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Opinion of the United States Court of Appeals, Ninth Circuit

United States Court of Appeals, Ninth Circuit

Nos. 17-35678, 17-35717

HALLMARK CARE SERVICES, INC., DBA Castlemark Guardianship and Trusts, DBA Eagle Guardianship, a Washington Corporation; LORI PETERSEN, DBA Empire Care Services, Plaintiffs-Appellees,

v.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY; SPOKANE COUNTY, Defendants-Appellants.

June 17, 2020

NOT FOR PUBLICATION

Submitted June 3, 2020 [**] Seattle, Washington

Appeal from the United States District Court for the Eastern District of Washington D.C. No. 2:17-cv-00129-JLQ Justin L. Quackenbush, District Judge, Presiding

Before: GOULD, BEA, and MURGUIA, Circuit Judges.

MEMORANDUM[*]

Hallmark Care Services, Inc., and Lori Petersen (collectively, Hallmark) appeal the district court's grant of Spokane County's and Spokane County Superior Court's motion to dismiss. The County and the Superior Court cross-appeal the district court's denial of the County's and Court's motion for sanctions under Federal Rule of Civil Procedure 11.

We have jurisdiction under 28 U.S.C. § 1291. We review dismissals under *Rooker-Feldman* de novo, *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003), dismissals based on immunity de novo, O*lsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004), and denials of Rule 11 sanctions motions for an abuse of discretion, *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990).

We affirm. Because the parties are familiar with the facts and procedural history of the case, we recite only those facts necessary to decide this appeal.

Hallmark's suit is barred by the *Rooker-Feldman* doctrine because the suit is functionally an appeal of a state-court judgment. See 28 U.S.C. § 1257; *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). If a federal court gave Hallmark the relief sought, damages compensating

Hallmark for the harm the state-court judgment caused, then the state-court judgment would be effectively nullified. See *Cooper v. Ramos*, 704 F.3d 772, 779 (9th Cir. 2012).

Even if *Rooker-Feldman* did not preclude subject-matter jurisdiction, the suit is barred by judicial immunity. The Superior Court had jurisdiction, see Wash. Rev. Code § 11.88.010(1), 11.88.120(1); *In re Guardianship of Lamb*, 265 P.3d 876, 883 (Wash. 2011), and the Superior Court's conduct was judicial. *Ashelman v. Pope*, 793 F.2d 1072, 1075-78 (9th Cir. 1986) (en banc). Procedural errors do not allow a litigant to circumvent judicial immunity. See *Stump v. Sparkman*, 435 U.S. 349, 359 (1978).

Finally, the district court did not abuse its discretion in denying the County's and the Court's motion for Rule 11 sanctions. See Fed. R. Civ. P. 11. The district court concluded that the suit was not objectively legally baseless, see *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005), and we see no compelling reason why that conclusion was outside the ambit of the district court's broad discretion in such matters.

AFFIRMED.[1]

Notes:

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

[1] Hallmark's Motion to Supplement the Record on Appeal, Dkt. 33, is DENIED.

Appendix
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Memorandum Opinion And Order Re: Motion To Dismiss And Motion For Cr 11 Sanctions of United States District Court, E.D. Washington

United States District Court, E.D. Washington

No. 2:17-CV-00129-JLQ

HALLMARK CARE SERVICES, INC., et al., Plaintiffs,

v.

SUPERIOR COURT OF STATE OF WASHINGTON FOR SPOKANE COUNTY; SPOKANE COUNTY, Defendants.

July 27, 2017

MEMORANDUM OPINION AND ORDER RE: MOTION TO DISMISS AND MOTION FOR CR 11 SANCTIONS

JUSTIN L. QUACKENBUSH SENIOR UNITED STATES DISTRICT JUDGE

BEFORE THE COURT is the Defendants' Motion to Dismiss (ECF No. 11) and Defendants' Motion for CR 11 Sanctions (ECF No. 18). After the Motion to Dismiss was filed, the court directed the parties to address the *Rooker-Feldman* doctrine in the Response and Reply briefs because it was not addressed in the Motion. See (ECF No. 16). The parties submitted response and reply briefs on both

Motions. This Order memorializes the court's ruling on the Motions.

I. Introduction/Background

All well-pleaded facts are accepted as true for the purposes of the Motion to Dismiss.

On March 13, 2015, the Washington State Supreme Court issued an order suspending Lori Petersen from the practice of guardianship for one year. See (ECF No. 1- 1 at 2-3).[1] The Supreme Court also ordered Petersen to pay costs to the Certified Professional Guardian Board. (ECF No. 1-1 at 3). The suspension was set to begin on March 20, 2015. (ECF No. 1-1 at 2-3).

On March 17, 2015, Spokane County Superior Court Commissioner Rachelle Anderson sent a letter to Petersen acknowledging receipt of the Supreme Court order and directing Petersen to submit a "specific plan as to each individual you represent" no later than 4:00 p.m. on March 19, 2015. (ECF No. 1-1 at 5). The letter attached a list of guardianship cases, some of which were assigned to Petersen, and others to Hallmark Care Services, Inc. ("Hallmark"), doing business as Castlemark Guardianship and Trust ("Castlemark"), and Hallmark Care Services, Inc., doing business as Eagle Guardianship and Professional Services ("Eagle"). (ECF No. 1 at ¶14).

On March 18, 2015, attorney John Pierce, representing Petersen, sent a letter to Commissioner Anderson stating counsel was filing a motion with the Washington Supreme Court seeking to stay the suspension for 60 to 90 days. (ECF No. 1-1 at 7). Counsel's letter disclosed Petersen would be petitioning the court to transfer her cases to another guardian, but asserted the process would take "approximately 4-6 weeks." (ECF No. 1-1 at 7-8). Additionally, counsel disputed whether cases assigned to Castlemark or Eagle were subject to the suspension order. (ECF No. 1-1 at 7).

On March 26, 2015, the Washington Supreme Court granted a stay of the suspension to allow Petersen to work with the Certified Professional Guardian Board to ensure her clients were properly transferred to another guardian. (ECF No. 1 at ¶18).

On April 1, 2015, Lewis County Superior Court Judge James Lawler, a member of the Certified Professional Guardian Board, sent Petersen a letter stating the Board would review the status of all guardianships associated with Petersen. (ECF No. 1-1 at 10). The letter directed Petersen to provide information by April 10, 2015, including: all guardianship appointments in the name of Lori Petersen, Empire Care, Castlemark, Hallmark, or Eagle; a plan for compliance with transferring her cases to another guardian; and information about

every person associated with any guardianship business where Petersen was a designated guardian or an individual certified professional guardian. (ECF No. 1-1 at 10-11).

On April 1, 2015, Hallmark held a shareholders meeting and elected a new director, officer, and proxy to ensure Petersen was not involved in the business during her one year suspension. (ECF No. 1 at ¶¶22-23). Hallmark also added another professional guardian. (ECF No. 1 at ¶24).

On April 7, 2015, Hallmark received four documents from the Spokane County Superior Court Guardianship Monitoring Program Coordinator. (ECF No. 1 at ¶27). The first document was a letter from Spokane County Superior Court Judge Kathleen O'Connor addressed to Hallmark stating "Hallmark/Castlemark/Eagle's ownership is in question" because the ownership was "confidential." (ECF No. 1-1 at 19). Because ownership had not been disclosed to the court "[d]espite inquiries on multiple occasions, " the letter stated Petersen's association with those agencies was brought "into question." (ECF No. 1-1 at 19). The letter stated "[t]he Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella." (ECF No. 1-1 at 19). Additionally, the letter stated a

special master would be appointed "to oversee the transition process and individual guardians ad litem will determine successor guardians." (ECF No. 1-1 at 19). Lastly, the letter required Hallmark to post a $100, 000 surety bond to secure payment of fees. (ECF No. 1-1 at 19).

The second document was a letter from Judge O'Connor to local certified professional guardians. (ECF No. 1-1 at 21). The letter disclosed that guardians ad litem would be contacting the recipients "to take on several cases due to the recent suspension of CPG Lori Petersen." (ECF No. 1-1 at 21).

The third document was a letter from Judge O'Connor to local guardians ad litem informing them the court would be assigning 125 cases "currently assigned to Ms. Petersen and/or agencies with which she is involved." (ECF No. 1-1 at 21).

The final document was an Order Appointing Special Master, signed by Spokane County Superior Court Judge Ellen Kalama Clark for the 125 cases discussed in the prior letters. (ECF No. 1-1 at 26-32). The Order appointed retired Superior Court Judge Paul Bastine as special master. (ECF No. 1-1 at 31).

On April 7, 2015, attorney Pierce, representing Hallmark, sent a letter to Judge Lawler in response to the April 1 letter. (ECF No. 1-1 at 15-17). The

letter states Petersen was in the process of "transferring certain cases" to Hallmark. (ECF No. 1-1 at 15). The letter stated Hallmark had moved to be appointed as successor guardian in Petersen's cases. (ECF No. 1-1 at 15). The letter also referred to letters and orders from Judge O'Connor and Judge Kalama Clark. (ECF No. 1-1 at 15-16).

On April 17, 2015, Petersen and Hallmark contested the actions of the Spokane County Superior Court by filing a motion for reconsideration. (ECF No. 1 at ¶34). The motion for reconsideration argued the Superior Court: (1) lacked jurisdiction to expand on the Supreme Court Order suspending Petersen; (2) lacked authority to order the $100, 000 bond and appointment of special master; and (3) failed to give Hallmark due process because it allegedly did not receive notice or a right to appear and defend against the Order Appointing Special Master. (ECF No. 1 at ¶34). The motion also sought clarification of a number of issues regarding who was presiding over the reassignment of guardianships and whether there was a hearing that led to the Order Appointing Special Master. (ECF No. 1 at ¶35).

On May 4, 2015, Spokane County Superior Court Commissioners held a hearing wherein Petersen and Hallmark were removed as guardians of record. (ECF No. 1 at ¶36). Counsel for Hallmark and Petersen was present at the hearing and

objected to the removal of his clients in each of the cases. (ECF No. 1 at ¶¶38-39).

On May 8, 2015, a deputy prosecutor from the Spokane County Prosecutor's Office entered a limited notice of appearance on behalf of the Spokane County Superior Court. (ECF No. 1 at ¶42). The deputy prosecutor then filed a memorandum in support of the court's Order and actions taken with regard to Petersen and Hallmark. (ECF No. 1 at ¶44).

On May 13, 2015, a hearing was held where counsel for Petersen and Hallmark was present, but the deputy prosecutor was not. (ECF No. 1 at ¶46). Counsel informed the court that a deputy prosecutor had appeared on behalf of the Superior Court and asserted the hearing should be postponed until the deputy prosecutor was present. (ECF No. 1 at ¶47). The hearing proceeded without the deputy prosecutor present. (ECF No. 1 at ¶47).

On May 18, 2015, Petersen and Hallmark's motion for reconsideration was heard by Judge Kalama Clark. (ECF No. 1 at ¶¶50, 52). Counsel for Petersen and Hallmark presented argument on the issues raised in the motion. (ECF No. 1 at ¶51). In the court's ruling on the motion, Judge Kalama Clark stated the court was the petitioner in the proceedings and the Order Appointing Special Master was

presented ex parte. (ECF No. 1 at ¶52). It appears the court denied the motion for reconsideration. See (ECF No. 1 at ¶52).

On May 13, 2015, Petersen and Hallmark filed a notice of appeal to Division III of the Washington Court of Appeals regarding the Order Appointing Special Master. See *In re Guardianship of Holcomb*, No. 33356-6, Dkt. #1 (Wash.Ct.App. Div. III). On July 23, 2015, the Court of Appeals issued a motion to determine appealability. (Id. at Dkt. #26); (ECF No. 12-1 at 23). After receiving briefing, a Commissioner for the Court of Appeals issued an order on August 26, 2015. (ECF No. 12-1). The Commissioner found neither Petersen nor Hallmark were aggrieved parties based on their removal as guardians. (ECF No. 12-1 at 23-25). The Commissioner further found Hallmark was an aggrieved party as to the order assessing fees against it. (ECF No. 12-1 at 26).

A review of the online docket shows the state court appeal was eventually dismissed by Division III in April 2017, and a motion for discretionary review was filed in the Washington Supreme Court on May 1, 2017. See No. 33356-6 (Wash.Ct.App. Div. III); Dkt. #1, No. 94454-7 (Wash. Sup. Ct.). The Washington Supreme Court denied the motion on June 22, 2017 and no further filings have been made. See No. 94454-7 (Wash. Sup. Ct.).

On April 6, 2017, Petersen and Hallmark ("Plaintiffs") initiated the instant federal court action by filing the Complaint. (ECF No. 1). The Complaint alleges six causes of action against the Spokane County Superior Court and Spokane County ("Defendants"): (1) lack of due process by failing to follow the state rules of civil procedure and local court rules regarding initiating a civil action; (2) judicial abuse of authority by taking ex parte action against and issuing ex parte orders against Petersen and Hallmark in cases those judges and commissioners were not assigned; (3) lack of due process by failing to follow the process for removal of a guardian under the Revised Code of Washington; (4) lack of due process by failing to follow the process set forth by the Certified Professional Guardian Board for removal of a guardian; (5) lack of due process by failing to give due regard to the definitions of good standing for a certified professional guardian or certified professional guardianship under state court rules; and (6) breach of the separation of powers doctrine by taking executive administrative actions against Petersen and Hallmark. (ECF No. 1 at ¶¶58-67).

On May 19, 2017, Defendants filed the Motion to Dismiss (ECF No. 11). The Motion argues Defendants are entitled to absolute judicial immunity, Plaintiffs lack any property right in

continued guardianships, and Plaintiffs' claims are barred by res judicata. (ECF No. 11). On June 8, 2017, the court held a telephonic hearing in this matter wherein the court raised the issue of whether Plaintiffs' claims are barred under the *Rooker-Feldman* doctrine and subsequently issued an Order on this issue. (ECF No. 16). On June 15, 2017, Plaintiffs filed a Response to the Motion to Dismiss and addressed the *Rooker-Feldman* doctrine. (ECF No. 17). On June 27, 2017, Defendants filed a Reply. (ECF No. 20).

On June 20, 2017, Defendants filed a Motion for CR 11 Sanctions. (ECF No. 18). The Motion seeks costs and attorneys' fees based on Plaintiffs' claims being frivolous. (ECF No. 18). On June 23, 2017, Plaintiffs filed a Response. (ECF No. 19). On June 28, 2017, Defendants filed a Reply. (ECF No. 22).

Both the Motion to Dismiss and Motion for Sanctions were submitted for decision without oral argument.

II. Discussion

A. Motion to Dismiss

To survive a motion to dismiss, the pleading must allege sufficient facts, which, accepted as true, "state a claim to relief that is plausible on its face."

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is plausible on its face when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqba*l, 556 U.S. 662, 678 (2009). In considering a motion to dismiss under Fed.R.Civ.P. 12(b)(6), "the court accepts the facts alleged in the complaint as true." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). However, a claim may be dismissed "based on the lack of a cognizable legal theory." (Id.). While a court may not generally consider evidence outside of the complaint in a Fed.R.Civ.P. 12(b)(6) motion, the court may consider "material which is properly submitted as part of the complaint" and documents the complaint "necessarily relies" on and whose authenticity "is not contested." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998)). A motion brought under Fed.R.Civ.P. 12(c) is "functionally identical" to a motion under Fed.R.Civ.P. 12(b)(6) and courts apply the "same standard." *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). The "principal difference" between the two motions "is the tim[ing] of filing." (Id.).

1. *Rooker-Feldman*

Under *Rooker-Feldman*, "a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court." *Noel v. Hall,* 341 F.3d 1148, 1154 (9th Cir. 2003). The doctrine takes its name from two Supreme Court decisions: *Rooker v. Fidelity Trust*, 263 U.S. 413 (1923) and *District of Columbia v. Feldman*, 460 U.S. 462 (1983).

Federal courts must dismiss the complaint "if claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003); see *Worldwide Church of God v. McNair*, 805 F.2d 888, 892 (9th Cir. 1986) ("claims are 'inextricably intertwined' if the district court must 'scrutinize not only the challenged rule itself but the [state court's] application of the rule."). "*Rooker-Feldman* looks to federal law to determine 'whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Bianchi*, 334 F.3d at 900-01 (quoting *Garry v. Geils*, 82 F.3d 1362, 1365 (7thCir. 1996)); see also, (id. at 900) (stating the *Rooker-Feldman* doctrine "does not require [the federal court] to determine whether or not the state

court fully and fairly adjudicated the constitutional claim. Nor is it relevant whether the state court's decision is res judicata or creates the law of the case under state law.").

Plaintiffs argued to the Spokane County Superior Court that the actions taken were unconstitutional, beyond statutory and court rule authority, and were done ex parte without notice or opportunity to be heard by Plaintiffs. See (ECF No. 1 at ¶¶34, 46-47). When their motion was denied, Plaintiffs appealed to the Washington State Court of Appeals and Washington State Supreme Court. See (ECF No. 12-1); *In re Guardianship of Holcomb*, No. 33356-6 (Wash.Ct.App. Div. III); No. 94454-7 (Wash.).

Each of Plaintiffs' six causes of action herein challenges the specific acts taken against Plaintiffs and alleges those acts were unconstitutional. See (ECF No. 1 at ¶¶58-67). Plaintiffs seek damages for "the wrongful damage to the businesses of Hallmark and Petersen including the wrongful taking, without due process, of all of the Plaintiff's [sic] goodwill and going concern of their business." (ECF No. 1 at ¶68). To find for Plaintiffs on any one of their claims, the court would have to evaluate and find the acts of the Spokane County Superior Court were unconstitutional. Plaintiffs seek to have this court reverse the decisions of the state court system, which

is improper and lies beyond this court's subject matter jurisdiction. It is immaterial that those arguments were rejected on procedural grounds on appeal.

To the extent Plaintiffs bring new claims for damages, those claims are inextricably intertwined with the state court decisions. Awarding damages for loss of business goodwill presumes a finding of unconstitutional conduct by the state court. Such arguments are indistinguishable from the arguments made in the state proceedings. Whether Plaintiffs initiated the state court proceedings is immaterial for the *Rooker-Feldman* doctrine, and Plaintiffs cite no cases suggesting otherwise. To the extent the time to seek modification of the Washington Supreme Court's order denying the motion for discretionary review has not passed, the fact the appeal may be technically ongoing does not prevent application of *Rooker-Feldman*. *See* I*n re Birting Fisheries, Inc.*, 300 B.R. 489, 498 n.9 (9th Cir. 2003); *In re Metcalf*, 92 Wn.App. 165, 175 n.6 (1998).

For all of the above reasons, the court finds this matter should be dismissed as a de facto appeal of state court decisions. Any new claims are inextricably intertwined with the state court decisions and this court could not render judgment for Plaintiffs without disturbing the findings made by the state courts. Additionally, as shown below, the

claims are subject to dismissal based on judicial immunity.

2. Judicial Immunity

"It is well settled that judges are generally immune from suit for money damages." *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001); see *Adkins v. Clark County*, 105 Wn.2d 675, 677 (1986) ("It is well settled judges are immune from liability for damages from acts committed within their judicial capacity, even if accused of acting maliciously and corruptly"). "[J]udicial immunity does not apply to non-judicial acts, i.e. the administrative, legislative, and executive functions that judges may on occasion be assigned to perform." *Duvall*, 260 F.3d at 1133; see *Adkins*, 105 Wn.2d at 677-78 ("To find liability, the actions of the defendant judge must be in clear absence of all jurisdiction, not simply in excess of jurisdiction.... acts by a judge or judicial officer will be protected by immunity from civil action for damages if they are intimately associated with the judicial process.").

"[A] judge will not be deprived of immunity because the action he took was in error ... or was in excess of his authority." *Mireles v. Waco*, 502 U.S. 9, 12-13 (1991) (quotation and citation omitted). "Judicial immunity applies 'however erroneous the act may have been, and however injurious in its

consequences it may have proved to the plaintiff.'" *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). Judicial immunity is only overcome if the actions were "nonjudicial actions, i.e., actions not taken in the judge's judicial capacity" or were "actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles*, 502 U.S. at 11-12.

The Ninth Circuit considers four factors to determine whether an act is judicial in nature: (1) "the precise act is a normal judicial function"; (2) "the events occurred in the judge's chambers"; (3) "the controversy centered around a case then pending before the judge"; and (4) "the events at issue arose directly and immediately out of a confrontation with the judge in his or her official capacity." *Duvall*, 260 F.3d at 1133 (quoting *Meek v. County of Riverside*, 183 F.3d 962, 967 (9th Cir. 1999)). "These factors are to be construed generously in favor of the judge and in light of the policies underlying judicial immunity." *Ashelman*, 793 F.2d at 1076; see also, (id.) ("Jurisdiction should be broadly construed to effectuate the policies supporting immunity").

Washington statutory law states "[a]t any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the

guardianship or replace the guardian.... Such action may be taken based on the court's own motion." RCW 11.88.120(1)(a); see *In re Hemrich's Guardianship*, 187 Wn. 21, 26 (1936) ("Acting under the authority of this statute, the court always has power, under proper circumstances, to remove a guardian"). "Although governed by statute, guardianships are equitable creations of the court and it is the court that retains ultimate responsibility for protecting the ward's person and estate." *In re Guardianship of Lamb*, 173 Wn.2d 173, 184 (2011) (quoting In re *Guardianship of Hallauer*, 44 Wn.App. 795, 797 (1986)); see RCW 11.92.010 ("Guardians ... shall at all times be under the general direction and control of the court making the appointment."). "The court having jurisdiction of a guardianship matter is said to be the superior guardian of the ward, while the person appointed guardian is deemed to be an officer of the court." *In re Lamb*, 173 Wn.2d at 190 (quoting *Seattle First National Bank v. Brommers*, 89 Wn.2d 190, 200 (1977)).

Contrary to Plaintiffs' argument, the state court could lawfully initiate removal proceedings against Plaintiffs as guardians. As such, Defendants were not acting "in the clear absence of jurisdiction." Rather, the Defendants were acting in a normal judicial function. Whether the statutory procedure was fully followed is immaterial to determine

whether judicial immunity attaches. As there is statutory authority for the court to initiate removal proceedings, the court finds Defendants acted in a normal judicial function.

Plaintiffs admit they "have no idea where these events occurred." (ECF No. 17 at 8). The fact Plaintiffs lack personal knowledge is not dispositive in determining whether the events at issue took place in the judge's chambers. All letters were sent on the Superior Court letterhead, and the Order Appointing Special Master bore the signature of Judge Kalama Clark and the seal of the Clerk of the Court. Judge Kalama Clark allegedly stated the Order was presented ex parte. This court has no basis to believe these acts were done anywhere other than in the state court judge's chambers. Accordingly, the court finds the acts occurred within the judge's chambers.

As discussed above, the Spokane County Superior Court had the statutory right to initiate removal proceedings. See RCW 11.88.120(1)(a). The removal proceedings, while initiated by the court, constitute a case then pending before the court. Plaintiffs' contentions otherwise are unpersuasive. The fact it was initiated by the court does not disqualify it as a pending case, nor does the timing thereof change the analysis. Plaintiffs' claims regarding the failure to follow statutory procedures

for removal is not before this court. See supra §(A)(1). For these reasons, the court finds the actions of Defendants concerned a then-pending case.

The court observes the unusual factual history of this case where the state court proceedings were initiated by the state court and were not in response to a particular confrontation. However, the fact the matter was initiated by the state court does not make it any less judicial in nature. See *Ashelman*, 793 F.2d at 1078 ("As long as the judge's ultimate acts are judicial actions taken within the court's subject matter jurisdiction, immunity applies."). The entirety of the proceedings were in fact a confrontation with state court judges acting in their judicial capacity. While the state court was the initiator, this court finds the events at issue were immediately and directly related to acts performed in a judicial capacity.

In light of all of the foregoing, the court finds Defendants are entitled to judicial immunity. Based on the court's rulings on the *Rooker-Feldman* doctrine and judicial immunity, the court will not address the other arguments in the Motion to Dismiss.

B. Motion for Fed.R.Civ.P. 11 Sanctions

Defendants' Motion for Sanctions argues: (1) "Plaintiffs' claims are not warranted by existing law

or by a nonfrivolous argument for modifying or reversing existing law"; and (2) "[a]ny attorney conducting a reasonable inquiry of the law before filing these claims would have discovered that they are legally baseless." (ECF No. 18 at 3). Plaintiffs assert the Motion for Sanctions "is a red herring - an attempted distraction by a party who is terrified of the facts that will come out through discovery in the course of this action." (ECF No. 19 at 10). The majority of the parties' briefs re-argue the merits of the claims addressed at length in the Motion to Dismiss briefing.

In the Reply, Defendants, for the first time, cite 42 U.S.C. § 1988 as a basis for an award of attorney's fees. See (ECF No. 22 at 2). The court will not consider this basis because it was not raised in the Motion for Sanctions and because Defendants do not otherwise argue or establish a basis for an award pursuant to that statute.

"By presenting to the court a pleading, written motion, or other paper ... an attorney ... certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; [and] (2) the claims, defenses, and other legal contentions are warranted by existing law or by

a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed.R.Civ.P. 11(b)(1)-(2). When the complaint is the focus of a motion brought pursuant to Fed.R.Civ.P. 11, "a district court must conduct a two-prong inquiry to determine (1) whether the complaint is legally or factually baseless from an objective perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before signing and filing it." Holgate v. Baldwin, 425 F.3d 671, 676 (9th Cir. 2005) (quotation marks and citation omitted). For this test, the term "frivolous" means "a filing that is both baseless and made without a reasonable and competent inquiry." (Id.) (emphasis in original) (citation omitted).

As discussed at length supra, the court found Plaintiffs' claims barred under the *Rooker-Feldman* doctrine and by judicial immunity. While Defendants are clearly entitled to dismissal of Plaintiffs' claims, the court does not find Plaintiffs' claims are baseless or frivolous. The fact defense counsel did not raise *Rooker-Feldman* until the court brought it to counsel's attention demonstrates the claims were not objectively baseless. The court does not find counsel failed to conduct a reasonable inquiry before filing the Complaint.

III. Conclusion

Plaintiffs' claims herein are the same and inextricably intertwined with those made in the Washington state court proceedings. Plaintiffs' arguments against application of the *Rooker-Feldman* doctrine are unavailing. Additionally, Defendants are entitled to judicial immunity. While the court finds dismissal appropriate, the court does not find Plaintiffs' claims frivolous or baseless. Accordingly, the Motion to Dismiss is Granted and the Motion for Sanctions is Denied.

IT IS HEREBY ORDERED:

1. The Motion to Dismiss (ECF No. 11) is GRANTED as set forth herein.

2. The Motion for CR 11 Sanctions (ECF No. 18) is DENIED as set forth herein.

3. The Clerk is directed to enter Judgment dismissing the Complaint (ECF No.1) and the claims therein WITH PREJUDICE and without costs or attorneys' fees to any party.

IT IS SO ORDERED. The Clerk is hereby directed to enter this Order and Judgment, furnish copies to counsel, and close this file.

Opinion and Ruling by the Washington State Court of Appeals, Division III

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

No. 33356-6-III

In the Matter of the Guardianship of
JUDITH D. HOLCOMB
and
OTHER SIMILAR CASES
CONSOLIDATED ON APPEAL†

UNPUBLISHED OPINION
(Filed October 18, 2018)

† No. 33357-4-III, *In re Guardianship of St. Peter*;
No. 33358-2-III, *In re Guardianship of Wiegele*;
No. 33359-1-III, *In re Guardianship of Daniel*;
No. 33360-4-III, *In re Guardianship of Adams*;
No. 33362-1-III, *In re Trust of Hartley*;
No. 33363-9-III, *In re Guardianship of Ard*;
No. 33364-7-III, *In re Guardianship of Wright*;
No. 33365-5-III, *In re Guardianship of Friesen*;
No. 33366-3-III, *In re Guardianship of Reed*;
No. 33367-1-III, *In re Guardianship of Bowers*;
No. 33368-0-III, *In re Special Needs Trust of Harmon*;
No. 33369-8-III, *In re Guardianship of Cornelius*;
No. 33370-1-III, *In re Guardianship of Mateer*;

No. 33371-0-III, *In re Guardianship of Harris*;
No. 33372-8-III, *In re Trust of Elvidge*;
No. 33373-6-III, *In re Guardianship of Fulton*;
No. 33374-4-III, *In re Guardianship of Zauner*;
No. 33375-2-III, *In re Guardianship of Martin*;
No. 33376-1-III, *In re Guardianship of Mateer*;
No. 33377-9-III, *In re Guardianship of Carey*;
No. 33378-7-III, *In re Guardianship of Olson;*
No. 33379-5-III, *In re Guardianship of Nalley*;
No. 33380-9-III, I*n re Guardianship of Nichols*;
No. 33381-7-III, *In re Guardianship of Smelcer*;
No. 33382-5-III, *In re Guardianship of Olson*;
No. 33383-3-III, *In re Guardianship of Fairbanks*;
No. 33384-1-III, *In re Guardianship of Collier*;
No. 33385-0-III, *In re Guardianship of Blair*;
No. 33386-8-III, *In re Guardianship of Vogel*;
No. 33387-6-III, *In re Guardianship of Campbell*;
No. 33388-4-III, *In re Guardianship of Fenske*;
No. 33389-2-III, *In re Guardianship of Sullivan*;
No. 33390-6-III, *In re Guardianship of Higgins*;
No. 33391-4-III, *In re Guardianship of Tuckerman*;
No. 33392-2-III, *In re Guardianship of Wharton*;
No. 33393-1-III, *In re Guardianship of Weiland*;
No. 33394-9-III, *In re Guardianship of Vingo*;
No. 33395-7-III, *In re Guardianship of Morales*;
No. 33396-5-III, *In re Guardianship of Morales*;
No. 33397-3-III, *In re Guardianship of Moore*;
No. 33398-1-III, *In re Guardianship of Stanich*;
No. 33399-0-III, *In re Guardianship of Hopper*;
No. 33400-7-III, *In re Guardianship of Taylor*;
No. 33401-5-III, *In re Guardianship of Rosser*;

No. 33402-3-III, *In re Guardianship of Reinhardt*;
No. 33403-1-III, *In re Guardianship of Fry*;
No. 33404-0-III, *In re Guardianship of Edgar*;
No. 33405-8-III, *In re Guardianship of Pitner*;
No. 33406-6-III, *In re Guardianship of Baker*;
No. 33407-4-III, *In re Guardianship of Williams*;
No. 33408-2-III, *In re Guardianship of Wells*;
No. 33409-1-III, *In re Guardianship of Alden*;
No. 33410-4-III, *In re Guardianship of Stephens*;
No. 33411-2-III, *In re Guardianship of Torpe*y;
No. 33414-7-III, *In re Guardianship of Gehring*;
No. 33444-9-III, *In re Guardianship of Brangwin*;
No. 33445-7-III, *In re Guardianship of Anderson*;
No. 33446-5-III, *In re Guardianship of Anderson*;
No. 33447-3-III, *In re Guardianship of Baldwin*;
No. 33448-1-III, *In re Guardianship of Baldwin*;
No. 33449-0-III, *In re Guardianship of Blair-Robbins*;
No. 33450-3-III, *In re Guardianship of Bloyed*;
No. 33451-1-III, *In re Guardianship of Brady*;
No. 33452-0-III, *In re Guardianship of Bowen*;
No. 33453-8-III, *In re Guardianship of Claycomb*;
No. 33454-6-III, *In re Guardianship of Dahl*;
No. 33455-4-III, *In re Guardianship of Delorenzo*;
No. 33456-2-III, *In re Guardianship of Demary*;
No. 33457-1-III, *In re Guardianship of Desjardins*;
No. 33458-9-III, *In re Guardianship of Eberhart*;
No. 33459-7-III, *In re Guardianship of Eisenman*;
No. 33460-1-III, *In re Guardianship of Foster*;
No. 33461-9-III, *In re Guardianship of Futo;*
No. 33462-7-III, *In re Guardianship of Garcia*;
No. 33463-5-III, *In re Guardianship of Haliwell*;
No. 33464-3-III, *In re Guardianship of Harrington*;

No. 33465-1-III, I*n re Guardianship of Hinds*;
No. 33466-0-III, *In re Guardianship of House*;
No. 33467-8-III, *In re Guardianship of Howard*;
No. 33468-6-III, *In re Guardianship of Jenkins*;
No. 33469-4-III, *In re Guardianship of Laird*;
No. 33470-8-III, *In re Guardianship of Lee*;
No. 33471-6-III, *In re Guardianship of Loss*;
No. 33472-4-III, *In re Guardianship of Love*;
No. 33473-2-III, *In re Guardianship of Mally*;
No. 33474-1-III, *In re Guardianship of May*;
No. 33475-9-III, *In re Guardianship of McKinsey*;
No. 33476-7-III, *In re Guardianship of McLellan*;
No. 33477-5-III, *In re Guardianship of McMorris*;
No. 33478-3-III, *In re Guardianship of Melendrez*;
No. 33479-1-III, *In re Guardianship of Melton*;
No. 33480-5-III, *In re Guardianship of Miller*;
No. 33481-3-III, *In re Guardianship of Milton*;
No. 33482-1-III, *In re Guardianship of Mitchell*;
No. 33483-0-III, *In re Guardianship of Morris*;
No. 33484-8-III, *In re Guardianship of Naylor*;
No. 33485-6-III, *In re Guardianship of Oppengaard*;
No. 33486-4-III, *In re Guardianship of Palmer*;
No. 33487-2-III, *In re Guardianship of Rice*;
No. 33488-1-III, *In re Gurdianship of Rivero*;
No. 33489-9-III, *In re Guardianship of Robert*s;
No. 33490-2-III, *In re Guardianship of Seeman*;
No. 33491-1-III, *In re Guardianship of Shaw*;
No. 33492-9-III, *In re Guardianship of Slater*;
No. 33493-7-III, *In re Guardianship of Smith*;
No. 33494-5-III, *In re Guardianship of Boyd*;
No. 33495-3-III, *In re Guardianship of Stephenson*;
No. 33496-1-III, *In re Guardianship of Sternberg*;

No. 33497-0-III, *In re Guardianship of Stocker*;
No. 33498-8-III, *In re Guardianship of Storrud*;
No. 33499-6-III, *In re Guardianship of Tiffany*;
No. 33500-3-III, *In re Guardianship of Underwood*;
No. 33501-1-III, *In re Guardianship of White*;
No. 33502-0-III, *In Guardianship of Withers*;
No. 33503-8-III, *In re Guardianship of Baker*;
No. 33504-6-III, *In re Guardianship of McCoy*;
No. 33505-4-III, *In re Guardianship of McDirmid*;
No. 33506-2-III, *In re Guardianship of Trimble*;
No. 33507-1-III, *In re Guardianship of Zingale*;
No. 33508-9-III, *In re Guardianship of Leach*;
No. 33601-8-III, *In re Guardianship of Getchell.*

SIDDOWAY, J. — After Lori Petersen, a certified professional guardian (CPG), received a one-year disciplinary suspension, the Spokane County Superior Court undertook judicial review not only of cases in which she served as guardian, but of cases assigned to a CPG agency (CPGA) with which she was associated. Following costly proceedings in which replacement guardians were appointed in every case, the court assessed costs of the procedure against her and the corporate operator of the agencies.

The costs were assessed without due process, including without affording the CPGA an opportunity to challenge facts outside the record on which assessment decisions were based. We reverse the money judgments only, and remand for further

proceedings consistent with this opinion. We retain jurisdiction for one reason only: the administrative inconvenience to the courts and the parties that would be presented should the conduct of further hearings result in over 120 new appeals. Our retention of jurisdiction should not be viewed as reflecting any view of the merits or any belief that a further appeal is expected.

BACKGROUND OF PROCEEDINGS

Lori Petersen became a CPG in 2001. *See In re Disciplinary Proceeding Against Petersen*, 180 Wash. 2d 768, 773, 329 P.3d 853 (2014). In April 2012, the Certified Professional Guardian Board served her with a complaint charging her with violating standards of practice. *Id.* at 774-75. The charges and Ms. Petersen's defense were presented to a hearing officer in October 2012. *Id.* at 775. He entered findings, conclusions, and a recommendation that Ms. Petersen be suspended from serving as a CPG for 1 year and monitored for 24 months thereafter. *Id.* at 779. The Board adopted the hearing officer's recommendations but reduced the costs he had recommended be imposed. *Id.*

The record and recommendation were submitted to the Washington Supreme Court for review. It questioned only the proportionality of the costs imposed by the Board. *Id.* After a remand in

which the Board made a further substantial reduction in the costs imposed to $7,500.00, the court affirmed and adopted the Board's recommendation in an order dated March 13, 2015. During the almost three years of proceedings leading up to the March 2015 order, the Board did not impose an interim suspension on Ms. Petersen, which it was authorized to do if there was a substantial risk of injury to the public. *Petersen*, 180 Wn.2d at 789 (citing former DR1[1] 519).

The Supreme Court's order directed that Ms. Petersen's suspension become effective on March 20, 2015. In response to a motion to stay the suspension filed with the Supreme Court by Ms. Petersen on March 18, the court granted a stay to April 27, 2015, to allow her "to work with the Certified Professional Guardian Board to ensure proper representation of her clients and the transition of the representation of her clients to successor certified professional guardians." Clerk's Papers (CP) at 67.

1 The Board's disciplinary rules (DR) are contained within the Certified Professional Guardianship Board's Program Regulations, available at https://www.courts.wa.gov/programs_orgs/guardian/fa=guardian.display&fileName=rulesindex. In the regulations presently appearing on the website, the Board's authority to impose an interim suspension where a respondent's continued practice as a CPG poses a substantial threat of serious harm to the public appears at DR 509.6.1.A.

At the time of the Supreme Court's order, Ms. Petersen operated as a CPG doing business as Empire Care Services or Empire Care and Guardianship (Empire). The Supreme Court's July2014 decision characterized Empire as an agency that Ms. Petersen "owns and operates" and described it as "serv[ing] over 60 wards." *Petersen*, 180 Wn.2d at 773. By Ms. Petersen's count at the time, 37 of the wards she served were subject to guardianships ordered and being supervised by the Spokane County Superior Court.

At the time of the Supreme Court's order affirming her suspension, Ms. Petersen was also an employee of Hallmark Care Services, Inc. and served as a designated CPG for two CPGAs operated by Hallmark: Castlemark Guardianship and Trust (Castlemark), and Eagle Guardianship and Professional Services (Eagle). If she were not replaced, Ms. Petersen's suspension as a CPG would cause Hallmark to be out of compliance with a Board regulation requiring CPGAs to have two designated CPGs.

On March 17, 2015, a Spokane County court commissioner wrote to Ms. Petersen at two business locations—one, Hallmark's; the other, Empire's—directing her to inform the court in writing of her plans for her caseload, given the impending March 20 effective date of her suspension. She was asked to

deliver her answer by no later than 4:00 p.m. on March 19. An attachment to the letter listed well over 120 pending guardianships by case name, incapacitated person name, guardian, and standby guardian. Empire was the assigned guardian in 32 of the cases and Ms. Petersen was the assigned guardian in 5. In all of the other cases, the assigned guardian was Castlemark, Eagle, or Hallmark.

Ms. Petersen's lawyer responded to the court commissioner the next day, notifying her that a motion had been made to stay the Supreme Court's order to allow Ms. Petersen time to transition her clients. He pointed out that of the cases on the commissioner's list, only 37 were cases in which Ms. Petersen served as guardian in her own name or in her trade name, Empire, causing them to be directly affected by the suspension. As for the Castlemark and Eagle cases, he informed the commissioner that Ms. Petersen would cease working for Hallmark during the period of her suspension and that Hallmark was working to identify a new designated CPG to replace Ms. Petersen. He stated that he had notified the Board of the change in agency status in light of Ms. Petersen's suspension and that Hallmark had 60 days to find a new CPG, citing Board DR 706.3.

Ms. Petersen's lawyer later filed a notice of appearance for Hallmark. Given the predominance of

his advocacy for Hallmark in matters relevant to this appeal, we refer to him hereafter as Hallmark's lawyer, although he continues to represent Ms. Petersen.

According to a declaration Hallmark's lawyer later filed with the court, corporate actions were taken on April 1, 2015, by Hallmark's shareholder, directors and officers to address Ms. Petersen's impending suspension. Reportedly, Keri Sandifer was elected the sole director and officer of Hallmark and two individual CPGs in good standing, James Whiteley and Joan Shoemaker, provided written acceptances of their appointment as Hallmark's two designated CPGs on that date. The lawyer's declaration states, "After April 1, 2015, Hallmark Care Services, Inc. had on its board, an individual qualified pursuant to RCW 11.88.020, and had two designated CPGs, both in good standing with the CPG Board, making the agency compliant pursuant to GR 23(d)(2)." CP at 105.[2]

On April 7, 2015, a judge of the Spokane County Superior Court wrote to Hallmark's counsel and expressed disagreement with his view that only Ms. Petersen's and Empire's cases were affected by

2 The declaration also states that Ms. Sandifer was given a proxy by the company's sole shareholder, PJLA, Inc., but as discussed hereafter, rules adopted by the Washington Supreme Court do not treat ownership of the capital stock of a CPGA as relevant to certification.

Ms. Petersen's suspension. The letter stated that the appointment of successor guardians was at issue in all of Hallmark's cases as well, explaining:

> Specifically, Hallmark/Castlemark/Eagle's ownership is in question. Despite inquiries by the Court on multiple occasions, ownership has always been stated as "confidential." The choice to leave this inquiry unanswered puts Ms. Petersen's association with any of those agencies into question. The Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella. CP at 56.

PROCEEDINGS

On the same day that the superior court judge informed Hallmark's counsel that all of its cases would be transitioned to a successor guardian, a second superior court judge signed an order appointing a special master "to oversee the transition to and appointment of successor guardians for incapacitated persons serviced by. .. Lori Petersen and the agencies of which she is a designated CPG or standby guardian." CP at 94. The order was uncaptioned other than to say, "In the Guardianship of: ____ An Incapacitated Person" and bore no case

number. A copy of the order was mailed to Hallmark's lawyer.

In a contemporaneous letter, the first superior court judge wrote to persons serving as guardians ad litem (GAL) in Spokane County that the suspension of Ms. Petersen "affects 125 cases in Spokane County," causing it to appoint a special master "to oversee the transition of the 125 cases currently assigned to Ms. Petersen and/or agencies with which she is involved." CP at 58. It explained:

> The court will assign Guardians ad Litem to each case to investigate the appointment of a guardian, successor guardian and/or standby guardian. Of the 125 cases seven are already assigned to Mr. William Dodge to investigate specific complaints. .. .
>
> .. . Ms. Ana Kemmerer[3] will assign a group of cases to each of you so the work can begin. If you have a conflict in a particular case please file a motion and the Special Master will review it. If the Special Master concurs, Ms. Kemmerer will arrange a trade between two Guardians ad Litem to eliminate the conflict and keep the caseload balanced.
>
> Ms. Kemmerer cannot review each case to determine if it is county or private-pay. At

3 Ms. Kemmerer served as Guardianship Monitoring Program Coordinator within the Spokane County Court Administrator's Office.

> a minimum your reasonable fees will be covered at the county pay rate. Because generally the only issue in these cases will be appointment of a successor guardian and/or standby guardian, the maximum fee will be $500.00 without further court approval. CP at 58-59.

On April 10, 2015, dozens of orders were entered appointing GALs and scheduling review hearings on an expedited basis for each guardianship in which Ms. Petersen, Empire, Castlemark, or Eagle served as guardian. Each order was captioned with multiple case names and numbers; generally with four. In each order, the court directed a given GAL to review court files and any other pertinent records and file a GAL report and successor guardian recommendation on the assigned cases with the court. Each order found good cause to shorten the period for filing the GAL reports from 15 days to 5 days before the scheduled hearing date. The order did not direct the GAL to provide a copy of his or her report and recommendation to Ms. Petersen, Hallmark, or their lawyer.

Each order reiterated that the GAL was appointed initially at public expense and that Spokane County would not pay more than $500 in GAL fees without further court approval. Each contained the following additional language:

> Upon the hearing to appoint a successor guardian and/or standby guardian, the Court may assess all Guardian ad Litem fees as costs against Certified Professional Guardian, Lori Petersen, CPG #9713.

See CP at 178-647. The orders were e-mailed to Hallmark's lawyer on April 10 and were mailed to him on the following Monday, April 13.

On April 16, Ms. Kemmerer forwarded a follow-up letter to the GALs from the second superior court judge. It informed the GALs that:

> No certified Professional Guardian or agency affiliated with Ms. Lori Petersen should be appointed as Guardian or Standby Guardian. That therefore excludes any CPG affiliated with the Hallmark, Castlemark, and Eagle agencies, including but not limited to Joan Shoemaker and James Whiteley, from being appointed.

CP at 76. On April 19, Ms. Shoemaker resigned as a designated CPG for Hallmark, reportedly because she received a telephone call from an employee of the Administrative Office of the Courts informing her that if she continued as a CPG for Hallmark, she would lose all her guardianship cases. Hallmark's lawyer later represented to the court that Mr. Whiteley had received a similar call.

On April 17, 2015, Hallmark's lawyer filed a Motion for Reconsideration of the order appointing the special master, specifically challenging its directive to transition guardianship cases to guardians other than Hallmark dba Castlemark and Eagle. Hallmark posed a number of questions about events leading to the court's order and challenged the court's jurisdiction to take actions against Hallmark that it characterized as disciplinary, and therefore the exclusive province of the Board.

The court heard argument of the Motion for Reconsideration on May 15, 2015, and announced its decision a couple of days later. In orally announcing its decision, the court stated that in appointing the special master it had relied on its authority under RCW 11.88.120(1) and (4) and that the order appointing the special master did only two things: appointed a special master and ordered Ms. Petersen to post a surety bond (the court granted Ms. Petersen's challenge to the surety bond requirement). The court stated, "The order that I signed does not remove Hallmark from any case nor does it order the appointment of a guardian in any case." Report of Proceedings (RP) (May 18, 2015) at 4.

Later, however, the court stated:

> Ms. Petersen is not now listed as a director or officer of the agency but there are concerns about ownership or other

> positions within the agency. This is important and necessary information because clearly the CPG Board and Supreme Court did not want Ms. Petersen, who has been found to have committed professional misconduct, involved in any guardianship actions.
>
> [Hallmark's lawyer] at argument noted there had been a change in directors and officers of the agency and said there was quote, no possibility of outside influence in the matter, closed quote. That's the heart of the issue in these cases completely. While Ms. Petersen may no longer be employed as a CPG with Hallmark or serving as an officer or director, there is a very valid concern based upon past history and lack of full disclosure, that she continues to be connected in some other way and still has access to and involvement with these vulnerable IPs. Having not received, even to this day, some positive affirmation from Hallmark that Ms. Petersen is no longer involved in any way or benefiting financially at all from any guardianship matters, this Court is not inclined to allow those agencies to be considered as guardian or standby guardian in these matters.

Id. at 8-9. A written order denying the motion for reconsideration was later entered and identified only

the respects in which the motion was granted and denied, without making findings or stating reasons.

Meanwhile, the review hearings had begun on May 4, 2015, and they continued through June 4, 2015, before two superior court commissioners. Counsel for Hallmark was present for each of the review hearings. At one of the initial hearings, he challenged the superior court's jurisdiction, its authority to remove Hallmark, and the process it had used and was using to remove Hallmark and Ms. Petersen. Hallmark also filed a response and objection to the order appointing the guardian ad litem in three of the cause numbers, and it renewed that objection by reference at most of the hearings.

At each hearing, the GAL summarized his or her report and recommended a successor GAL. At the first hearing on May4, Hallmark's lawyer indicated he had not yet received copies of any GAL reports. The court responded that it would have the GALs provide a copy of the reports as they went through the process. At oral argument of this appeal, Hallmark's lawyer stated that he never received copies of the GAL reports in advance of the subject hearings, but he was sometimes provided with a copy of the report at the hearing itself. *See* Wash. Ct. App. oral argument, *In re Guardianship of Holcomb*, No. 33356-6-III (May 3, 2018) at 6 min., 41 sec. through 7 min., 17 sec.

(available at http://www.courts.wa.gov/appellate_trial_courts/appellateDockets /index.cfm?fa=appellateDockets.showDateList&courtId=a03&archive=y).

Although some of the GALs did not report any concerns about the care provided by Ms. Petersen, Empire, Castlemark, or Eagle, a number did. Among concerns expressed in individual cases were

- mismanagement of trust funds;
- charging excessive or improper guardianship fees for clients with limited funds;
- providing insufficient personal allowance to the incapacitated person;
- failure to perform visits of the incapacitated person;
- failure to file periodic care plans or status reports;
- filing falsified or improper periodic care plan reports;
- failing to list a current address for the incapacitated person in the guardianship file;
- improper care; and
- complaints from caregivers concerning lack of communications from the guardian.

Some of these concerns were raised by the court and the GALs' review of the guardianship files, and some were raised by the caretakers or family members of the incapacitated person.

None of the GALs sought appointment of a successor CPG because of a concern that Ms. Petersen might exercise control over Castlemark or Eagle or benefit financially from its operations during the period of her suspension. None contended that she had been insufficiently forthcoming about her role at Hallmark or that Hallmark was in chaos. The commissioners sometimes explained their appointment decisions or responded to Hallmark's procedural objections by referring to these matters, but it was not based on any evidence presented by GALs during the review hearings.[4]

The amount of requested GAL fees was discussed on the record at some of the hearings, but there were many hearings where the amount of fees requested was never discussed. While both court commissioners allowed GALs to present fee requests at the review hearings, both stated at various times that the court was not signing on the fees at that time. *See* RP (May 7, 2015) at 49-50, 82; RP Supp.

4 A declaration of Ms. Kemmerer containing some of this information had been filed in opposition to Hallmark's and Ms. Peterson's motion for reconsideration of the order appointing a special master but it was not a part of the evidence presented in the review hearings.

(May 4, 2015) at 13-14, (May 14, 2015) at 250. Instead, the commissioners repeatedly stated during review hearings that they were reserving the issue of reimbursement to Spokane County for the approved GAL fees pending further court review. Each order appointing a successor guardian also stated that the court was reserving the issue of reimbursement pending further court review.[5]

A week following the conclusion of the review hearings, and without further notice or proceedings, the commissioners began entering judgments assessing GAL fees against Hallmark or Lori Petersen/Empire in all of the cases in which the incapacitated person lacked assets to pay. Each judgment indicated that the court found that the GAL fees incurred were reasonable and that "[t]he GAL investigation was necessitated by the suspension of Lori Petersen as a CPG in this matter and her association with related agencies." CP at 3175-4364. On the second page of each judgment entered against Hallmark, the court further found that:

> [A]lthough the agency in this case is not one in which Lori Peterson is the designated CPG, it has failed to disclose

5 In some cases this language was included in a separate addendum order entered at the same time as the order appointing guardian, rather than in the order appointing guardian.

the interest that Ms. Peterson has in the agency and the degree of control that she has over the agency despite the requests of the court. Ms. Peterson has also served as the designated CPG for this agency and her activities were not overseen by the agency appropriately and as a result she was suspended. Furthermore, the agency has been in chaos with rapidly changing CPG designations. There have been numerous complaints from IPs, caregivers and others about lack of contact, lack of response to concerns raised about care and in some cases complaints about financial improprieties. The court has seen many instances of inaccurate and outdated information provided to it in annual reports. These acts and/or omissions have resulted in breaches of the fiduciary duty that the guardian owes to its IPs. Effective May 18, 2015, the agency, because of the recent resignation of one of the designated CPGs will not have the requisite two CPGs to conduct business and effective June 30, 2015, the resignation of the other CPG will mean that it will have no CPGs to conduct business and thus it does not appear that the agency can provide the assurance of viability beyond that date. For all these reasons, and based upon additional findings of the court as articulated on the record in these related proceedings and incorporated by reference herein, the CPG

> agency is presently unsuitable to be appointed as a successor guardian and that has necessitated the need of the court to appoint a GAL to investigate and recommend a successor guardian to insure continuity of care for the incapacitated persons under its jurisdiction.

Id. at 4140. Upon entry, copies of the money judgments were served on Hallmark's attorney. Hallmark and Ms. Petersen appeal.

ANALYSIS

Issues on appeal and motion to strike

Hallmark and Ms. Petersen initially appealed three orders in each of more than 120 guardianship cases: the order appointing the special master; the order removing appellants as guardians and appointing a successor guardian; and the judgment assessing GAL fees against one of them. We consolidated the cases for appeal. The Spokane County Guardianship Monitoring Program (GM Program), a program within the county's superior court administrator's office, sought and was granted special amicus status to respond to Hallmark's pleadings on appeal.

In response to this court's motion to determine appealability, the parties briefed and our court commissioner heard argument on whether Ms. Petersen and Hallmark had standing to appeal their removal as guardians. Finding that Ms. Petersen and Hallmark were not aggrieved parties with respect to the orders appointing a special master and removing them as guardians, our commissioner dismissed the appeal of those categories of orders, leaving the judgments assessing GAL fees as the sole subject matter of this appeal. Commissioner's Ruling, *In re Guardianship of Holcomb*, No. 33356-6-III (Wash. Ct. App. Aug. 26, 2015) at 22-23. Hallmark and Ms. Petersen did not move to modify the commissioner's ruling.

As a threshold matter, the GM Program asks us to strike portions of Hallmark's and Ms. Petersen's opening brief,[6] which it contends violates our commissioner's prior orders as well as provisions of the Rules on Appeal. The opening brief does include material that our commissioner deemed relevant only to dismissed matters, but with the benefit of hindsight, background on Hallmark's and Ms. Petersen's objections to the procedure followed in the superior court proves to be relevant. Hallmark

6 Hallmark's and Ms. Petersen's operative opening brief is their second. They were ordered by our court commissioner to remove portions of their first opening brief related to matters that were dismissed.

and Ms. Petersen evidently foresaw that the superior court's authority to assess GAL fees against them would be defended on the basis that all actions taken in response to Ms. Petersen's suspension were an "emergent necessity," as the GM Program argues on appeal. Br. of Amicus Curiae at 12. Hallmark's and Ms. Petersen's objections to the procedure in the trial court calls into question that defense of the process.

The GM Program's argument that Hallmark and Ms. Petersen violated the Rules of Appellate Procedure by failing to cite to all relevant portions of the record supporting their assertions of fact is also true. But the same can be said for some statements of fact in the GM Program's brief. We recognize that an appeal that involves separate submissions and proceedings in over 120 cases makes complete compliance with RAP 10.3(a)(5) and 10.4(f) onerous and perhaps prohibitively expensive. Both parties did a sufficient job of providing record citations for important and contested matters. Neither parties' briefing has hampered the work of the court.

We turn to the dispositive issue that remains before us following our commissioner's unappealed order as to the scope of the appeal: Whether the superior court violated CR 54(f)(2) and Hallmark's and Ms. Petersen's due process rights when it filed judgments requiring Ms. Petersen and Hallmark to

reimburse Spokane County for the GAL fees incurred in each of the cases.

Violation of CR 54(f)(2) and denial of due process

Hallmark and Ms. Petersen argue that the money judgments entered against them violated CR 54(f)(2), which requires five days' notice of presentation of a judgment. They also allege a violation of due process, where the court commissioners consistently represented that the issue of assessment of the fees against Ms. Petersen was being reserved, and Hallmark never received notice that assessment of fees against it was even being considered. At oral argument of the appeal, the GM Program characterized repeated statements by the commissioners that the cost assessment issue was being reserved as equivalent to the court taking a disputed matter under advisement. We disagree. The implication of the commissioners' statements was that an assessment of fees against Ms. Petersen, if it were to be considered at all, would be the subject matter of a future hearing. She and Hallmark understandably did not address the issue of fee assessment at the review hearings.

Under RAP 2.5(a), a party may raise a claim of "manifest error affecting a constitutional right" for the first time on appeal. "It is consistent with RAP

2.5(a) for a party to raise the issue of denial of procedural due process in a civil case at the appellate level for the first time." *Conner v. Universal Utils.*, 105 Wn.2d 168, 171, 712 P.2d 849 (1986) (citing *Esmieu v. Schrag*, 88 Wn.2d 490, 497, 563 P.2d 203 (1977)). The due process challenge is properly before us.

A party is also able to challenge a judgment entered in violation of CR 54(f)(2) for the first time on appeal. Failure to comply with the notice requirements of CR 54(f)(2) generally renders the trial court's entry of judgment void; while the judgment will not be found invalid if the complaining party is not prejudiced, a party is prejudiced if it is not allowed to appeal. See *Burton v. Ascol*, 105 Wn.2d 344, 352, 715 P.2d 110 (1986) (no prejudice shown when party was allowed to appeal).

The GM Program argues that the superior court was not required to comply with CR 54(f)(2) because guardianships are special proceedings for purposes of CR 81(a). Assuming (though not deciding) that this is so, CR 81(a) provides that statutes applicable to special proceedings supersede the civil rules only where they provide for inconsistent procedure. Statutes governing guardianship proceedings do not dictate a procedure for entering a money judgment imposing fees that is

inconsistent with the procedure required by CR 54(f)(2).

Because entry of the money judgments violated both CR 54(f)(2) and Ms. Petersen's and Hallmark's right to due process, they are reversed.

Procedure on remand

Because our commissioner has dismissed Ms. Petersen's and Hallmark's challenges to the orders removing her and Hallmark's agencies as guardians, we write further to make clear that in any future proceedings, they are free to challenge the assessment of GAL fees (but not the orders removing them as guardians) on the basis that the replacement process followed by the court was not necessary.

It appears to be the case that in taking action in proceedings below some, and perhaps all, of the judicial officers involved were privy to information obtained ex parte from persons associated with the GM Program. As explained in *Sherman v. State*, 128 Wn.2d 164, 204-05, 905 P.2d 355 (1995), reliance on ex parte information, however well intentioned, is improper:

> Canon 3 of the CJC, which requires judges to perform the duties of their offices impartially and diligently, provides in relevant part:
> Judges should accord to every person who

> is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.. ..
>
> CJC Canon 3(A)(4) (1994) (emphasis added). As the comment to Canon 3 explains, this prohibition against ex parte communications includes contacting neutral third parties about a pending case:
>
> The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted…CJC Canon 3(A)(4) cmt. (1994) (emphasis added). *Id.*

It appears that some of the information obtained ex parte led to the conclusion by the judicial officers that no CPG or CPGA affiliated with Ms. Petersen or Hallmark could be appointed to serve as guardian. The Supreme Court's order and its rules do not support that conclusion.

RCW 11.88.120(1) addresses a court's authority to make changes to a guardianship after it is established, and includes the court's authority to replace a guardian, on the court's own motion, "upon the death of the guardian… or for other good reason."

Washington cases hold that under a similarly-worded former law, "the court always has power, under proper circumstances, to remove a guardian, but it may not act arbitrarily." *In re Guardianship of Hemrich*, 187 Wash. 21, 26, 59 P.2d 748 (1936) (applying Rem. Rev. Stat. § 1579 (1932), which empowered courts to remove guardians "for good and sufficient reasons") (citing *In re Estate of Shapiro*, 131 Wash. 653, 230 P. 627 (1924); *In re Guardianship of Dodson*, 135 Wash. 625, 238 P. 610 (1925)).

Under RCW 11.88.090(10), the fees of a GAL "shall be charged to the incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs." This charging language is subject to the proviso that "the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just." *Id.*

Guardianships are equitable creations of the courts and it is the Washington Supreme Court that holds the authority to regulate the certification of professional guardians. Petersen, 180 Wn.2d at 781-82. It has done so in GR 23, establishing the framework and delegating some regulatory and

rulemaking tasks to the Board. *Id.* at 782. Relevant here, the Supreme Court has established the requirements that individuals and agencies must meet to apply to serve as CPGs or CPGAs. GR 23(d). Although the Board processes applications for certification and makes recommendations to the Supreme Court, it is ultimately the court that orders certification. GR 23(c)(2)(i), (v).

The Supreme Court's requirements for an agency wishing to be certified as a CPGA include a requirement that its officers and directors all meet the qualifications of RCW 11.88.020 for guardians, that it have two designated CPGs, and that it provide proof of its financial responsibility. GR 23(d)(2), (5). No requirement limits who can own the capital stock of a CPGA and the rule does not identify any ramification to an agency if one of its CPGs is suspended, other than the requirement that it have two CPGs in place. Board DR 706.3 provides that "[i]f a change in circumstances results in an agency having only one designated guardian, the agency shall notify the Board within five (5) calendar days of the change in circumstances" and "shall have sixty (60) calendar days from the date the agency is no longer in compliance with GR 23 to add a designated guardian to the agency."

The fact that the Supreme Court has not required that the capital stock of a CPGA be owned

by only CPGs in good standing makes sense. CPGs may have a significant capital investment in a CPGA through which they operate, and may have coworkers who depend on the business's continued operation for their livelihood. Even if a CPG facing suspension does not have a large sunk investment in a CPGA's assets, she may be individually responsible, as a guarantor or otherwise, for ongoing real estate, equipment, and loan obligations. Obviously, she must scrupulously abide by an order suspending her, and the suspension alone will likely have significant financial ramifications. But nothing in GR 23 suggests that in addition to suffering the suspension, a CPG should lose her entire investment in a CPGA or that the CPG's coworkers should all be thrown out of work.

The Supreme Court's order in Ms. Petersen's case provides only that "Lori A. Petersen is suspended for a period of one year," that "[f]ollowing the end of the one year suspension, she shall be monitored for a 24 month period," that "[t]he monitoring shall be at Lori A. Petersen's expense," and that "Lori A. Petersen shall pay costs to the Board in the amount of $7,500.00." CP at 1881. It does not state or imply that anyone affiliated with Ms. Petersen must suffer suspension with her.

Evidence presented in future proceedings may or may not support the guardian replacement

procedure followed by the court and an assessment of fees against Hallmark or Ms. Petersen. We do not prejudge that issue, but want to be clear that our commissioner's decision that the guardian replacement decisions were not before us on appeal does not foreclose Hallmark's challenge to fee assessments based on what it claims was an unnecessary guardian removal procedure.

We reverse the money judgments only, and remand for further proceedings consistent with this opinion. We retain jurisdiction to avoid the administrative inconvenience to the courts and the parties that would be presented should the conduct of further hearings result in over 120 new appeals.

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

Siddoway, J.

WE CONCUR:
Lawrence-Berrey, C.J., Fearing, J.

Oral Ruling by Trial Court on Motion for Reconsideration of Order Appointing Special Master

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

Cause No. 4-09717-1

In the Guardianship of MARIA DELORENZO, et al.

COPY

VERBATIM REPORT OF PROCEEDINGS
HONORABLE ELLEN KALAMA CLARK

MAY 18, 2015; 3:31 P.M.

APPEARANCES:

FOR THE PETITIONER(S): STEVEN J. KINN Spokane County Prosecutor's Office 1116 W. Broadway Avenue Spokane, Washington 99260

FOR THE RESPONDENT(S): JOHN PIERCE Law Office of John Pierce, PS 505 W. Riverside Avenue Suite 518 Spokane, Washington 99201

Tammey L. McMaster, CCR No. 2751
Official Court Reporter
1116 W. Broadway Avenue
Spokane, Washington 99260

(MAY 18, 2015.)

(AFTERNOON SESSION.)

THE COURT: Folks, first of all, thank you for coming back this afternoon. It did give me enough time to look over things I have to think about and was able to write out some remarks so I think we're ready to proceed this afternoon.

Now, as Mr. Pierce mentioned in his argument last week the Court's primary responsibility in these guardianship cases, the Court's duty is to protect the incapacitated person. If there are any questions about the abilities of a guardian or a standby guardian, the Court not only can but must act to be sure those questions are answered and must act swiftly and proactively to be sure no harm comes to the IPs or to their estates. This authority comes from RCW 11.88.120(1), states: "The Court may for other good reason, replace the guardian or limited guardian." And says in subparagraph four, "The Court may grant such relief as it deems just and in the best interest of the incapacitated person." So there's where we start.

Now, before me is a motion for reconsideration of an order signed by me on April 7th of 2015. Let's be very clear about what this order does because it does only two things; it appoints retired Judge Paul Bastine as special master and orders a $100,000

surety bond to be paid by Lori Petersen and/or Hallmark, Castlemark, Eagle. I will note for the record when I refer to Hallmark in this decision, I am including Castlemark and Eagle as a group. The order that I signed does not remove Hallmark from any case nor does it order the appointment of any guardian in any case.

I have reviewed the materials submitted by Mr. Pierce and Mr. Kinn. There are some legal issues appropriately raised regarding what this Court actually ordered.

Mr. Pierce asks for clarification on a number of other matters, at least some of which seem to be more of a discovery request regarding how this order came about rather than reconsideration of what was actually ordered. I am not here as a fact witness and I am uncomfortable with being put in that position. I will answer what I can: The order was presented to me ex parte without a court reporter present so there is no transcript. It was presented to me because it was not an order that would have been brought to the court commissioner, even though they handle most of our guardianship hearings, and because Judge O'Connor was out on medical leave. I am part of the court's Guardianship Registry Committee and the Guardianship Monitoring Program Committee, and was aware of the need for action to be taken upon Ms. Petersen's suspension.

To answer some Mr. Pierce's other questions, any further legal issues regarding this order should be brought to me. Any issues regarding individual guardianship cases should by set on the guardianship docket with the court commissioners. If there are other issues that arise regarding all of these matters globally, I would be available to hear those. Mr. Pierce also asked if the need arises to serve additional documents who should those be served on as far as Court goes. With regards to any matters that I hear I think at this time it's best for those to be served upon Mr. Kinn.

MR. KINN: I'm sorry. On whom, Your Honor?

THE COURT: On you.

MR. KINN: All right. Thank you.

THE COURT: Now, there was also a request in the original memorandum for consolidation under CR 42. That wasn't really addressed in argument. For what it's worth, that is granted as far as this motion goes. Once this motion is resolved and the appropriate orders are entered, I don't believe there's any further need for consolidation since the cases are appropriately being heard individually with regard to appointment of guardians or standby guardian. Now, as far as the orders to entered regarding this motion, Counsel, here's what I'm going to suggest and allow this and I hope you all agree with it. I will allow the

order from this decision to be filed in one file, specifically Cause No. 4-09727-1, guardianship of Maria Delorenzo. That is the first case on the list the clerk has, the one I referred to at the time of the motion as Exhibit 1. Now, what I'm envisioning is that a statement could be filed in each of the other files simply indicating that the order filed on such and such a date in the Delorenzo case also applies in subject file. I think that's how the clerk's office is handling some of matters they have. If anybody has a better idea I would love to hear it.

So getting back to the issue with regard to appointment of a special master. This Court was required to take action quickly in 124 cases, including the appointment of a GAL in each case and setting hearing dates, clearly a huge administrative task. In some those cases there was a need for simple ministerial duties such as moving a hearing date if someone was unavailable or reassigning a GAL if there was a conflict of interest. There was also the need for some investigation into the appropriateness of the successor guardians, with recommendations to be made to the Court. Appointment of special master is appropriate in those cases.

As to the due process issues, again, this order merely appoints a special master to oversee the process of review. No dispositive issues were determined. Hallmark was given notice of the order

and an opportunity to be heard, which they have exercised by the filing of this motion. Now, Mr. Kinn referred order as the first step and Mr. Pierce asked what then is the next step. That answer is pretty simple, the next step is consideration of each case individually based upon the recommendations of the GALs and the special master.

Now, with regard to what Hallmark has termed an appearance of fairness question, these are issues due to Ms. Petersen's suspension and prior lack of information from Hallmark, had to be raised and addressed. Ms. Petersen wasn't going to ask those questions and the IPs probably wouldn't know if they should ask those questions. Who else would or could? The Court could not statutorily or ethically simply stand by and let the matters proceed.

Now, I also want to point out as to Mr. Kinn's objection regarding the timeliness of the hearing of the motion, I think the record needs to be clear. I received the motion on April 17th. I was out of the office for about a week after that and my calendar on Fridays is pretty full. On May 4, my JA set a hearing for May 15. The delay was due to my absence and needing to find time in my schedule. It was not the fault of Mr. Pierce or his clients at all.

Now, the order does appoint Judge Bastine as special master for all cases involving Lori Petersen

as CPG or standby guardian, Castlemark Guardianship and Trusts, Hallmark Care Services and Eagle Guardianship. Mr. Pierce correctly notes that the Supreme Court suspension order of the March 19, 2015, suspends only Ms. Petersen. Hallmark is objecting to the Court reviewing the need to take any action involving the cases in which Hallmark or its affiliates are guardian or standby guardians, and for refusing to allow Ms. Petersen to transfer cases to Hallmark.

The record I was given clearly shows Ms. Petersen served in many capacities at Hallmark. Attachment 2 to Ms. Kemmerer's declaration is a declaration from Terri Stein, then a part of Hallmark. The declaration is dated November 4, 2014, filed in Cause No. 4-10617-4. It discuss Ms. Petersen's role as a consultant to assist in the transfer of the business to new management, as a bookkeeper, as an office manager, a "decision-maker" and as a CPG. Now, correspondence from Judge O'Connor and Commissioner Anderson indicate that Superior Court has had questions about Ms. Petersen's role or involvement and association with Hallmark. Apparently, according to the letters submitted between Judge Lawler and Mr. Pierce, the CPG Board also has similar questions. Those have not been answered.

Ms. Petersen is not now listed as a director or officer of the agency but there are concerns about ownership or other positions within the agency. This is important and necessary information because clearly the CPG Board and Supreme Court did not want Ms. Petersen, who has been found to have committed professional misconduct, involved in any guardianship actions.

Mr. Pierce at argument noted there had been a change in directors and officers of the agency and said there was quote, no possibility of outside influence in the matter, closed quote. That's the heart of the issue in these cases completely. While Ms. Petersen may no longer be employed as a CPG with Hallmark or serving as an officer or director, there is a very valid concern based upon past history and lack of full disclosure, that she continues to be connected in some other way and still has access to and involvement with these vulnerable IPs. Having not received, even to this day, some positive affirmation from Hallmark that Ms. Petersen is no longer involved in any way or benefiting financially at all from any guardianship matters, this Court is not inclined to allow those agencies to be considered as guardian or standby guardian in these matters.

Now, there have been on file here additional complaints noted concerning Ms. Petersen and Hallmark but this Court's action is not the case of

disciplining Hallmark at all. The ultimate decision to appoint a certain person or agency as guardian is within the discretion of the Court. This Court is choosing, at this time, under these facts and circumstances, in this county to review whether Hallmark should remain as a guardian in the cases before it. The portion of the order appointing the special master will not be changed.

Now, with regard to the $100,000 bond, I think counsel is correct. There is no legal authority for that at this time. So that part of the order will be omitted. The issue of errors and omissions insurance was not part of my order so it's not part of this motion, but I do appreciate Mr. Pierce offering to obtain that information for Mr. Kinn.

Counsel, I'd like you to prepare an order consistent with this decision. I would take a general order that simply denies reconsideration of the appointment of the special master but does grant the request to eliminate need for posting a bond and otherwise refers to this oral decision. If you prefer a more formal order, please prepare that as soon as possible and send it to me for signature and filing. I've told our court reporter you'd probably be asking for a transcript so she is aware if you need that needs to be done.

Counsel, that's where we are. Mr. Pierce, is this your motion do you have any questions about anything we've said?

MR. PIERCE: No, Your Honor. Thank you very much for your consideration.

THE COURT: You're very welcome.

Mr. Kinn, any questions?

MR. KINN: No questions, Judge, thanks.

THE COURT: All right. Then you all know how to contact Tammey if you need to, otherwise I will look forward to the order.

Thank you all very much.

MR. PIERCE: Thank you, Your Honor.

(Proceedings Concluded.)

CERTIFICATE

I, TAMMEY L. MCMASTER, do hereby certify: That I am an Official Court Reporter for Spokane County Superior Court, sitting in Department No. 12, at Spokane, Washington; That the foregoing proceedings were taken on the date and time as shown on the cover page hereto; That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 22nd day of July, 2015.
Tammey McMaster, CCR No. 2751
Official Court Reporter

Ex Parte Order Appointing Special Master, Spokane County Superior Court

Superior Court of Washington, County of Spokane

IN RE THE GUARDIANSHIP OF
See Attached List
Incapacitated Persons

CASE NO. See Attached List

GENERAL ORDER APPOINTING SPECIAL MASTER
(CLERK'S ACTION REQUIRED)
(filed April 07, 2015)

[Attached list of 126 cases redacted]

I. BASIS

Due to the one-year suspension of Certified Professional Guardian, Lori Petersen, CPG #9713, by the Washington State Supreme Court under cause 91244-1, effective March 20,2015, it is necessary that the court appoint a special master to oversee the transition to and appointment of successor guardians for incapacitated persons serviced by the said Lori Petersen and the agencies of which she is a designated CPG or standby guardian.

II. ORDER

Paul Bastine is found or known by the Court to be a suitable disinterested person with the requisite knowledge, training or expertise, who is hereby appointed as Special Master for all cases involving Lori Petersen, as CPG or standby guardian, Castlemark Guardianship & Trusts, Hallmark Care Services and Eagle Guardianship. The address and phone of the Special Master are: 806 S. Raymond Rd. Spokane Valley, WA 99206; (509) 844-2954.

The Court orders at the conclusion of the Special Master's duties fees will be allocated at the direction of the court. In the meantime, Empire Care & Guardianship, Lori Petersen and/or the Castlemark/Eagle/Hallmark Agencies are to place $100,000 into the registry of the court or provide a $100,000 surety bond approved by the court to secure payment of such fees.

The Special Master shall have the following duties:

> (a) The Special Master shall oversee the appointment, administration and management of all Guardians Ad Litems appointed to investigate appropriate successor guardians to Lori Petersen and the agencies of which she designated as CPG.

(b) The Special Master shall investigate the potential successor certified professional guardians and their ability to absorb new clients.

(c) The Special Master shall report back to the Court with recommendations as to the appropriateness of the successor certified professional guardians based on the totality of circumstances.

DATED AND SIGNED IN OPEN COURT THIS 7th OF April, 2015.

Ellen Kalama Clark
Judge

Ex Parte Letter from J. O'Connor, Spokane County Superior Court.

Superior Court of the State of Washington
for the County of Spokane
Department No.4
Kathleen M. O'Connor
Judge

April 7, 2015

Dear Certified Professional Guardians,

The Court rarely has the opportunity to express gratitude for your tireless work for the County's most vulnerable population. The Court is aware of the long hours and in some cases non-payment for your time. The Court simply couldn't do it without you. Due to the demanding nature of many of these extraordinary cases locating a guardian is extremely difficult.

In the upcoming weeks, Guardians ad Litem will be contacting you to take on several cases due to the recent suspension of CPG Lori Petersen, effective April 28, 2015. The Court asks you to continue to go above and beyond and accept these appointments.

Yours truly,
Kathleen M. O'Connor
Superior Court Judge

Ex Parte Letter from J. O'Connor, Spokane County Superior Court.

Superior Court of the State of Washington
for the County of Spokane
Department No.4
Kathleen M. O'Connor
Judge

April 7, 2015

Dear Guardians ad Litem:

As you know, the Washington State Supreme Court suspended CPG Lori Petersen effective April 28, 2015. This action affects 125 cases in Spokane County.

The court recognizes the good work you do in the guardianship process and the difficulty in locating guardians or successor guardians in some cases. The Spokane County hourly rate you receive to do the work necessary to help protect this vulnerable population is low. The court also recognizes the role of the CPG with respect to our vulnerable citizens and have reached out to them in a separate email which is attached.

This pending suspension requires immediate action from all those involved in our guardianship community. The court will appoint a Special Master

to oversee the transition of the 125 cases currently assigned to Ms. Petersen and/or agencies with which she is involved.

The court will assign Guardians ad Litem to each case to investigate the appointment of a guardian, successor guardian and/or standby guardian. Of the 125 cases seven are already assigned to Mr. William Dodge to investigate specific complaints and those cases need for guardian(s). Currently, there are 34 persons on our Guardianship Registry. Excluding Mr. Dodge and Mr. James Woodard who is Ms. Petersen's prior attorney, there are 32 Guardians Ad Litem for 118 cases or 3-4 cases per person.

The court knows all of you are busy and may also have pending cases. However, time is of the essence. The court believes the vast majority of you would step up to help our vulnerable citizens and Ms. Ana Kemmerer will assign a group of cases to each of you so the work can begin. If you have a conflict in a particular case please file a motion and the Special Master will review it. If the Special Master concurs, Ms. Kemmerer will arrange a trade between two Guardians ad Litem to eliminate the conflict and keep the caseload balanced.

Ms. Kemmerer cannot review each case to determine if it is county or private pay. At a

minimum your reasonable fees will be covered at the county pay rate. Because generally the only issue in these cases will be appointment of a successor guardian and/or standby guardian, the maximum fee will be $500.00 without further court approval. In addition, for all of those who actively participate in this project the court will waive your fee for the 2015 Mandatory Guardian ad Litem Training.

Yours truly,
Kathleen M. O'Connor
Superior Court Judge

Ex Parte Letter from J. O'Connor, Spokane County Superior Court.

Superior Court of the State of Washington
for the County of Spokane
Department No.4
Kathleen M. O'Connor
Judge

April 7, 2015

Mr. John Pierce
[address redacted]

Re: Lori Petersen Suspension

Dear Mr. Pierce:

We have received your letter regarding succession planning for Ms. Petersen's guardianship cases. We disagree that only the Empire cases and those specifically naming Ms. Petersen individually are impacted by her suspension. The appointment of successor guardians is at issue in all of her cases.

Specifically, Hallmark/Castlemark/Eagle's ownership is in question. Despite inquiries by the Court on multiple occasions, ownership has always been stated as "confidential." The choice to leave this inquiry unanswered puts Ms. Petersen's association with any of those agencies into question. The Court

will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella.

A special master shall be appointed to oversee the transition process and individual guardians ad litem will determine successor guardians for these incapacitated persons. The Court will require $100,000 surety bond to secure payment of fees. Until such time as a new guardian is appointed, standby guardians are authorized to make emergency decisions for all incapacitated persons impacted by the Supreme Court's ruling.

Yours truly,
Kathleen M. O'Connor
Superior Court Judge

Supreme Court of the State of Washington
Grant, in part, Stay of Suspension

The Supreme Court State of Washington

March 26, 2015

SENT BY E-MAIL ONLY

[Recipients Redacted]

Re: Counsel:

On March 18, 2015. this Court received the "MOTION FOR IMMEDIATE STAY OF SUSPENSION" (motion) filed by counsel. Deborah J. Jameson, on behalf of the Respondent, Lori A. Petersen. After conferring with the Chief Justice, Barbara Madsen, it has been determined that I should enter the following ruling regarding the motion:

> "The "MOTION FOR IMMEDIATE STAY OF SUSPENSION" is granted only in part. The suspension imposed by this Court's ORDER dated March 13, 2015, is temporarily stayed to allow the Respondent, Lori A. Petersen, to work with the Certified Professional Guardian Board to ensure proper representation of her clients and the transition of the representation of her clients to successor

certified professional guardians. This Ruling shall only authorize the representation of those clients that she represented at the time the suspension went into effect on March 20,2015. The stay of the suspension will last only through April 27, 2015, with the suspension again becoming effective on April 28, 2015, and remaining in effect through March 20, 2016."

Sincerely,

Ronald R. Carpenter,
Court Clerk

Ex Parte Letter from Comm'r Anderson, Spokane County Superior Court

Superior Court of the State of Washington
for the County of Spokane

Rachelle E. Anderson
Superior Court Commissioner

March 17, 2015

Lori Petersen Hallmark Care Services Guardianship [address redacted]	Lori Petersen Empire Care [address redacted]

Dear Ms. Petersen:

We are in receipt of the Order from the Supreme Court of Washington dated March 13, 2015 indicating that effective this Friday, March 20, 2015, you are suspended for a period of one year from practicing in the field of guardianships. Currently you have a significant caseload of clients, and you must inform the Court, by way of a written response to this letter, what your planning for your cases effective March 20, 2015. This letter with a specific plan as to each individual you represent must be received by me no later than 4:00 pm on Thursday March 19, 2015.

You have appeared in court many times during the pendency of this proceeding with the Certified Professional Guardian Board and the appeal to the Supreme Court, and each time you had indicated to this court that you were doing concurrent planning with regard to your cases in case your appeal was unsuccessful. I trust that although time is short, you have a plan in place. It is imperative to the well-being of all those individuals involved that you respond with a specific plan immediately.

Sincerely,
Rachelle E. Anderson,
Spokane County Superior Court Commissioner

Supreme Court of the State of Washington
Ruling of Suspension of Guardian

The Supreme Court of Washington

Supreme Court No. 91244-1

In Re: Lori A. Petersen, CPG No. 9713.

ORDER

This Court, by opinion dated July 3, 2014, in *DISCIPLINE OF PETERSEN*, 180 Wn.2d 768, remanded this matter back to the Certified Professional Guardian Board so it could determine whether the sanction it asked the Court to impose against Lori A. Petersen promotes consistency. After the matter was remanded, the Board additionally considered the matter at its regularly-scheduled meeting on January 12,2015, and adopted "FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS *Disciplinary Regulation 513*" (Findings).

On February 4, 2015, the Certified Professional Guardian Board's (Board) filed with this Court a "PETITION FOR ORDER OF SUSPENSION" (Petition), dated January 28, 2015, in the matter of Lori A. Petersen. Pursuant to the Disciplinary Regulation 512.4.4, the Board petitioned the Court: (1) to affirm the Board's sanction against

Lori A. Petersen of a one year suspension as proportional; (2) to affirm the Board's recommendations for the remedy of monitoring for 24 months following the end of the suspension at Lori A. Petersen's expense; and (3) to affirm the Board's recommendation that Lori A. Petersen pay costs to the Board in the amount of $7,500.00. The Court reviewed both the Petition and the Findings, and after further consideration of the matter, the Court determined unanimously that the following order should be entered. Now, therefore, it is hereby ORDERED:

That the Board's recommendations to the Supreme Court are affirmed and adopted. Therefore, Lori A. Petersen is suspended for a period of one year. The effective date of suspension is 7 days from the date of this order. Following the end of the one year suspension, she shall be monitored for a 24 month period. The monitoring shall be at Lori A. Petersen's expense. Lori A. Petersen shall pay costs to the Board in the amount of $7,500.00.

DATED at Olympia, Washington, this 13th day of March, 2015.

For the Court
s/ Madsen, C.J./
CHIEF JUSTICE

RCW 11.88.120 Modification or termination of guardianship—Procedure.

(1)(a) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(b) …

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the

guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards

issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver is punishable as contempt of court.

(4) The Administrative Office of the Courts must develop and prepare, in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant.

Declaration of Judge Kathleen M. O'Connor's

Court of Appeals, Division III

Of the State of Washington

No. 33356-6

In Re The Guardianship of Judith Diane Holcomb, et al.

Incapacitated Persons

Declaration of Kathleen M. O'Connor

I, KATHLEEN M. O'CONNOR, declare that:

1. I am currently a Spokane County Superior Court Judge and have served in that capacity since 1988. Prior to being elected to the Superior Court I served as a Superior Court Commissioner for nine (9) years.

2. As part of my duties as a Superior Court Judge, I serve as the Chair of the Superior Court Guardianship Monitoring Committee which in turn is charged with oversight of the Superior Court Monitoring Program.

3. In Washington State, Guardianships, although governed by statute, are nevertheless equitable

creations of the courts and it is the court that retains ultimate responsibility for protecting incapacitated persons and their estates. The Guardianship Monitoring Committee is a program within the Superior Court Administrator's Office that facilitates the furtherance of the Court's responsibility to each incapacitated person who is under the protection of a guardianship.

4.In my capacity as chair of the Guardianship Monitoring Program Committee I was aware that Appellant Lori Petersen's License to practice as a Certified Professional Guardian was suspended by the Washington Supreme Court effective April 27,2015 for a period of one year.

5. Ms. Petersen was the appointed primary guardian in 31 Spokane County Guardianships in Spokane County in April, 2015. In another 93 cases she was appointed as the standby guardian where the primary guardian was listed as a variety of guardianship agencies owned by Hallmark Care Services where she also worked as a bookkeeper.

6. In light of Ms. Petersen's suspension, immediate action was necessary to replace her as the primary or standby guardian. The vast majority of the Guardianships that Hallmark/Petersen were appointed as Guardians at the time of Ms. Petersen's suspension involve incapacitated adults who rely on

subsistence level public assistance as their primary or sole source of income. The absence of capable guardians for even a limited period for any of these incapacitated persons could result in catastrophic consequences in their quality of life and to the benefits to which they are entitled.

7. At my request, the Honorable Ellen Clark of the Superior Court issued an Order Appointing Special Master to facilitate the appointment of Guardian Ad Litems who would independently review each guardianship and submit recommendations for successor guardians if required.

8. Appellants in this action, Lori Petersen and Hallmark Care Service, moved for reconsideration of the "Order Appointing Special Master".

9. After being advised of the motion for reconsideration, I requested the assistance of the Office of the Prosecuting Attorney to reply to the motion for reconsideration pursuant to their duty to advise the Superior Court under RCW 36.27.020 (3). See Neal v. Wallace, 15 Wn. App. 506; 550 P.2d 539 (1976). With the approval of Superior Court Presiding Judge Salvatore Cozza, Deputy Prosecuting Attorney Steven Kinn was assigned to respond to the motion and I was designated as the contact to advise and consult on the legal issues surrounding the motion for reconsideration. At the

same time it was agreed that I would screen myself from the proceedings and not discuss the pending motion for reconsideration with Judge Clark. With the exception of a bond requirement, the motion for reconsideration was denied by Judge Clark and the process to appoint successor guardians proceeded.

10. Since Ms. Petersen's suspension, GALs were appointed in all cases where Ms. Petersen was either the primary or a standby Guardian for Hallmark Care Services. Hearings have been held by other judicial officers with notice to Hallmark and Ms. Petersen and successor guardians appointed.

11. I have been informed of Hallmark/Petersen's appeal of the order appointing special master as well as the final judgments issued assessing GAL fees to Hallmark as a result of the process to appoint successor guardians.

12. The real parties in this appeal are the incapacitated persons who now have the necessary oversight and stability of newly appointed successor guardians appointed by the Superior Court. That oversight and stability was jeopardized by the suspension of Lori Petersen as a Certified Professional Guardian.

13. The vast majority of the incapacitated persons in the guardianships currently on appeal are indigent.

They lack the resources to obtain legal representation on their own.

14. At the same time, a ruling by the Court of Appeals on the process by which the Superior Court ordered successor guardians to manage this large number of guardianships in the wake of Ms. Petersen's suspension has the potential for impacting the Court's ability to effectively provide guardianship services for vulnerable adults.

15. No one legal representative of any one guardianship can adequately represent the interests of the collective of incapacitated persons who will be impacted by the large number of guardianship matters currently on appeal.

16. Therefore, I respectfully request that the Court of Appeals permit Deputy Prosecuting Attorney Steven Kinn and the Spokane County Guardianship Monitoring Program to intervene in a special amicus curiae status to file all necessary affirmative and responsive pleadings pursuant to RAP 1.2 (a),

RAP 8.3 and RAP 10.6.

17. All the guardianship appeals appear to have common legal issues and the Court of Appeals has consolidated all 124 cases for review.

18. The appeal also appears to assign error to the process by which appellants were removed as

guardians from the cases. As such, permitting Mr. Kinn and the Superior Court Guardianship Monitoring Program to enter under special amicus status will "promote Justice and facilitate the decision of the cases on the merits" under RAP 1.2(a). The Superior Court's input on the facts and legal authority for its process in appointing successor guardians in this large number of guardianships is essential to a complete resolution of the multiple cases on appeal.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

June 25 2016 (Date) Spokane, WA (Place) s/Kathleen O'Connor/ (Signature)

Declaration of Anastasia Fortson-Kemmerer

Court of Appeals, Division III

Of The State of Washington

No. 33356-6

In Re the Guardianship of Judith Diane Holcomb, et al.

Incapacitated Persons

Declaration of Anastasia Fortson-Kemmerer

I, ANASTASIA FORTSON-KEMMERER, declares that:

1. I have been employed since 2008 as Guardianship Monitoring Program Coordinator within Spokane County Court Administrator's Office.

2. That my duties include: Supervising the management of court files for research, audits, visits and court commissioner reviews. Assisting professional and nonprofessional guardians and the public regarding paperwork and questions. Managing and directing daily operations of the program. Monitoring complaints regarding the

administration of the guardianship by the Certified Professional Guardians (CPGs). Resolving complaints or problems from professional and non-professional guardians. Attending quarterly Guardianship Monitoring meetings.

3. Most of the attachments I reference in this declaration are actual court documents from the files of Guardianships in Spokane County from official proceedings in those matters. The remainder are documents maintained by the Spokane County Court Administrator's Office. As to those documents, I am qualified in my capacity as Guardianship Monitoring Coordinator to testify that they are all documents made in the regular course of business of the Spokane County Superior Court and were prepared at or near the event that gave rise to the document's preparation.

4. Sometime around April 27, 2015, the Spokane County Superior Court received the final order of the Washington State Supreme Court suspending Lori Petersen as a Certified Professional Guardian for one year. The Supreme Court also directed Ms. Petersen to cooperate with the Certified Professional Guardianship Board (CPGB) to develop a transition plan to provide for successor guardians due to her suspension as a Certified Professional Guardian (CPG).CPBG's subsequent letter to Lori Petersen and her Attorney's Response to that letter are attached

(Attachments 1 and 2). Since Ms. Petersen and Hallmark's attorney were proposing simply replacing Ms. Petersen with Hallmark as guardians during Ms. Petersen's suspension, CPBG wanted information on the ownership/organization and resources of Hallmark. Ms. Petersen was unresponsive to this request.

5. At the time of the notice of final suspension, Ms. Petersen was appointed as a court appointed Guardian in 32 cases. She was designated as the designated standby guardian by Hallmark Guardianship Agency, which also does business under the names "Castlemark" and "Eagle" guardianships in all of their guardianships. (See Attachment "3")

6. On March 17, 2015, Spokane County Superior Court Commissioner Rachelle Anderson sent a letter to Lori Peterson. Commissioner Anderson additionally requested that given the Supreme Court's Order of Suspension, what plan was in place for a transition to new Guardianships. (Attachment "4") Her attorney and the attorney for Hallmark replied on March 18, 2015 that the transition plan was to substitute Hallmark for Petersen during her suspension. (Attachment 5)

7. Judge Kathleen O'Connor replied to Petersen's Attorney's letter proposing that Hallmark simply

substitute in for Petersen as appointed guardian. In the letter she indicated that a simple substitution of Hallmark for Petersen was unacceptable. (Attachment 6)

8. Instead of simply permitting the entry of agreed orders substituting Hallmark for MS Petersen as the CPG, Superior Court Ellen Clarke issued an order appointing a special master to set in place a process to review each guardianship with the assistance of guardian ad litems. Hallmark's guardianships were review along with Petersen's because of Petersen's association with Hallmark and the numerous complaints concerning its performance in numerous guardianships in the year prior to Ms. Petersen's suspension.

9. In 2014-2015, the Spokane County Guardianship Monitoring Program received numerous Complaints against Guardianships involving Lori Peterson, Hallmark Care Service, Eagle Guardianship Service, Castlemark and Empire Care and Guardianship.

10. Monitoring Hallmark's compliance with their Guardianship responsibilities was chaotic given the extreme turnover of CPG personnel at Hallmark in 2014. Indeed, Hallmark has consistently failed to place its designation of primary CPG in the court file in its appointed Guardianships in a timely manner as required by CR23.

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

08/5/2015 (Date) Spokane, WA(Place) s/Anastasia Kemmerer/ (Signature)