

**No. 20-593**

---

IN THE  
**Supreme Court of the United  
States**

---

HALLMARK CARE SERVICES, INC. ET AL.,  
*Petitioners*,  
v.

SUPERIOR COURT OF WASHINGTON FOR THE  
COUNTY OF SPOKANE, ET AL.,  
*Respondents*.

---

**On Petition for Writ of Certiorari to  
the United States Court of Appeals  
for the Ninth Circuit**

---

**RESPONDENTS' BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

---

LUKE W. O'BANNAN  
COUNSEL OF RECORD  
KIRKPATRICK & STARTZEL, P.S.  
108 NORTH WASHINGTON ST., STE. 201  
SPOKANE, WASHINGTON 99201  
LOBANNAN@KS-LAWYERS.COM  
ATTORNEY FOR RESPONDENTS

---

---

ii.

**QUESTION PRESENTED**

Whether the Court should review a decision that created no circuit split, decided no important federal question, and correctly applied judicial immunity.

**TABLE OF CONTENTS**

	Page
QUESTION PRESENTED .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES.....	iv
INTRODUCTION .....	1
STATEMENT OF THE CASE .....	2
ARGUMENT .....	10
I. Plaintiffs attended and raised objections in each hearing where Commissioners appointing new guardians for incapacitated persons. There was no Star Chamber, “drum-head” hearing, or “secret trial.” .....	11
II. Plaintiffs’ claims arising from alleged judicial misconduct are all barred by judicial immunity .....	12
CONCLUSION.....	14

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Hallmark Care Servs., Inc. v. Superior Court of Washington for Spokane Cty.</i> 809 F. App'x 424 (9th Cir. 2020) .....	10
<i>Hallmark Care Servs., Inc. v. Superior Court of Washington for Spokane Cty.</i> 809 F. App'x 435 (9th Cir. 2020). .....	10
<i>Hallmark Care Servs., Inc. v. Superior Court of Washington</i> 140 S. Ct. 122 (2019).....	
<i>In re Castillo</i> , 297 F.3d 940 (9th Cir. 2002),.....	13
<i>In re Disciplinary Proceedings Against Petersen</i> , 180 Wash. 2d 768, 329 P.3d 853 (2014). ....	2,11
<i>Matter of Guardianship of Holcomb</i> , 5 Wash. App. 2d 1044 (2019).....	2,7,8
<i>Matter of Guardianship of Holcomb</i> , 193 Wash. 2d 1002, 438 P.3d 131 (2019) ....	2,9
<i>Mullis v. U.S. Bankr. Court for Dist. of Nevada</i> , 828 F.2d 1385 (9th Cir. 1987). .....	14

## TABLE OF AUTHORITIES—Continued

	Page
<b>STATUTES</b>	
Wash. Rev. Code ch. 11.88 .....	3
Wash. Rev. Code § 11.88.008. .....	3
Wash. Rev. Code § 11.88.030 .....	3
 <b>JUDICIAL RULES</b>	
Wash. General Rule 23(d)(2). .....	4
Wash. Super. Ct. Civ. R. 54(f)(2) .....	7

---

---

IN THE  
**Supreme Court of the United States**

---

HALLMARK CARE SERVICES, INC. ET AL.,  
*Petitioners,*  
v.

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF SPOKANE, ET  
AL.,  
*Respondents.*

---

**On Petition for Writ of Certiorari to  
the United States Court of Appeals  
for the Ninth Circuit**

---

**RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI**

---

**INTRODUCTION**

Plaintiffs request review of this “sister case” to another action subject to a currently filed petition for writ of certiorari. Both legal actions stem from discipline of Plaintiff Lori Petersen by the Certified Professional Guardian Board and the appointment of replacement guardians for 124 incapacitated persons. This Court previously declined review of the underlying matter, in which the Washington State

Court of Appeals affirmed appointment of guardians replacing Plaintiffs. *Matter of Guardianship of Holcomb*, 5 Wash. App. 2d 1044, review denied, 193 Wash. 2d 1002, 438 P.3d 131 (2019), and cert. denied sub nom. *Hallmark Care Servs., Inc. v. Superior Court of Washington*, 140 S. Ct. 122, 205 L. Ed. 2d 41 (2019).

In both cases that Plaintiffs request review, their claims were dismissed on summary judgment on the grounds of judicial immunity. Defendants submit the following counterstatement as the most efficient method for bringing misstatements to the attention of the Court.<sup>1</sup>

### **STATEMENT OF THE CASE**

In December of 2009, Washington’s Certified Professional Guardian Board (“Board”) began receiving complaints about Plaintiff Lori Petersen’s treatment of incapacitated persons in her care. *In re Disciplinary Proceedings Against Petersen*, 180 Wash. 2d 768, 773-74, 329 P.3d 853 (2014). Ms. Petersen was a certified professional guardian who had previously served on the Board including sitting on the Standards

---

<sup>1</sup> A nearly identical Statement of the Case is included in the opposition brief in the sister case. Defendants repeat the contents here for the convenience of the Court during its consideration of the separate petitions.

of Practice Committee (“SOP Committee”). *Id.* A professional guardian is appointed under ch. 11.88 Wash. Rev. Code and acts as the guardian of three or more incapacitated persons but is not a family member of the incapacitated persons. Wash. Rev. Code § 11.88.008. Each guardianship action begins with a petition that alleges an individual is incapacitated and requests the court appoint a guardian. Wash. Rev. Code § 11.88.030. Ms. Petersen worked as a professional guardian and charged fees for carrying out the duties of a court-appointed guardian. *See*, Wash. Rev. Code § 11.88.008.

The SOP Committee investigated the complaints and found Ms. Petersen violated the standards of procedure. The Board suspended Ms. Petersen from practicing as a guardian for one year and, on March 13, 2015, the Washington State Supreme Court upheld Ms. Petersen’s suspension. *In re Disc. of Petersen*, at 779, 792.

At the time of her suspension, Ms. Petersen was guardian of 37 individuals in Spokane County and was the designated certified guardian for Hallmark Care Services d.b.a. Castlemark Guardianship and Trusts d.b.a. Eagle Guardianship (hereafter “Hallmark”). Certified professional guardianship agencies, such as Hallmark, are

required to designate at least two individuals in the agency that are certified professional guardians. Wash. General Rule 23(d)(2).

On March 17, 2015, Spokane County Superior Court Commissioner Anderson sent Ms. Petersen a letter requesting Ms. Petersen provide the court with her plan for transitioning guardianship of the numerous incapacitated people within her care. Ms. Petersen agreed that wards under the care of Empire Care were impacted by her suspension but refused to provide information about Hallmark, Castlemark, and Eagle. On April 7, 2015, Chair of the Spokane Superior Court Guardianship Committee, Judge Kathleen O'Connor, sent counsel for Ms. Petersen and Hallmark a letter indicating dissatisfaction with their failure to cooperate and lack of transparency. Judge O'Connor indicated a special master would be appointed to oversee the transition of guardianships of incapacitated persons within the care of Ms. Petersen or Hallmark.

On April 7, 2015, Judge Ellen Clark ordered appointment of Retired Judge Paul Bastine as special master with the following duties:

- (a) The Special Master shall oversee the appointment, administration and management of all Guardian Ad Litem appointed to investigate

appropriate successor guardians to Lori Petersen and the agencies of which she [is] 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 guardian based on the totality of the circumstances.

Plaintiffs moved for reconsideration of this order, arguing lack of jurisdiction, lack of legal authority, and lack of due process.

A deputy prosecuting attorney with the Spokane County Office of the Prosecuting Attorney responded to the motion at the request of Judge O'Connor, who screened herself from the proceedings. On May 18, 2015, Judge Ellen Clark heard argument on the motion and affirmed the appointment of the special master.

On April 10, 2015, Spokane County Superior Court Commissioner Tony Rugel ordered the appointment of a Guardian Ad Litem ("GAL") in each of the 125 guardianship actions. Each GAL was instructed to review the guardianship file and

recommend appropriate successor guardian. The GALs performed their investigations and provided the court with reports recommending successor guardians for the incapacitated people. Between May 4, 2015, and June 4, 2015, one of the two Spokane County Superior Court Commissioners held a review hearing for each guardianship. The GALs presented their findings and recommendations to the commissioners and the commissioners ordered the appointment of new guardians. Plaintiffs, through counsel, appeared at each hearing and presented or preserved objections to removal as guardian.

Ultimately, Ms. Petersen and Hallmark were removed as guardians of record in each case. The court also imposed guardian ad litem fees on Hallmark. Plaintiffs appealed. *Matter of Guardianship of Holcomb*, 5 Wash. App. 2d 1044 (2018) (unpublished).

Plaintiffs assigned error to “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.” *Id.* Finding “Ms. Petersen and Hallmark were not aggrieved parties with respect to the orders appointing a special

master and removing them as guardians” the Court of Appeals “dismissed the appeal of those categories of orders, leaving the judgments assessing GAL fees as the sole subject matter of this appeal.” *Id.* The Court of Appeals consolidated the cases and issued an unpublished decision reversing the money judgments only, and remanding for further proceedings. *Id.* Although the Court of Appeals ruled that “entry of the money judgments violated both CR 54(f)(2) and Ms. Petersen’s and Hallmark’s right to due process” this conclusion was not supported by any discussion of the constitutional right to due process. *Id.*

Plaintiffs filed an action in federal district court on April 6, 2017, while their state-court appeal remained pending. Plaintiffs generally alleged that Spokane County judges and commissioners violated Plaintiffs’ procedural due process rights by failing to follow court rules and procedures in removing them as guardians. Defendants moved to dismiss the Complaint, arguing that Plaintiffs’ claims were barred by the doctrine of absolute judicial immunity, that Plaintiffs could not demonstrate a constitutionally protected property interest in the continued guardianships, and that Plaintiffs’ claims were precluded by the state court judgment under Full Faith and

Credit and res judicata. Defendants also moved for sanctions against Plaintiffs for filing a frivolous complaint. The district court raised, *sua sponte*, the issue of subject matter jurisdiction under the *Rooker-Feldman* doctrine. The parties were given an opportunity to brief the issue and did so.

The district court then entered an order dismissing Plaintiffs' Complaint and denying Defendants' request for sanctions. The district court based its dismissal on lack of subject matter jurisdiction and further held that Plaintiffs' claims were barred by absolute judicial immunity. The court noted Defendants other arguments for dismissal but determined that it did not need to address them in light of its rulings on *Rooker-Feldman* and judicial immunity. Plaintiffs appealed to the Ninth Circuit the order of dismissal and Defendants cross-appealed on the denial of sanctions.

While that appeal remained pending before the Ninth Circuit, the Washington State Court of Appeals reversed the assessment of guardian ad litem fees against Plaintiffs but did not alter the decision to remove them as guardians. *Matter of Guardianship of Holcomb*, 5 Wash. App. 2d 1044. Plaintiffs unsuccessfully sought review by the Supreme Court of the State of Washington. *Matter of Guardianship of*

*Holcomb*, 193 Wash. 2d 1002, 438 P.3d 131 (2019). Plaintiffs then petitioned for review by this Court, which was likewise denied. *Hallmark Care Servs., Inc. v. Superior Court of Washington*, 140 S. Ct. 122, 205 L. Ed. 2d 41 (2019).

In March, 2019, Plaintiffs filed this new lawsuit against the Defendants with similar allegations to those previously asserted, dismissed, and pending on appeal to the Ninth Circuit. Plaintiffs initially filed the action in state court, but Defendants removed the case to the federal court.

On April 30, Plaintiffs filed a motion for partial summary judgment on their due process claims. Defendants responded to Plaintiffs' motion for partial summary judgment and cross-moved for summary judgment dismissal of all claims. Defendants arguments included that Plaintiffs claims are barred under the doctrine of res judicata, judicial immunity, the statute of limitations, and Washington's claim notice statute.

On June 28, 2019, the district court denied Plaintiffs' motion for partial summary judgment and granted Defendants' cross-motion for summary judgment

dismissal of all claims. The district court found judicial immunity barred Plaintiffs' claims and did not address Defendants' remaining arguments for dismissal.

Plaintiffs appealed the dismissal of this second action to the Ninth Circuit. On June 17, 2020, the Ninth Circuit issued two unpublished decisions affirming both district court decisions dismissing Plaintiffs' claims. *Hallmark Care Servs., Inc. v. Superior Court of Washington for Spokane Cty.*, 809 F. App'x 424 (9th Cir. 2020); *Hallmark Care Servs., Inc. v. Superior Court of Washington for Spokane Cty.*, 809 F. App'x 435 (9th Cir. 2020). Plaintiffs concurrently petition for review of both of these decisions.

## **ARGUMENT**

As is their sister case, none of the considerations for review on certiorari are present in this case. Plaintiffs have not pointed to a circuit split or demonstrated any reason the Ninth Circuit's unpublished order is in conflict with the decision of another United States court of appeals, or a state court of last resort. Instead of addressing the considerations set out by court rule, Plaintiffs allege the misapplication of a rule of law. There is no reason for this Court to extend this litigation.

I. Plaintiffs attended and raised objections in each hearing where Commissioners appointing new guardians for incapacitated persons. There was no Star Chamber, “drumhead” hearing, or “secret trial.”

Plaintiffs characterizations of the guardianship proceedings go beyond unfair. The Spokane County Superior Court did not file an action or initiate claims against Plaintiffs. The crisis created by Ms. Petersen’s suspension resulted in weeks of public hearings wherein new guardians were appointed at the recommendation of various GALs. Plaintiffs attended these open hearings, raised objections, and sought appellate review. The commissioners of the Spokane County Superior Court properly appointed new guardians in accordance with its statutory duties to protect the incapacitated persons.

Under Washington law, the courts “retain[] ultimate responsibility for protecting the ward’s person and estate.” *In re Disciplinary Proceedings Against Petersen*, 180 Wash. 2d 768, 781-82, 239 P.3d 853 (2014) (internal quotation omitted). Guardians are officers of the court, like attorneys. *Id.* at 783. Indeed, Washington courts have “broad plenary power over guardianship practice.” *Id.*

Plaintiffs' implications of nefarious Star Chamber hearings and secret trials are unsupported accusations that needlessly undermine the impartiality of the judiciary. Further, Plaintiffs were able to raise procedural defects on appeal and seek appropriate relief without filing claims directly against Spokane County, the Spokane County Superior Court, Ms. Kemmerer, and Retired Judge Bastine.

II. Plaintiffs' claims arising from alleged judicial misconduct are all barred by judicial immunity.

Plaintiffs argue that the lower courts erred in dismissing their claims because "the defendants in this action were the County of Spokane Washington, and its Superior Court – not the individual judges." *Petition*, at 24. Plaintiffs then argue "it is a worthy endeavor to discuss whether or not immunity should apply to some of the individual actors in this matter." *Petition*, at 24. Plaintiffs raised this argument in their appeal to the Ninth Circuit, arguing "it is important to note that no judges . . . were included as defendants in this appealed action." In the very next sentence, however, Plaintiffs argued that "on remand, certain individual judges and commissioners can be, and should be, joined as defendants in the action."

Plaintiffs do not hide that their allegations are based on the conduct of the judges and commissioners, but attempt to side-step judicial immunity by suing the County and the Superior Court. Plaintiffs provide no authority supporting this attempt to circumvent judicial immunity by suing a municipality and division of the state court. The Plaintiffs' claims were all based on the allegedly improper removal of Plaintiffs as guardians, which was accomplished by order of the court commissioners.

“Judicial or quasi-judicial immunity is not available only to those who adjudicate disputes in an adversarial setting.” *In re Castillo*, 297 F.3d 940, 948 (9th Cir. 2002), as amended (Sept. 6, 2002). “Rather, the immunity is extended in appropriate circumstances to non jurists who perform functions closely associated with the judicial process.” *Id.* Absolute quasi-judicial immunity applies “to court clerks and other non-judicial officers for purely administrative acts—acts which taken out of context would appear ministerial, but when viewed in context are actually a part of the judicial function.” *Id.*, at 952. “Court clerks have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part

of the judicial process.” *Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828 F.2d 1385, 1390 (9th Cir. 1987). All conduct complained of by the Plaintiffs was judicial in nature, entitling Defendants to judicial immunity.

There is no merit to Plaintiffs’ arguments on the misapplication of law by the lower courts.

## **CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted,

LUKE W. O'BANNAN  
COUNSEL OF RECORD<sup>2</sup>  
KIRKPATRICK & STARTZEL, P.S.  
108 NORTH WASHINGTON ST., STE. 201  
SPOKANE, WASHINGTON 99201  
LOBANNAN@KS-LAWYERS.COM  
ATTORNEY FOR RESPONDENTS

---

<sup>2</sup> Mr. O’Bannan’s Application for Admission to the U.S. Supreme Court Bar has been filed and is currently pending with the Clerk of the Court.