App. LEXIS 237

<sup>71</sup> In Miller v. Badgley, 51 Wn. App. 285; 753 P.2d 530; 1988 Wash. App. LEXIS 197; 6 U.C.C. Rep. Serv. 2d

## **REPLACE THE TRUSTEE**

Assigned Error -- On June 27, 2008, Superior Court ORDER APPROVING FINAL ACCOUNT AND DECREE OF DISTRIBUTION, RE THE ESTATE, CP 494 – 496, was entered without replacing the Personal Representative for cause.

Assigned Error -- On June 27, 2008, Superior Court (ORDER AND DECREE APPROVING TRUSTEE'S INTERIM ACCOUNTING, CP 497 – 498) was entered without replacing the Trustee for cause.

Assigned Error – On 8/1/2008, Superior court order (ORDER ON MOTION FOR RECONSIDERATION, CP 566 - 567) denied Guy's Motion for Reconsideration without revising two court orders entered on 6/27/2008. The two court orders that should have been reconsidered and revised are: 1) Order And Decree Approving Trustee's Interim Accounting, entered on June 27, 2008 ( CP 497 - 498): and 2) Order Approving Final Account And Decree Of Distribution, re the Estate, entered on 6/27/2008 (CP 494 496). Superior Court Order on Motion for Reconsideration (CP 566 – 567) was entered without replacing the PR/Trustee for cause.

Assigned Error – On 10/26/2012, Superior court order (ORDER AND DECREE APPROVING TRUSTEE'S FINAL ACCOUNTING, CP 1751 - 1754) was entered without replacing the Trustee for cause.

Summary list of Superior Court orders in this section: CP 494- 496, CP 497 – 498, CP 566 – 567, and CP 1751 – 1754

**ASSIGNED ERROR – COURT DENIED GUY'S REQUEST TO REPLACE THE PR/TRUSTEE FOR CAUSE.**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, and CP 1751 – 1754

On 6/08/2008, Guy Mettle's "Response Regarding Accounting Deficiencies and Requests for Relief (CP 294 – 318 ) request for relief #2 (on page 12) requested that the Personal Representative and the Trustee should be replaced per RCW 11.28.250, RCW 11.24.040. Said request for relief #2 to replace the PR/Trustee also appears on page 14 of "Guy Mettle's Motion Regarding Administration and Accounting Deficiencies, and Request for Relief ( CP 357 - 382). Assigned error: Superior Court did not replace the PR/Trustee, but the Court continued to approve his accounting, activities, attorney fees, and the Court closed the estate and trust.

**ASSIGNED ERROR – GREGG DEFRAUDED THE COURT ABOUT HIS APPOINTMENT AS TRUSTEE**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, and CP 1751 – 1754

Respondent Gregg created changes to Dorothy's Will and Trust, which appointed Gregg to replace the previous Personal Representative and Trustee (Guy), while Dorothy was incapacitated by senile dementia. Further, Gregg never filed a copy of the Trust or of the amendment that Gregg claims appointed him as the replacement Trustee.

An attorney in fact cannot appoint himself to be Personal Representative, Executor, or to positions of benefit to himself, per RCW 11.94.070, RCW 11.95.100 through RCW 11.95.150. In year 2000, Gregg claimed to have Dorothy's power of attorney, and Gregg used that claim to manipulate Dorothy's financial accounts against her will to completely deprive Dorothy of any access to her own money. Gregg let Dorothy's car break down, and Gregg disappeared for months at a time because Gregg was secretly living in Florida. Dorothy was in fear of her life, and Dorothy said so to Gregg's attorney, David McGoldrick. Dorothy shouted in McGoldrick's face that Gregg had stolen all her money and that Gregg was trying to kill her. Gregg kept

Dorothy falsely imprisoned, mentally abused, and coerced her into signing the codicil to her Will.

On 10/12/2000, Dorothy was diagnosed, by Dr. Kaldstrom, as incapacitated due to senile dementia.

But two weeks earlier on 9/26/2000, while Dorothy was incapacitated by senile dementia and under Gregg's undue influence, Gregg coerced Dorothy into signing a codicil (CP 216 – 218) to her Will. Said codicil appointed Gregg as Dorothy's new Personal Representative.

Likewise, on 9/26/2000, while Dorothy was incapacitated by senile dementia and under Gregg's undue influence, Gregg coerced Dorothy into signing an amendment to her trust, which allegedly appointed Gregg as Dorothy's new trustee. However, Gregg did not file that amendment in probate court.

Assigned error – Superior Court accepted Gregg as the Trustee even though Dorothy was incapacitated by senile dementia and under Gregg's undue influence and in fear of her life, when Gregg coerced Dorothy into signing an amendment to her trust, which allegedly appointed Gregg as Dorothy's new trustee. Thereby, said amendment was invalid, and Gregg defrauded the court and the beneficiaries about being Dorothy's Trustee. This is even more certain, because Gregg did not file said amendment in probate court. Even if Gregg were to present said amendment, it is still invalid because it was created while Dorothy was incapacitated with senile dementia and under Gregg's undue influence and in fear of her life. Gregg's alleged appointment as trustee is invalid. Assigned error – The court failed to replace Gregg as trustee even though Gregg's fraud gave the court good cause to remove and replace Gregg as Trustee for the rest of the case, which the Court of Appeals should do.

## **ASSIGNED ERROR – PR/TRUSTEE’S TACTICAL DELAYS GAVE CAUSE TO REPLACE HIM**

Re Superior Court orders CP 494- 496, CP 497 – 498, CP 566 – 567, and CP 1751 – 1754

Trustee upon advice of his attorneys has intentionally failed at every one of their simple duties. Example #1: Trustee’s never provided an annual report in 11 years (2002 – 2013), except when forced to do so by Guy’s motion, and they opposed every motion by beneficiary Guy that asked for said reporting. Example #2: Trustee opposed every motion by Guy for distribution of Guy’s inheritance, which has not been completed in 11 years (2002 – 2013). Example #3: The Trustee committed fraud on the Guardianship court and on the beneficiaries by keeping the Charles Schwab account a secret for 6 years (2002 – 2008). Example #4: For 6 years (2002 – 2008), the Trustee tried to extort a signed release from liabilities out of the beneficiaries before the Trustee would release our inheritance, all the while Trustee defrauded the beneficiaries by holding the Charles Schwab account in secret, and said account is still missing \$50,000. Example #5: For 10 years (2003-2013), Trustee refused to provide with any items required by Guy’s request for Special Notice. Example #6: For 5 years (2008-2013) Trustee refused to participate in discovery. Example #7: Over 11 years (2002 – 2013), the PR/Trustee ran up \$128,000 in attorney fees, which he could have avoided by providing timely accountings and distributions.

For details on the PR/Trustee’s tactical delays see:

**a) Personal Representative’s tactical delays in closing the Estate:**

“Assigned Error – Court Approved Personal Representative’s Tactical Delays in Closing the Estate,” herein on page 97.

**b) Trustee’s tactical delays in distributing the trust:**

“Trustee’s Tactical Delays in Distribution,” herein on page 41.

c) Trustee's tactical delays in providing accountings:

"Assigned Error – Court Approved Trustee's Tactical Delays in Providing Annual Accountings," herein on page 60.

d) PR/Trustee's tactical delays in discovery:

"Assigned Error - PR/Trustee's Tactical Delays Blocked All Discovery until the Case Was Closed," herein on page 35.

Assigned error – Superior Court approved PR/Trustee's tactical delays, which kept the Trust open 10 years after Dorothy death (2002 – 2012), mulched the estate, blocked distribution of the beneficiaries' inheritance, and incurred \$128,000 in Trustee attorney fees.

#### **CAUSE REMAINS TO REPLACE THE PR/TRUSTEE**

Cause remains to replace the PR/Trustee because the PR/Trustee still must participate in discovery. Law of the Case, Res Judicata, and Collateral Estoppel do not limit discovery. [Estate of DelGuzzi.<sup>72</sup>] Wherever discovery leads, the PR/Trustee must either litigate the results, as Gregg would do, or the PR/Trustee could cooperate with the beneficiaries so they receive timely distributions along with a complete and reliable accounting by a professionally recognized authority, such as a CPA. [Park's Trust.<sup>73</sup>]

Case citations: [HN8] A trustee may be removed by a superior court and a successor trustee appointed for reasonable cause. Wash. Rev. Code § 11.98.039. Reasonable cause may include conflict of interest between the trustee and the trust beneficiaries. It is the duty of a trustee to administer the trust in the interest of the beneficiaries.

- In the Supreme Court Of Washington, Pamela Ann Porter v. Karen Lee Cover Porter , 107 Wn.2d 43; 726 P.2d 459; 1986 Wash. LEXIS 1272; 68 A.L.R.4th 859
- Nancy Waits v. Lois Denise Hamlin, 55 Wn. App. 193; 776 P.2d 1003; 1989 Wash. App. LEXIS 268;

---

<sup>72</sup> *In the Matter of the Estate of JACK DELGUZZI*, 2009 Wash. App. LEXIS 1626

<sup>73</sup> *Park's Trust*, 39 Wn.2d 763; 238 P.2d 1205; 1951 Wash. LEXIS 353

- Loraine Bahr V. Vera Hardung; 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS 62

The PR/Trustee converted beneficiaries' inheritance to the PR/Trustee's own use, in order to fund Trustee's vendetta against the beneficiaries. Therein, the PR/Trustee litigated for 11 years (2002 – 2013) and counting. Rather than give timely distributions, accountings, and participating in discovery, the PR/Trustee chose to litigate twelve cases (Superior Court 03 4 01245, Superior Court 08-4-00411-5, COA 38243-1-II, COA 38603-8-II, COA 38733-6-II, COA 41463-5-II, COA 42213-1-II, COA 44244-2-II, Supreme Ct #84705-3, Supreme Ct #84648-1, Supreme Ct #85871-3, and Supreme Ct #86961-8), and to run up \$128,000 in attorney fees. And, COA 44244-2-II is still in process, and the PR/Trustee has not even participated in discovery yet. Therefore, the COA has good cause to replace the PR/Trustee.

**Case Citations:** [HN3] A trustee owes the beneficiaries of the trust the highest degree of good faith, care, loyalty and integrity. This duty includes the responsibility to inform the beneficiaries fully of all facts that would aid them in protecting their interests. Failure to report can be a breach of fiduciary duty.

- Meenakshi S. Petrie V. David Petrie; 105 Wn. App. 268; 19 P.3d 443; 2001 Wash. App. LEXIS 383
- Loraine Bahr V. Vera Hardung; 80 Wn. App. 751; 911 P.2d 1017; 1996 Wash. App. LEXIS 62
- Nancy Waits v. Lois Denise Hamlin, 55 Wn. App. 193; 776 P.2d 1003; 1989 Wash. App. LEXIS 268;
- Randel J. Peterman V. Shirley R. Ellis, 2008 Wash. App. LEXIS 458

#### **RECUSE JUDGE LARKIN**

Assigned Error -- On 10/24/2008, Superior Court order (ORDER DENYING GUY METTLE'S NOTION FOR RECUSAL, CP 759 – 760) was entered without recusal of Judge Thomas Larkin.

See (a) Guy's Motion For Recusal Of Honorable Judge Thomas Larkin, CP 607 – 625, (b) Addendum 1 For Guy Nettle's Motion For Recusal Of Honorable Judge Thomas Larkin, CP 676 –

689, and (c) Appendix For Addendum 1 For Guy Mettle' S Motion For Recusal Of Honorable Judge Thomas Larkin, CP 705 – 750.

**ASSIGNED ERROR – JUDGE'S PREJUDICE ALLOWED PR/TRUSTEE'S VEXATIOUS LITIGATION AND TACTICAL DELAYS.**

Re Superior Court order CP 759 - 760

Assigned Error – Judge Larkin treated this case like any civil case, instead of a probate case, which has its own RCW Chapter 11 with many safeguards to protect the beneficiaries from an antagonistic and wasteful PR/Trustees. Thereby, Judge Larkin allowed the Trustee to implement tactical delays for 11 years (2002 – 2013) without compelling distribution of the beneficiaries' inheritance from the trust.

See PR/Trustee's tactical delays:

a) Personal Representative's tactical delays in closing the Estate:

“Assigned Error – Court Approved Personal Representative's Tactical Delays in Closing the Estate,” herein on page 97.

b) Trustee's tactical delays in distributing the trust:

“Trustee's Tactical Delays in Distribution,” herein on page 41.

c) Trustee's tactical delays in providing accountings:

“Assigned Error – Court Approved Trustee's Tactical Delays in Providing Annual Accountings,” herein on page 60.

d) PR/Trustee's tactical delays in discovery:

“Assigned Error - PR/Trustee's Tactical Delays Blocked All Discovery until the Case Was Closed,” herein on page 35.

Assigned error - Thereby, Judge Larkin violated RCW11.48.010 requirement to distribute the trust "as quickly and rapidly as possible." (See herein page 40 Distributions) Judge Larkin knew he was personally prejudiced against the beneficiaries and against Guy in particular. Judge Larkin should have recused himself in CP 759-760, or anytime thereafter.

**ASSIGNED ERROR – JUDGE’S PREJUDICE ALLOWED PR/TRUSTEE TO VIOLATE FIDUCIARY DUTY.**

Re Superior Court order CP 759 - 760

Assigned error - Judge Larkin allowed the PR/Trustee to use tactical delays to run up PR/Trustee attorney fees to over \$128,000, which violated CR 11 by approving PR/Trustee pleadings created for the purpose of tactical delays, and which is so wasteful that it violated the PR/Trustee’s fiduciary duty to the beneficiaries [Estate of Larson,<sup>74</sup> Estate of Ehlers,<sup>75</sup> and Hennings v Hennings.<sup>76</sup>] Judge Larkin never undertook substantive analysis of \$128,000 in PR/Trustee attorney fees to determine if the PR/Trustee was benefitting the estate, trust, or beneficiaries, rather than using the trust to pursue the PR/Trustee’s personal vendetta. [Dunn v. Rainier Nat’l Bank.<sup>77</sup>] See herein page 101 Attorney Fees. Judge Larkin knew he was personally prejudiced against the beneficiaries and against Guy in particular. Judge Larkin should have recused himself in CP 759-760, or anytime thereafter

**ASSIGNED ERROR – JUDGE’S PREJUDICE BLOCKED DISCOVERY**

Re Superior Court order CP 759 - 760

Assigned error – In 11 years (2002 – 2013) Judge Larkin refused to allow discovery, which is a fundamental right so basic that Guy does not have to repeat all the RCW laws and

---

<sup>74</sup> In re Estate of Larson, Supreme Court Of Washington, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985)

<sup>75</sup> In re Estate of Ehlers, Wash. Court of Appeals, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996), at HN1

<sup>76</sup> Hennings v Hennings 2006 Wash. App. LEXIS 453

<sup>77</sup> Dunn v. Rainier Nat’l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)

RAP rules, here. See herein page 26, Discovery Statutes and Rules. Then on 9/21/2012, Judge Larkin denied discovery, again (CP 1592 – 1593), even though there was no appeal in process. That violated discovery principals in Estate of Delguzzi.<sup>78</sup> And on 10/26/2012, Judge Larkin closed the Trust (CP 1751 – 1754), without allowing discovery. Assigned error: Judge Larkin knew he was personally prejudiced against the beneficiaries and against Guy in particular. Judge Larkin should have recused himself in CP 759-760, or anytime thereafter.

**ASSIGNED ERROR – JUDGE’S PREJUDICE PENALIZED GUY \$24,000.**

Re Superior Court order CP 759 - 760

Trustee’s Petition to Approve Trustee’s Final Accounting, filed 10/03/2012, argued that Guy should pay an additional \$24,430.87 in PR/Trustee attorney fees expended during appeals. Assigned Error – Judge Larkin’s court Order And Decree Approving Trustee’s Final Accounting, CP 1751 - 1754, erred in charging Guy with the additional \$24,430.87 because the Trustee cannot charge Guy with fees denied to the PR/Trustee by appellate courts during appeals. By doing so, the Judge Larkin attacked prior decisions by the Court of Appeals and the Supreme Court, which had already denied those attorney fees.

Case citation: “Executor cannot attack prior judgment refusing to tax appeal costs on losing parties, by setting off such costs on final account against such party’s share.” In re Brown’s Estate, 93 Wash. 324, 160 P. 945 (1916).

In the hearing on 10/26/2012, Guy informed Judge Larkin that the Judge was reversing the decisions of higher courts, which had rejected the \$24,430.87 in appeal attorney fees requested by the Trustee. Judge Larkin replied that he reversed higher court decisions because Guy was “so unreasonable.” (See Verbatim Report on 10/26/2012, toward the end of the hearing.) Therein, Judge Larkin showed that his personal prejudice against Guy over rode higher

---

<sup>78</sup> *In the Matter of the Estate of JACK DELGUZZI*, 2009 Wash. App. LEXIS 1626

court decisions that had been already entered in this case. Assigned error: Judge Larkin knew he was personally prejudiced against the beneficiaries and against Guy in particular. Judge Larkin should have recused himself in CP 759-760, or anytime thereafter.

### **ASSIGNED ERROR – 11 YEARS AND DOZENS OF LEGAL ERRORS ARE PRIMA FACIE EVIDENCE OF JUDGE'S PREJUDICE**

Re Superior Court order CP 759 – 760

This started out as a simple case, with one bank account in the Estate and one bank account in the Trust. And, it is well known that Washington State probate law (RCW 11) is designed to be a simple and streamlined probate. Assigned error: The fact that Judge Larkin has not completed distribution of two bank accounts or even begun discovery in 11 years (2002 – 2013) is prima facie evidence that Judge Larkin's exhibited extreme prejudice against the beneficiaries and in favor of enriching the PR/Trustee's local attorneys.

Case citation: "We cannot believe that the legislature, in enacting the statute, intended it to apply to a situation such as this, where the respondent would be permitted to mulct the estate by continually keeping it in litigation, and thus prolonging the progress of the settlement of the estate. It would be against a sound public policy to construe the statute in such a manner." [In the Estate of August Wind V. Alfred Hendrickson, Wash. Supreme Court, 32 Wn.2d 64 (1948)]

Assigned error - Judge Larkin knew he was personally prejudiced against the beneficiaries and against Guy in particular. Judge Larkin should have recused himself in CP 759-760, or anytime thereafter.

Elder abuse and theft and mulching from their estates are so common as to be a regular industry in Pierce County Superior Courts, and all of it occurred in the Estate of Dorothy P. Mettle.(See previously herein, but now Appendix 35 Racketeering and Criminal Profiteering, section titled Judicial Misconduct.) When someone complains, the Washington probate judges retaliate, as they did In the Matter of the Estate of Andrea C. Barovic; In the Matter of the

Estate of Mike Barovic; In the Matter of the Donald M. Barovic Trust, 88 Wn. App. 823; 946 P.2d 1202; 1997 Wash. App. LEXIS 1921. Similarly, Judge Larkin is retaliating against Guy in the Estate of Dorothy P. Mettle via the dozens of legal errors assigned above.

The U.S. Supreme Court has emphasized that “any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias.” *Commonwealth Coatings Corp. v. Cont’l Cas. Co.*, 393 U.S. 145, 150 (1968).

Washington State law came to same conclusion:

Case citations: “[HN3] Due process, the appearance of fairness, and Wash. Code Jud. Conduct Canon 3(D)(1) requires disqualification of a judge biased against a party or whose impartiality may be reasonably questioned.”

- Rhonda S. Bowers v. Spokane County, 2007 Wash. App. LEXIS 1366, and
- Carlsen, Llp, v. American Best Food, 2001 Wash. App. LEXIS 554
- State Of Washington, v. Perala, 132 Wn. App. 98; 130 P.3d 852; 2006 Wash. App. LEXIS 435
- State Of Washington, v. Wilson, 2007 Wash. App. LEXIS 2129

Per CJC 3(D)(1): “Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned.” Regarding CJC 3(D)(1), the Court Of Appeals Of Washington, Division Two, stated:

“Despite this canon's use of the word "should" rather than "must," a judge's duty to recuse is clear and nondiscretionary when one of the canon's specifically listed instances for disqualification is applicable.”  
State v. Ra, 175 P.3d 609 142 Wn. App. 868, (2008).

Assigned error – Therefore, Judge Larkin had a nondiscretionary duty is to recuse, himself. And, the COA has that duty now to recuse Judge Larkin.

## **REQUESTS FOR RELIEF**

### **Discovery Requests for Relief**

**Request for Relief # 1** -- Order PR/Trustee to comply with Guy’s requests for discovery.

**Request for Relief # 2** -- Pursue discovery of \$50,000 missing from Dorothy's Charles Schwab account, and \$70,000 in items missing from the Estate

**Request for Relief # 3** -- Apply CR 60, CR 11, and other discovery sanctions to PR/Trustee's for refusing to participate in discovery, for example, the court should strike the PR/Trustee's pleadings and give a default judgment in favor of Guy.

**Request for Relief # 4** -- Recognize the PR/Trustee's failure to participate in discovery must be accepted by the Court as evidence of lack of merit in the PR/Trustee's case.

**Request for Relief # 5** -- Recognize that Guy has been unable to fully present his case and evidence due to PR/Trustee's refusal to participate in discovery (Estate of Delguzzi<sup>79</sup>), which applies to every pleading, hearing, and appeal.

#### **Distribution Requests for Relief**

**Request for Relief # 6** -- Order Trustee to stop delaying distributions, and to make them as rapidly and quickly as possible.

**Request for Relief # 7** -- Within 10 days, complete the interim distribution of \$125,000 to Guy, which was ordered on 6/27/2008 (CP 510 – 549) to the best of the Trust's ability

**Request for Relief # 8** -- Remove the \$24,430.87 deduction from Guy's distribution that was ordered on 10/26/2012 ( P 1751 – 1754.)

**Request for Relief # 9** -- Remove the \$ 53,886.23 deduction from Guy's distribution that was ordered on 10/26/2012 ( P 1751 – 1754.)

#### **Accounting Requests for Relief**

---

<sup>79</sup> *Estate of JACK DELGUZZI*, 2009 Wash. App. LEXIS 1626

**Request for Relief # 10** -- Require verifiable accounting for the \$50,000 missing from the Charles Schwab account. Require that complete source documents, such as monthly statements, deposits, withdrawals, and checks to be filed in court going back to the inception of the Charles Schwab account.

**Request for Relief # 11** -- Require a forensic accounting by an independent CPA of all estate and trust accounts and assets going back to the inception of the case, or as far back as the trail leads.

**Request for Relief # 12** -- Require the Trustee to stop delaying annual accountings for the duration of Superior Court case and related appeals.

**Request for Relief # 13** -- Require the Trustee to provide Guy with special notice per the requests that Guy served on the PR/Trustee and filed in court.

**Request for Relief # 14** -- Require interim and final accounting to include the names and addresses of all beneficiaries, and not merely that of a local agent.

#### **Interest and Damages Requests for Relief**

**Request for Relief # 15** -- Require PR/Trustee to pay prejudgment and post judgment interest for unwarranted delays in closing the Estate and Trust, in making interim distributions, and in making the final distributions. Interest should be 12% per year on the amounts indicated above. Calculation: Total assets = \$50,000 missing from the Trust's Charles Schwab account + \$70,000 missing from the Estate + approximately \$400,000 in the Trust's Merrill Lynch account = \$520,000 in assets to be distributed. Plus 12% interest for 11 years (2002 – 2013) = \$520,000 x 12%/year X 11 years = \$686,400. The Trustee should distribute \$686,400 in interest to the beneficiaries. Any shortfall should be made up by the Trustee personally.

**Request for Relief # 16 – Award Guy Recoverable Loss Due To PR/Trustee’s tactical Delays and Discovery Violations** – For 11 years, the PR/Trustee has been litigating out of spite with the intent of punishing Guy by consuming all of Guy’s inheritance in litigation costs, which is proven by John Mettle’s declaration (CP 901 – 903). The PR/Trustee and his attorneys stole \$50,000 from the Trust,<sup>80</sup> \$70,000 from the Estate, engaged in malfeasance, professional misconduct, perjury, accounting fraud, spiteful litigation, nonjusticiable litigation, and failed to participate in discovery, which has resulted in this trial case, four appellate cases, and three Supreme Court cases. Said extended litigation forced Guy into indigency and forced indigent Guy to do all of the legal work, himself, instead of being gainfully employed. Such forced loss of employment is a recoverable loss. (County of Blue Earth v. Francis E. Wingen.<sup>81</sup>) Guy’s lost employment is valued at: 5 Years (2008 – 2013) x (50 Working Weeks/Year) x (40 Hours/Week) x (up to \$300 per hour equivalent the PR/Trustee’s attorney rate) = up to \$3,000,000 which should be awarded to Guy from PR/Trustee, personally.

### **Supersedeas Bond Requests For Relief**

**Request for Relief # 17** – Require the Trustee to post a supersedeas bond to cover unmade distributions, prejudgment interest, post judgment interest, potential damages and

---

<sup>80</sup> See “\$50,000 Missing From Schwab Account Requires Verifiable Accounting” on page 23 herein.

<sup>81</sup> Case Quote: “Injunction-bond cases also provide a useful analogy. *Cf. O’Leary*, 655 N.W.2d at 642. When an injunction bars a party’s actions, damages are not limited to unjust enrichment by the enjoining party. If a party is enjoined from employment, that party may recover lost salary and benefits. *Hubbard Broad., Inc. v. Loescher*, 291 N.W.2d 216, 219-20 (Minn. 1980)”  
County of Blue Earth v. Francis E. Wingen, in Court of Appeals, 684 N.W.2d 919 (Minn. App. 2004).

attorney fees until all appeals of the case are resolved , recoveries completed, and distribution made.

### **Court Forced Guy To Withdraw His Motion – Request For Relief**

Re Order Recognizing Guy Mettle’s Withdrawal Of His Motion For Accounting And Billing Information, CP 1185 - 1186

**Request for Relief # 18** -- Court should recognize that Guy did not withdraw his motion.

**Request for Relief # 19** -- Court should recognize PR/Trustee’s defense was nonsuit

**Request for Relief # 20** -- Court should presume that Guy’s statements of fact are true.

**Request for Relief # 21** -- Court should recognize Guy’s right to plead further.

**Request for Relief # 22** -- Court should treat Trustee’s defense as a motion for summary judgment.

**Request for Relief # 23** -- Court should recognize that Trustee waived his right to a nonsuit defense.

### **Indigency Request for Relief**

**Request for Relief # 24** -- Court should order and recognize that it is a progeny’s constitutional right to receive inheritance given by a parent.

**Request for Relief # 25** -- Guy’s motion for indigency status should be granted

**Request for Relief # 26** -- Court should recognize that Guy was and is presumptively indigent

**Request for Relief # 27** -- Court should waive appeal fees and other court costs, such as Clerk’s Papers, due to Guy’s indigency, or the Court should identify another procedure to accomplish the same.

**Request for Relief # 28** -- Court should order and recognize that indigency is valid status in probate cases, with commensurate consideration by the courts of the indigent's inability to pay appeal fees and court costs.

**Request for Relief # 29** -- Court should define how the Boddie doctrine<sup>82</sup> applies to probate cases.

### **Estate Requests for Relief**

**Request for Relief # 30** -- Court should require the Personal Representative to file an initial Estate Inventory and Appraisal, which the PR failed to do upon Dorothy's death.

**Request for Relief # 31** -- Court should sanction the Personal Representatives unwarranted delays in bringing the Will to Court (10 month delay) and in Closing the Estate three years after receipt of the last tax refund.

**Request for Relief # 32** -- Court should require Personal Representative to pay prejudgment interest assets retained in the Estate during those unwarranted delays.

**Request for Relief # 33** -- Court should deny PR's attorney fees incurred during those unwarranted delays.

**Request for Relief # 34** -- Require Personal Representative Gregg to personally pay \$70,000 for items that he stole from the Estate.(See Exhibit 5 in CP 319 – 343).

### **Attorney Fee Request for Relief**

---

<sup>82</sup> The U.S. Supreme Court established the Boddie doctrine, which mandated waiver of fees for indigents as a Constitutional right in cases where the State monopolized all avenues of dispute resolution. *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)

**Request for Relief # 35** -- Require the Trustee to provide Guy with timely attorney fee statements and allow Guy two weeks for Guy to review PR/Trustee attorney fees before payments.

**Request for Relief # 36** -- Require separate attorney fee statements 1) for the Estate , and 2) for the Trust, so that attorney fees for both distinct legal entities are not comingle and confusing which hinders substantive analysis of fees.

**Request for Relief # 37** -- Require PR/Trustee to identify each fee item with the case number to which the work was applied. That information is already in the attorney's billing software program.

**Request for Relief # 38** -- Conduct substantive analysis of PR/Trustee's attorney fees to determine if the work efficiently benefited the Estate, Trust, or beneficiaries. Fees for litigating the PR/Trustee personal vendetta against Guy should be excluded, as should fees for caused by PR/Trustee's unwarranted delays in distribution, for opposing annual accounting, for opposing discovery, and for irrelevant case work which did not benefit the beneficiaries.

**Request for Relief # 39** -- Deny PR/Trustee attorney fees for defending the attorney's own fees.

**Request for Relief # 40** -- Deny PR/Trustee attorney fees for preparing tax documents.

**Request for Relief # 41** -- Deny PR/Trustee attorney fees for opposing Guy's motion for indigency.

**Request for Relief # 42** -- \$128,000 in PR/Trustee attorney fees is excessive and should be disgorged, reduced by 80%, or reduced by similar amount. This was a simple case that stated with one bank account in the Estate and one bank account in the Trust. Therefore,

\$128,000 in attorney fees is prima facie evidence of excessive attorney fees, which should be disgorged and returned to the Trust.

**Request for Relief # 43** -- Recover excessive attorney fees that have already been paid to PR/Trustee's attorneys. Recovery may come from the attorneys or from the PR/Trustee, himself.

**Request for Relief # 44** -- Award Guy's attorney fees and cost for this appeal, and during this case going back to its inception.

**Request for Relief # 45** -- Deny PR/Trustee attorney fees during this appeal.

#### **Racketeering and Criminal Profiteering Requests for Relief**

**Request for Relief # 46** -- The Court should recognize and investigate that local attorneys and probate judges that form a long standing collusion and criminal profiteering gang that exploits the elderly, mulches their estates, and steals their assets. The judges are politicians in black robes that benefit politically by enriching the local legal community, which ensures the judges reelection. Said judges include every judge and commission that has ruled on this case, The Estate (and trust) of Dorothy P. Mettle.

**Request for Relief # 47** -- Court should move to recover ill gotten gains extracted from Dorothy Mettle, her estate, trust, and beneficiaries by the gang of criminal profiteers listed previously herein, but now in Appendix 35 Racketeering and Criminal Profiteering because the COA ordered Guy to shorten his opening brief.

**Request for Relief # 48** -- Court should apply \$250,000 civil penalty to each of the criminal profiteers.

**Request for Relief # 49** -- Court should assess cost of investigation and prosecution against the criminal profiteers, which Guy estimated at \$2,000,000. See Appendix 35.

**Request for Relief # 50** -- Treble damages should be assessed against the PR/Trustee, whose basis of calculation should include the cost of excessive PR/Trustee's attorney fees, delayed distributions, prejudgment interest, post judgment interest, missing monies, forensic accounting, Guy's attorney fees until all appeals are resolved, and recovery costs.

Calculation of Treble Damages:

Damages to the Trust done by PR/Trustee Gregg

\$ 50,000 that Trustee Gregg stole from the Trust's Charles Schwab account.

\$ 70,000 that Gregg stole from the Estate,<sup>83</sup> and thus it did not go into the Trust

\$ 686,400 Prejudgment and Post judgment interest = \$520,000 in undistributed assets x 12% interest/year x 11 years

(Note: \$520,000 undistributed assets = \$400,000 in Merrill Lynch account +

\$50,000 stolen by Gregg from Trust's Charles Schwab account + \$70,000 stolen by Gregg from Estate.)

-----  
\$ 806,400 Damages to the Trust by Gregg

Treble Damages due to PR/Trustee Gregg's criminal profiteering

**\$ 2,419,200** Treble damages (\$806,400 damages to the trust x 3 = \$2,419.200)

**Replace the Trustee Requests for Relief**

**Request for Relief # 51** -- Remove and replace the Trustee.

**Request for Relief # 52** -- Immediately block PR/Trustee's access to any estate and trust accounts, money, or assets..

**Request for Relief # 53** -- Direct the new trustee to recover missing money, excessive attorney fees, prejudgment interest, post judgment interest, damages to the beneficiaries, and attorney fees until all appeals are resolved , recoveries made, and distributions completed.

---

<sup>83</sup> See Exhibit 5 in CP 319 – 343 for list of items that Gregg stole from the Estate.

**Recuse Judge Larkin Request for Relief**

**Request for Relief # 54** -- Recuse Judge Larkin, forthwith.

**Unsworn Declaration**

I, Guy Mettle, declare, under penalty of perjury, under laws of Washington State, that the foregoing is true to the best of my knowledge and belief.



Date: July 10, 2013

\_\_\_\_\_  
Guy Mettle  
P.O. Box 2491  
Westerville, OH 43086-2491  
614-432-6000

**Case Citation Regarding Unsworn Declarations**

Verification of a pleading to effect that the party believes it to be true is not objectionable as a verification upon information and belief.

State ex rel. Evans v. Chapman, 139 Wash. 556, 247 P. 946 (1926).

Filed by Appellant: Guy Mettle Pro Se, Beneficiary, Son of Dorothy P. Mettle P.O. Box 2491 Westerville, OH 43086-2491 (614) 432-6000	Respondent: Gregg M. Mettle Personal Representative/Trustee Attorney for Respondent: David B. Petrich, WSBA #18711 1201 Pacific Avenue, Suite 1200 Tacoma, WA 91402 (253) 572-4500
--	--

**CERTIFICATE OF SERVICE**

I, Guy Mettle, certify that on the July 10, 2013, I served copies of the following document:

**APPELLANT'S SHORTENED OPENNING BRIEF**

to the person(s) hereinafter named by depositing said copies in the United States mail, postage prepaid, addressed as follows:

David Petrich  
Eisenhower & Carlson  
1201 Pacific Avenue, Suite 1200  
Tacoma, WA 98402

**Unsworn Declaration**

I, Guy Mettle, declare, under penalty of perjury, under laws of Washington State, that the foregoing Certificate of Service is true to the best of my knowledge and belief.



Date: July 10, 2013

\_\_\_\_\_  
Guy Mettle  
P.O. Box 2491  
Westerville, OH 43086-2491  
614-432-6000

Filed with:

Clerk of Courts  
Washington Court of Appeals Division 2  
950 Broadway, Suite 300  
Tacoma, WA 98402

FILED  
COURT OF APPEALS  
DIVISION II  
2013 JUL 11 AM 11:43  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY