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HONORABLE WYMAN YIP
Hearing Date: May 22, 2023
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Matter of:

Case No. 22-4-08326-1 KNT

THE SHARON M. HAROLD
IRREVOCABLE TRUST DATED
NOVEMBER 12, 2004

a Trust.

**TRUSTEE'S RESPONSE TO MOTION
TO STAY PROCEEDING**

I. INTRODUCTION

Petitioner David A. Paice, (Trustee) Trustee of the Sharon M. Harold Irrevocable Trust dated November 12, 2004 (Harold Trust) does not object to a reasonable stay of proceedings in this action, but respectfully requests that the Court issue a stay of no more than 60 days. Because the Trustee is concerned that Respondents (including Mr. Charles Harold) will continue to file additional litigation against Petitioner related to the underlying subject matter of this action in another venue or under another cause number by filing another civil action (such as the Vulnerable Adult Petition filed by Mr. Harold, which was recently dismissed), the Trustee respectfully urges the Court to impose restrictions prohibiting parties to this action from filing any other separate actions that relate to the subject matter of this action. The parties should be required to "standstill" as to all litigation involving the underlying subject matter of this action, including, without limitation, issues related to the following topics: the Harold Trust; the Trustee's trust accountings; the Trustee's actions as a fiduciary; and the Trustee's attorneys' fees. This restriction is reasonable, warranted, and necessary considering that when Commissioner Judson denied the Petition for Protection Order on April 20, 2023, Mr. Harold responded to Commissioner Judson and the

Trustee that “[w]e’ll see you in federal court.” Schilbach Decl., Ex. B at 33:7 (Transcript of Hearing dated April 20, 2023). The Trustee has respectfully submitted a proposed order for the Court’s consideration.

Although the Trustee agrees to the entry of a stay for no more than 60 days (provided the Court also restricts the parties from filing other actions related to the subject matter of this action), the Trustee was compelled to file this Response to correct misstatements of fact in the Respondents’ Motion to Stay Proceeding.

II. COUNTERSTATEMENT OF FACTS

A. After holding a full hearing on the merits and reviewing hundreds of pages of briefing, Commissioner Henry Judson denied Charles Harold’s Petition for Protection Order in full and dismissed the Petition with prejudice.

On April 20, 2023, King County Superior Court Commissioner Henry Judson held a hearing on the merits of Charles Harold’s Petition for Protection Order, which he filed against Mr. Paice on behalf of Sharon M. Harold on March 3, 2023. Declaration of Aleksander R. Schilbach, Ex. A (Denial Order dated May 5, 2023). The parties to the protection-order proceeding filed hundreds of pages of briefing and evidence, and the Court considered all of it. *See* Denial Order ¶ 3.H (listing evidence considered by Commissioner Judson); Docket in *Harold v. Paice*, King Cty. Sup. Ct. No. 23-2-03980-7 KNT.

On April 20, during the hearing on Mr. Harold’s Petition for Protection Order before Commissioner Judson, Respondent Charles Harold (the Petitioner in the civil-protection proceeding) admitted that Mr. Paice did not steal money from the Trust:

Now, do we think David Paice stole money? No. Nobody thinks that. He keeps bringing that up. Nobody thinks that.

Transcript of Hearing at 11:1-2.

At the April 20 hearing, Commissioner Judson, who stated on the record that he reviewed everything submitted to him, made a detailed oral ruling. Transcript of Hearing at 4:20-21, 24:21-28:16 (Commissioner Judson’s oral ruling and findings). Commissioner Judson ruled that a civil-protection order was not appropriate where all of the allegations related to either the Harold Trust;

1 the approval of the Trustee's accountings and fees; or the allegations of breach of the Trustee's
2 fiduciary duties, and where there was already an action pending before this Court on those issues.

3 *Id.* at 24:21-28:16. Commissioner Judson ruled, in part:

4 THE COURT: Thank you. All right. Thank you, both. So what I'm
5 hearing this morning is, essentially all tied to the accounting and the
6 TEDRA case. The fact that Mr. Paice brought a TEDRA petition
7 seeking approval of his accounting is something that, as in his
8 position, he was completely and authorized and entitled to do. That's
9 what the TEDRA statute is there for.

10 And I believe that it would be in, frankly, everyone's best interest --
11 particular Ms. Harold -- to have only one case proceed, rather than
12 one case and a civil protection order proceed. I do not believe that
13 the allegations here rise to the level of personal and financial
14 exploitation, abandonment, abuse, and neglect. Those are the
15 standards for a vulnerable adult protection order.

16 All of the issues that have been raised here and discussed here today
17 -- all of them -- the attorney's fees, the allegations of breach of
18 fiduciary duty, the allegations of commingling funds -- everything -
19 - all of that is something that could be dealt with -- if you wish it to
20 be dealt with -- in the TEDRA -- in the TEDRA case.

21 *Id.* at 24:21-25:15.

22 On May 5, 2023, Commissioner Judson entered the Denial Order. *See* Denial Order at 1.
23 Commissioner Judson's Denial Order provided, in relevant part:

24 The Court finds that the Petitioner's allegations and the evidence
25 offered by the Petitioner fail to meet the standard required for entry
26 of a Vulnerable Adult Protection Order under chapter 7.105 RCW.
27 The Court finds that the Petitioner has failed to prove by a
preponderance of the evidence that Sharon M. Harold, the Protected
Person, has been abandoned, abused, financially exploited, or
neglected or has been threatened with abandonment abuse financial
exploitation or neglect by the Respondent.

The Respondent's filing of the related TEDRA Petition [in] 22-4-
08326-1 does not constitute abandonment, abuse, financial
exploitation or neglect, nor does it constitute abusive litigation under
chapter 7.105 RCW. The objections raised by the Petitioner to
attorney fees paid from the Trust are part of the TEDRA Petition
proceeding and are also before Judge Yip.

Effective immediately upon the entry of this Order, all accounts that
were temporarily frozen and blocked by the Temporary Protection
Order and Hearing Notice dated March 6, 2023 and the Reissuance
of Temporary Protection Order and Notice of Hearing dated March
24, 2023 are unblocked and unfrozen in all respects, specifically

1 including the following accounts: BECU bank account ending in x-
2 9232 and LPL Financial Account ending in x-4662 in the name of
the Sharon M. Harold Irrevocable Trust dated November 12, 2004;
and Sharon M. Harold's USAA member number 6888.

3 Denial Order ¶ 3.N.

4 Critically, at the presentation hearing on May 5, Commissioner Judson crossed out a
5 sentence from the second paragraph of ¶ 3.N of the proposed Denial Order that was submitted by
6 Mr. Paice's counsel. *See* Denial Order ¶ 3.N (handwritten strike-through to first sentence of second
7 paragraph). The sentence that the Court struck read: "The Court finds that the Respondent was
8 entitled and authorized to file the TEDRA Petition to approve his accountings and to seek his
9 discharge as trustee, which is now pending before Judge Yip under King County Cause No. 22-4-
10 08326-1 KNT ("TEDRA Petition")." *Id.* Commissioner Judson explained on the record that
11 although he said that and believed it, he also believed it was not necessary to include this in the
12 ruling and that he felt it appropriate to defer to Judge Yip regarding this proceeding. Schilbach
13 Decl. ¶ 4.

14 The Court also addressed Mr. Harold's and Ms. Harold's failure to appear at the
15 presentation hearing held on May 5, 2023, and denied Mr. Harold's request for a "Stay of
16 Proceedings":

17 The Court has reviewed Petitioner's request for a Stay of
18 Proceedings and denies the same. There are no further proceedings
19 in this case due to the request for a full protection Order having been
denied at the 4/20/23 hearing. The Temporary Order was not
20 renewed and has expired. An Order should be entered to reflect the
Court's oral ruling at the 4/20/23 hearing. Petitioner has provided a
21 proposed order which does not reflect the Court's oral ruling at the
4/20/23 hearing. The Court therefore denies the request to enter the
Order proposed by Petitioner.

22 This presentation hearing was scheduled for 3:30 p.m. Neither Mr.
23 Harold nor anyone representing Mr. Harold appeared. The court
waited until 3:45 to start the hearing in case Mr. Harold was
24 experiencing difficulty in accessing the Zoom platform.

25 Denial Order at 9 (Court's typed ruling appended to Denial Order).

26 On May 15, 2023, Mr. Harold filed a Motion for Revision, which seeks to "revis[e] and
27 vacat[e]" the Denial Order entered by Commissioner Judson. Schilbach Decl., Ex. D at 1

(Petitioner's Motion for Revision). The Motion for Revision was not filed appropriately under the Local Civil Rules, but will nonetheless require time, energy and effort for Petitioner to deal with.

B. The Trustee has never denied funds to pay for Ms. Harold's counsel in this matter; the Harold Trust paid all \$19,282.50 of Ms. Harold's legal fees for Michelle Blackwell, an attorney that Mr. Harold fired.

Respondents' write that "[Trustee] Paice has never given Grantor [Ms. Harold] the Trust funds she asked for as evidenced by the fact that she appears before this Court now, in pro se." Motion to Stay Proceeding at 3.

On March 27, 2023, however, after the Harold Trust's account was unfrozen by Commissioner Judson, the Trustee's counsel sent Ms. Harold a check for \$20,740.50 for her requested legal fees and other expenses, of which \$19,282.50 were incurred by attorney Michelle Blackwell. Schilbach Decl, Ex. C (Letter to Mr. Harold, Ms. Harold, and Ms. Small dated March 27, 2023). Although the Harold Trust distributed funds for Ms. Harold to pay her attorney, Michelle Blackwell, Mr. Harold terminated Ms. Blackwell's representation of Ms. Harold on January 19, 2023. *See* Dkt. # 39 ¶¶ 3-4 (Michelle Blackwell's Declaration in Support of Alternative Motion for Withdrawal by Order for Respondent Sharon M. Harold describing circumstances of her termination by Mr. Harold).

III. EVIDENCE RELIED UPON

This Response is supported by the Declaration of Aleksander R. Schilbach, the exhibits thereto, and the pleadings and records on file with the Court.

IV. ISSUES

1. Whether the action should be stayed for no more than 60 days but the standstill order should prohibit the parties from filing other actions related to the subject matter of this action during the stay? *Yes*.

V. AUTHORITY

A. A stay of no more than 60 days is acceptable to the Trustee, but the Court must prohibit the parties from initiating other civil lawsuits that seek to litigate the subject matter of this lawsuit while the stay is pending.

Washington courts have inherent authority to control their dockets and the matters pending

1 before them. While a stay of no more than 60 days is acceptable to the Trustee, given Mr. Harold's
2 statement—"We'll see you in federal court"—and the risk that the Respondents may file multiple
3 other civil actions concerning the subject matter of this lawsuit, the standstill order must prohibit
4 the parties to this action from filing new actions regarding the underlying subject matter of this
5 action, which includes, without limitation, the Harold Trust, the Trustee's trust accountings,
6 allegations of the Trustee's breach of his fiduciary duty, and the appropriateness of the Trustee's
7 attorneys' fees and costs incurred in litigating this matter. This restriction is not only reasonable
8 and warranted, but it is also in Ms. Harold's and the Trust's best interests. As Commissioner
9 Judson recognized at the hearing on the Petition for Protection Order, it is in Ms. Harold's best
10 interests for there to be one action involving this subject matter:

11 And I believe that it would be in, frankly, everyone's best interest --
12 particular Ms. Harold -- to have only one case proceed, rather than
 one case and a civil protection order proceed.

13 Transcript of Hearing at 25:3-6.

14 Although the stay would disrupt the Trustee's plans for holding a CR 26(i) conference on
15 the adequacy of Respondents' discovery responses and for mediating this matter in accordance
16 with the Trustee's Notice of Mediation, the Trustee is willing to accommodate Ms. Harold's
17 request for a stay and postpone those events. Although the Trustee acknowledges that the parties
18 will not be prejudiced by staying the action for 60 days, a lengthier stay will likely be prejudicial
19 to completion of discovery and mediation before the November 2023 trial date. The discovery
20 cutoff is September 25, 2023, and the parties will have ample time for discovery motions and
21 mediation after the 60-day stay ends on July 24, 2023. (July 24, 2023 is 60 days from the May 22,
22 2023, the date the Motion for Stay of Proceeding is noted to be heard by the Court.) Accordingly,
23 the Trustee respectfully requests that the Court enter the proposed order staying the matter for no
24 more than 60 days (until July 24, 2023) and prohibiting the parties from filing new actions
25 involving the subject matter being litigated in this action.

26 **B. The Court should disregard all of the inadmissible evidence filed by Respondents in**
27

1 RESPECTFULLY SUBMITTED: May 16, 2023

2 LANE POWELL PC

3
4 By: /s/ Aleksander R. Schilbach
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10 *Attorneys for David A. Paice, Trustee of the Sharon*
11 *M. Harold Irrevocable Trust Dated, 12, November*
12 *2004*

13 I certify that this memorandum contains 2,459 words,
14 in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2023, I caused to be served a copy of the foregoing document to be delivered in the manner indicated below to the following person at the following address:

Sharon M. Harold, <i>Pro Se</i> 100 River Bend Rd. #103 Reedsport, OR 97467 smharold7@gmail.com	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
Charles A. Harold, <i>Pro Se</i> 1455 N. Tomahawk Road Apache Junction, AZ 85119 chuckharold@gmail.com	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
John J. Harold, <i>Pro Se</i> 230 Westmond Drive Reedsport, OR 97467 john6231@live.com	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
Amy Jane Small, <i>Pro Se</i> P.O. Box 352 Graegle, CA 96103 aj.harold9@gmail.com	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
Angel Harold, <i>Pro Se</i> 9317 Balcom Avenue Northridge, CA 91325 angelharold25@gmail.com	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
Josette Harold Ramirez, <i>Pro Se</i> 11319 Playa St Culver City, CA 90230 jobabe007@gmail.com	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery

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DATED: May 16, 2023.

s/ Silvia Webb

Silvia Webb