

HONORABLE WYMAN YIP
Hearing Date: March 17, 2023
Without Oral Argument

1 and to file an abusive and wholly baseless Petition for a Protection Order.

2 This proceeding began as, and remains, a petition to approve accountings. *See* Verified
3 Petition for Approval of Interim Account; For Discharge of Successor Trustee; and For
4 Appointment of Successor Trustee, Dkt. 1. If there are problems with the accountings (which the
5 Trustee does not concede), then the Court and the parties can address those problems. The Trustee
6 was glad when Ms. Harold had counsel, because the Trustee hoped her counsel would give her
7 independent advice that was of better quality than the advice her children were providing. Then
8 Mr. Harold fired his mother's attorney and the attorney withdrew, telling the Court that she agreed
9 her former client needed an LGAL. The Court is urged to grant this Motion and appoint an
10 independent LGAL to represent Ms. Harold's interests in this proceeding.

11 **A. Filing a meritless Petition for Protection Order prevented Sharon Harold from**
12 **receiving a \$20,740.50 distribution from the Trust—and shows why a LGAL is**
13 **necessary.**

14 On February 27, 2023, and in response to a February 24th request for a distribution to pay
15 for Ms. Harold's attorney's fees, medical expenses, and other bills, the Trustee arranged for a
16 distribution of \$20,740.50 to be made via check. Schilbach Decl., Ex. A. The check was to arrive
17 to Ms. Harold by Tuesday or Wednesday, March 7 or 8. *Id.*, Ex. A at 1-2. But the Temporary
18 Protection Order and Hearing Notice ("Temporary Order") entered on March 6, 2023 without
19 notice froze the Paice family's account (#2739), the Trust's accounts (#9232, #9307, #9349, and
20 #4662),² and Ms. Harold's personal USAA membership number (#6888), which presumably
21 controls all of her USAA bank accounts. *Id.*, Ex. B at 5. This effectively prevented the \$20,740.50
22 distribution from reaching Ms. Harold.

23 As cited in Petitioner's Motion, RCW 11.96A.120(4) prohibits precisely this type of
24 conflict of interest between virtual representatives and the represented party.

25 Here, the interests of Mr. Harold and Ms. Small, residuary beneficiaries, are not aligned
26 with the interests of Ms. Harold, the current lifetime beneficiary of the Trust. By filing a baseless

27 ² The Trust's account #9349 was closed in 2014. Declaration of David A. Paice, Trustee ¶ 4 (Dkt. 3).

1 Petition for Protection Order, Mr. Harold has successfully prevented his mother from receiving a
2 major distribution of funds from the Trust. The baseless Petition for Protection Order brings what
3 Ms. Blackwell and Mr. Paice suspected of Mr. Harold into sharp relief: his interests in the Trust's
4 funds do not align with his mother's.

5 The Court can easily dispose of Respondents' argument that RCW 11.96A.120 does not
6 apply. Although the accountings may be governed by California law, Washington procedural law
7 governs this proceeding. RCW 11.96A.090. RCW 11.96A.120(4) is a procedural rule prohibiting
8 conflicts of interest between virtually represented parties and the virtual representative, and it
9 applies "with respect to the particular question or dispute." RCW 11.96A.120(4). In any event,
10 California law is the same. *See* Calif. Code of Civil Procedure, § 372; Calif. Probate Code, § 1003,
11 copies attached hereto. Accordingly, under both Washington and California law, the court should
12 appoint a LGAL to provide independent and quality representation to Ms. Harold.

13 There is nothing prohibiting the Harold Trust from paying the necessary costs associated
14 with the appointment of an LGAL, and the Court can dispose of Respondents' arguments to the
15 contrary. First, Respondents fail to cite any authority that prohibits a trust—or this trust—from
16 paying the costs associated with appointing an LGAL. Second, Respondents' argument—that
17 because the primary purpose of the Trust is for Ms. Harold's benefit, the Trust cannot pay for an
18 LGAL—gets it backwards. If, as Respondents point out, the "primary purpose of the Trust shall
19 be to provide for the Grantor [Sharon Harold]," then it logically follows that the Trust instrument
20 would allow for the payment of an LGAL to protect Ms. Harold's interests with regard to a
21 proceeding involving the Trust. Finally, that Mr. Harold and Ms. Small are advocating against
22 having the Trust pay for an LGAL for Ms. Harold suggests that their interests as residual
23 beneficiaries are not aligned with the interests of Ms. Harold, the only lifetime beneficiary of the
24 Trust.

25 The Trustee respectfully urges the Court to appoint a LGAL.
26
27

1 **B. Mr. Harold's Petition for Protection Order is an abuse of Washington's civil-**
2 **protection statutes and a warning that Mr. Harold is unfit to represent his mother's**
3 **interests in this matter.**

4 Washington's civil-protection statutes are not blowtorches for scorched-earth tactics; they
5 are not meant to be weaponized and used against opposing parties in ongoing litigation who pose
6 no material threat to the protected person. Mr. Harold's burn-it-down attitude and account-freezing
7 antics (which were, tellingly, directed at his own mother) show precisely why the Court cannot
8 trust him to represent his mother's interests in this matter. The Trustee urges the Court to appoint
9 a LGAL who can protect Ms. Harold's interests.

10 The Petition for Protection Order fails to allege any new facts or new developments that
11 constitute the basis for a civil-protection order: it serves up a regurgitated mish-mash of facts from
12 Respondents Verified Joint Objection to Verified Petition for Approval of Interim Account; For
13 Discharge of Successor Trustee; and For Appointment of Successor Trustee ("Objection"). But the
14 claims raised in the Objection are already being litigated. Respondents have already filed the
15 Objection in this proceeding, and Commissioner Judson has already assigned the matter for trial
16 before this Court. There is no evidence of "serious immediate harm or irreparable injury" facing
17 Ms. Harold, and there is no evidence that the Harold Trust's funds are currently comingled with
18 or held together with the Trustee's personal funds. Further, there is no evidence that Ms. Harold
19 supports the Petition for Protection Order: the Temporary Order notes that only Charles Harold
20 appeared at the *ex parte* hearing. Schilbach Decl., Ex. B at 3 (noting who appeared at hearing).
21 Mr. Harold's decision to obtain the Temporary Order *ex parte*, in secret and without notice to the
22 Trustee or his legal counsel, shows how little regard Mr. Harold has for procedure and authority.
23 *Id.* ¶ 3.

24 The filing of the Petition for Protection Order is yet another warning that Mr. Harold cannot
25 represent his mother's interests with regard to the Trust. The Court should appoint an LGAL
26 immediately.
27

1 **C. Respondents fail to offer any evidence of Sharon Harold’s capacity or freedom of**
2 **undue influence.**

3 Substantial evidence supports the conclusion that Ms. Harold is incapacitated as
4 contemplated by RCW 4.08.060 and/or under the undue influence of certain of her children, which
5 impairs her ability to conduct this litigation in her own best interest.

6 Respondents offer only the self-serving declaration of Charles Harold in support of their
7 position. Respondents question the names and identity of attorney Ms. Michelle Blackwell but fail
8 to rebut what she said in open court to Commissioner Judson on February 3. Instead, Respondents
9 claim, without authority, that Ms. Blackwell’s statements to Commissioner Judson (among them,
10 “Your honor, I believe a fraud is being perpetrated on the court,” and that Mr. Harold, not Ms.
11 Harold, “abruptly terminated” Ms. Blackwell’s representation of Ms. Harold) constitute hearsay.
12 Opposition at 10. But they offer no support for their argument that an attorney’s statement made
13 to the judicial officer during oral argument constitutes inadmissible hearsay, and none exists. The
14 Trustee urges the Court to consider the totality of Ms. Blackwell’s unrefuted statements to
15 Commissioner Judson and the content of her declarations as proof of Ms. Harold’s lack of capacity
16 and/or undue influence.

17 The Court should also note that Mr. Harold has, in the civil-protection proceeding, stated:

18 [Sharon Harold] is properly defined as a “vulnerable adult” under
19 both Washington State and Oregon law because she has
20 fibromyalgia *accompanied by fatigue, altered sleep, periodic*
21 *memory lapses and mood swings caused by lack of sleep and drug*
22 *interactions. She is prone to falling and has fallen and suffered*
23 *severe injuries in recent years. She also has many other health*
24 *issues that require her to receive medical services from several*
25 *medical providers on a regular basis.* She has a history of transient
26 ischemic attacks (TIA).

27 Schilbach Decl., Ex. D at 1 (emphasis added). While Respondents’ Opposition claims that Ms.
Harold’s doctors have deemed her competent, there is no evidence in the record to support this.
See Opposition at 5-6 (failing to proffer evidence).

28 **D. The Trustee’s counsel did nothing improper by speaking with Ms. Harold at the time**
29 **she was not represented by counsel.**

30 The Court should disregard the argument that one of the Trustee’s attorneys, Mr. Schilbach,

1 acted improperly by contacting and speaking with Ms. Harold. As recounted in Mr. Schilbach's
2 declarations, Ms. Harold telephoned him to speak with him on October 5, 2022, and Mr. Schilbach
3 called her back. Feb. 28, 2023 Schilbach Decl. ¶ 2; Schilbach Decl. ¶ 5. At the time Ms. Harold
4 and Mr. Schilbach spoke, Ms. Harold was not represented by counsel and did not appear to be
5 incompetent. Schilbach Decl. ¶ 5. On October 25, 2022, Ms. Michelle Blackwell, Ms. Harold's
6 former attorney, confirmed that Ms. Harold was not represented by counsel. Schilbach Decl., Ex.
7 E.

8 **II. CONCLUSION**

9 The Trustee urges the Court to appoint an LGAL for Ms. Harold. The Trustee is willing to
10 make distributions from the Trust for all necessary costs associated with the LGAL's appointment.

11
12 DATED: March 15, 2023

13 LANE POWELL PC

14
15 By: /s/ Aleksander R. Schilbach

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21 *Attorneys for David A. Paice, Trustee of the Sharon*
22 *M. Harold Irrevocable Trust Dated, 12, November*
23 *2004*

24 I certify that this memorandum contains 1,746
25 words, in compliance with the Local Civil Rules.
26
27

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 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 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 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 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 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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Josette Harold Ramirez, <i>Pro Se</i> 11319 Playa St Culver City, CA 90230 jobabe007@gmail.com	<input 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

Jenifer Sawyer, <i>Pro Se</i> 1819 74 th St. E Tacoma, WA 98404 send2jen3@gmail.com	<input 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: March 13, 2023.

s/ Silvia Webb

Silvia Webb

State of California

CODE OF CIVIL PROCEDURE

Section 372

372. (a) (1) When a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case.

(2) (A) A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, person who lacks legal capacity to make decisions, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate.

(B) If application is made for appointment of a guardian ad litem for a person described in paragraph (1), and that person has a guardian or conservator of the estate, the application may be granted only if all of the following occur:

(i) The applicant gives notice and a copy of the application to the guardian or conservator of the estate upon filing the application.

(ii) The application discloses the existence of a guardian or conservator of the estate.

(iii) The application sets forth the reasons why the guardian or conservator of the estate is inadequate to represent the interests of the proposed ward in the action.

(C) The guardian or conservator of the estate shall have five court days from receiving notice of the application to file any opposition to the application.

(3) The guardian or conservator of the estate or guardian ad litem so appearing for any minor, person who lacks legal capacity to make decisions, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. Money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor, person lacking legal capacity to make decisions, or person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.

(4) Where reference is made in this chapter to "a person who lacks legal capacity to make decisions," the reference shall be deemed to include all of the following:

(A) A person who lacks capacity to understand the nature or consequences of the action or proceeding.

(B) A person who lacks capacity to assist the person's attorney in the preparation of the case.

(C) A person for whom a conservator may be appointed pursuant to Section 1801 of the Probate Code.

(5) Nothing in this section, or in any other provision of this code, the Civil Code, the Family Code, or the Probate Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of the minor's constitutional rights in a proceeding under the Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code).

(b) (1) Notwithstanding subdivision (a), a minor 12 years of age or older may appear in court without a guardian, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for any of the following:

(A) An injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6.

(B) An injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8.

(C) A protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code.

(D) A protective order pursuant to Sections 7710 and 7720 of the Family Code.

The court may, either upon motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, appoint a guardian ad litem to assist the minor in obtaining or opposing the order, provided that the appointment of the guardian ad litem does not delay the issuance or denial of the order being sought. In making the determination concerning the appointment of a particular guardian ad litem, the court shall consider whether the minor and the guardian have divergent interests.

(2) For purposes of this subdivision only, upon the issuance of an order pursuant to paragraph (1), if the minor initially appeared in court seeking an order without a guardian or guardian ad litem, and if the minor is residing with a parent or guardian, the court shall send a copy of the order to at least one parent or guardian designated by the minor, unless, in the discretion of the court, notification of a parent or guardian would be contrary to the best interest of the minor. The court is not required to send the order to more than one parent or guardian.

(c) (1) Notwithstanding subdivision (a), a minor may appear in court without a guardian ad litem in the following proceedings if the minor is a parent of the child who is the subject of the proceedings:

(A) Family court proceedings pursuant to Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(B) Dependency proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(C) Guardianship proceedings for a minor child pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code.

(D) Any other proceedings concerning child custody, visitation, or support.

(2) If the court finds that the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case, the court shall, upon its own motion or upon a motion by the minor parent or the minor parent's counsel, appoint a guardian ad litem.

(d) Before a court appoints a guardian ad litem pursuant to this chapter, a proposed guardian ad litem shall disclose both of the following to the court and all parties to the action or proceeding:

(1) Any known actual or potential conflicts of interest that would or might arise from the appointment.

(2) Any familial or affiliate relationship the proposed guardian ad litem has with any of the parties.

(e) If a guardian ad litem becomes aware that a potential conflict of interest has become an actual conflict of interest or that a new potential or actual conflict of interest exists, the guardian ad litem shall promptly disclose the conflict of interest to the court.

(Amended by Stats. 2022, Ch. 843, Sec. 1. (SB 1279) Effective January 1, 2023.)

State of California

PROBATE CODE

Section 1003

1003. (a) The court may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, appoint a guardian ad litem at any stage of a proceeding under this code to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

- (1) A minor.
- (2) A person who lacks legal capacity to make decisions.
- (3) An unborn person.
- (4) An unascertained person.
- (5) A person whose identity or address is unknown.
- (6) A designated class of persons who are not ascertained or are not in being.

(b) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(c) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from any other source as the court orders.

(d) Before a court appoints a guardian ad litem pursuant to this chapter, a proposed guardian ad litem shall disclose both of the following to the court and all parties to the action or proceeding:

- (1) Any known actual or potential conflicts of interest that would or might arise from the appointment.
- (2) Any familial or affiliate relationship the proposed guardian ad litem has with any of the parties.

(e) If a guardian ad litem becomes aware that a potential conflict of interest has become an actual conflict of interest or that a new potential or actual conflict of interest exists, the guardian ad litem shall promptly disclose the conflict of interest to the court.

(Amended by Stats. 2022, Ch. 843, Sec. 2. (SB 1279) Effective January 1, 2023.)