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Division I
State of Washington
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No. 86434-3

**COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON**

DAVID MALNES, Respondent,

v.

BRIAN MALNES obo HAROLD MALNES.

BRIEF OF APPELLANT

Brian Malnes, *pro se*

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I. ASSIGNMENT OF ERROR

i. Assignment of Error

1. No. 1 “Insufficient evidence to support a petition.”
2. No. 2 Commissioner should not have allowed Julia Lindeman the opportunity to testify as an expert witness on 1/11/2024.
3. No. 3 Commissioner should have found Julia in violation of RCW 2.24.050, by making materially false statements to the Commissioner while she discharged her official duties.

4. No. 4 David conspired with Leigh to violate Harold and Brian's rights.
 5. No 6. A *Motion for Revision of Commissioner's Order* was dismissed on 2/6/2024 in violation of RCW 7.105.205(5)(a), as Brian was not given directions to access the hearing for a civil protection order remotely.
- ii. Issues Pertaining to Assignments of Error
1. No. 1. Did David and Lori act illegally in setting up accounts as Harold, instead of for him? If as DRS instructed it is against the law for David and Lori to create accounts online for Harold, is this financial exploitation? (Assignment of Error 1).
 2. No. 2. Can an attorney be an expert witness without giving the opposing side an opportunity to impeach her testimony in accordance with ER 607, and ER 702? (Assignment of Error 2).
 3. No. 3. Can an attorney make materially false statements during a hearing in Superior Court? Is making those false statements a violation of RCW 2.24.050? (Assignment of Error 3).
 4. No. 4. Do the statutes in the Uniform Power of Attorney Act apply to everyone? Does a caveat, or loophole in the

law allow attorney's special privileges? (Assignment of Error 4).

5. No. 5. Is the Superior Court of Snohomish County compelled by rule to assure participants in civil protection hearing have all the information to attend hearing remotely as stated in RCW 7.105.205(5)(a)? (Assignment of Error 5).

II. STATEMENT OF THE CASE

- On 8/2/2022, Lori Malnes sent Brian an e-mail that outlined how she created online accounts as Harold, instead of his POA, at both the Social Security Administration (SSA) and the State of Washington Department of Retirement Services (DRS) (*CP#21, pg. 232*).
- On 9/12/2023, Brian asked for a reimbursement via e-mail from Lori as per the POA agreement: “Hello! Harry received a haircut this morning \$22 + \$5 tip. We also bought [Harry] \$85 worth of daily products and razor replacement. \$112 total. Hope you and the baby are doing great. Thanks” (*CP#21, pg. 235-236*).
- On 9/14/2023, Brian had not received a response, so he sent another e-mail to his brother’s wife Lori: “Hi Lori. Additionally, I need Carolyn’s banking info for her yearly review with the State. Thanks!” Lori responded the same day: “Do you have receipts for

the haircut and daily products? I'll get the banking info to you by the end of the day. Currently have a teething baby and someone replacing our back patio door." To which Brian replied: "I paid cash for haircut and forgot receipt. Amazon order tied with my order, which I chose not to share. I will simply donate this money as I have done with all I do for my folks. Thanks." Finally, Lori Malnes responded:" We appreciate all you do. Since these reimbursements come from a fund not our own, for our own protection, receipts are necessary to have a record. I know this isn't new information, but I know it is hard to get into the habit of keeping and getting receipts. Another good habit is making purchases for Harry or Carolyn separate from personal so that a separate receipt is there. I will reimburse this final time without receipts, but all future reimbursements will need to have receipts. You can even take a screenshot of Harry's portion of your phone bill - our kids are on our account, so I know it's easy to do"

(CP#21, pg. 236-237).

- Daniel Smith, a Retirement Specialist with DRS, informed Brian in no uncertain terms that registering for a login account at DRS on behalf of Harold Malnes, instead of actually being the retiree, is a crime. In the State of Washington, this is identity theft, RCW 9.35.020(1-2) (CP#21, pg. 231).

- Brian believed on, or around, the first of October, 2023 that his brother David, co-Agent for Harold Malnes at the time had, through his wife Lori (not a part of the arrangement for the care of Harold) had stolen the identity of Harold by creating digital accounts at DRS, and the SSA. Evidence of the “work around,” by Lori is found in her own words given on 8/2/2022, which had been re-read after Brian’s first interaction with DRS.
- On 10/11/2023 and 10/13/2023, Brian e-mailed Leigh Bennet to inform him of his concern David, co-POA for Harold, was potentially financially exploiting our father. “Harry needs personal items now. David has withheld refunding money for days at a time. This constitutes ‘financial exploitation’ (*No. 86433-5, CP#1, pg. 701*). Brian informed Leigh that he would seek a new POA on 10/13/2023, “I was going to look into POA forms in accordance with RCW 11.125.050” (*No. 86433-5, CP#1, pg. 701*).
- “[Brian] warned [Leigh] that [David] was violating Harold Malnes’ rights. This is the reason the [Brian] and Harold Malnes decided it was the best course to sign a new POA. The signing of the POA on 10/16/2023 was done in the UPS store at 19410 Hwy 99, Lynnwood, WA. 98036. Harold Malnes, always interactive spoke at length with the Notary about the document he was signing. The Petitioner asked Harold Malnes aloud before each initial he made. He then signed the POA. We went from there next

door for groceries. The difference between the [signing] of 10/16 and 10/23, is the conversations, hours long, prior to the decision.

The plan was to get the POA signed on 10/16/2023, and then meet with Leigh... E-mail sent to [Leigh] on 10/16/2023 was cordial as all communication to that point were. ‘Mr. Bennett, you wrote me and I never received a reply. Are you still representing my parents? If so I would like to schedule an appoint with my father in your office at the earliest opportunity.’ It is very obvious that the [Brian] wanted to work with [Leigh], who claims he has represented Harold and Carolyn for many decades, however, Leigh states: ‘In 2017...consulted with their family attorney Pete Bennett.’” (*No. 86433-5, CP#17 pg. 705*).

- Leigh Bennett fired Harold Malnes as a client on 10/16/2023 via several e-mails to both David and Brian. “I am withdrawing as legal counsel, which is totally my choice as to whom I wish to represent. As such, your parents are now free to obtain other legal counsel going forward” (*No. 86433-5, CP#1, pg. 705*). And in a further e-mail that same day, “No explanation is necessary, as I can withdraw as legal counsel whenever I deem appropriate” (*No. 86433-5, CP#1, pg. 706*).
- Leigh Bennett refused to give Brian (Agent) Harold and Carolyn’s files after he had fired them as clients. “As for picking up the file, I first need to talk with your father (my client) to confirm that I can

provide you with their file. So if you can please provide me with Harold's telephone number..." (*No. 86433-5, CP#1, pg. 707*). On 10/16/2023, Leigh acknowledges Brian is sole POA for Harold as he states, "since David is still the Attorney-in-Fact for Carolyn" (*No. 86433-5, CP#1, pg. 709*).

- On 10/17/2023, David e-mailed Brian and said: "Leigh Bennett's legal representation of our parents has been disappointing at best. He dropped the ball providing legal opinions for consideration – and that did not happen. Lori is in the process of transferring funds. She will be providing a Word document by the end of today that outlines all the actions you will need as sole POA to take on the bill paying" (*CP#21, pg. 249*).
- On 10/19/2023 Brian e-mailed his brother David and stated: "We are looking to sell here, and use proceeds to buy home that dad can live with us. A place you and your family are welcome." David simply replied he had received the e-mail (*CP#24, pg. 219*).
- Leigh Bennett did not contact Harold, his ex-client, at all. But instead, Leigh communicated with David, on several occasions prior to 10/20/2023. The first is a phone conversation that Leigh and David had on 10.10.2023 as Leigh states: "My first significant contact I had ...came from a recent telephone call I received from Harold's son, David Malnes, on October 10, 2023, wherein David expressed his concern that his father, Harold Malnes, was in

danger of being financially exploited by his brother, Brian Malnes” (*No. 86433-5, CP#51, pg. 436-437*). Leigh goes on to outline a number of topics discussed with David. It seems to have covered quite a bit and concerned Leigh enough to e-mail right away. Leigh has stated: “Again, I am the attorney for your parents and not the attorney for either of you individually or as Power of Attorney Agents” (*No. 86433-5, CP#1 pg. 699*).

- On 10/20/2023, Leigh Bennett attempted to call Harold at the phone number provided by Brian at 8:55 am (*No. 86433-5, CP#15, pg. 544*), he then signed the visitor’s log at Pacifica Senior Living at 9:10 am (*No. 86433-5, CP#1, pg. 711*), and met with Harold in his room for approximately 30 minutes. He then e-mailed Brian and David at 10:18 am. on 10/20/2023, after Leigh had met with Harold where he had him sign a revocation of a POA and then a POA listing David as sole agent. Leigh’s e-mail, however, states he had not yet met with Harold, “I plan to visit Harold at his Pacifica residence...” (*No. 86433-5, CP#15, pg. 543*). Leigh admits to this deception, “He purposely did not inform Brian because Leigh knew that Brian would interfere” (*No. 86433-5, CP#68, pg. 366*). “Without notifying Brian for concerns that he would try to prevent me from meeting with Harold privately” (*No. 86433-5, CP#51, pg. 438*).

- One of the reasons given for visiting Harold on 10/20/2023 by Leigh, through his attorney Randy was: ‘Brian has already stated he wants ‘to pool’ Harold’s money with the sale from his wife’s home...” (*No. 86433-5, CP#68, pg. 393*). The exact quote comes from an e-mail conversation on 10/11/2023 to both David and Leigh was: “Perhaps it means Laura and I sell our home in Edmonds and pool funds to buy a home that would suit all of our needs” (*No. 86433-5, CP#1, pg. 702*). Undoubtedly David communicated Brian’s message of 10/19/2023, where he mentions buying a home, but not pooling anything but the funds of both Brian and Laura. But at any rate, there is no emergency as home loans take time. From the communication between David and Brian on 10/19/2023 until 10/20/2023 when Leigh walked into Pacifica with forms filled out in David’s name the two must have communicated.
- Leigh Bennett used coercion to convince Harold to sign papers that were not in his best interest. “I told him that I would remain his legal counsel provided that he designate David as his sole POA Agent, as David had done an exemplary job managing his assets to date and that I was concerned over having Brian in a position of authority over his assets. So based on my advice, as his legal counsel, Harold signed a new Durable Power of Attorney

designating David in that position (which I brought with me to that meeting if Harold so chose)" (*No. 86433-5, CP#51, pg. 68*).

- Harold Malnes, in his *Declaration* (*No. 86433-5, CP#10, pg. 653*), "Without doubt, or reservation that I have never wanted my son Brian Malnes to ever stop caring for me as POA." This declaration was signed on 11/31/2023, eleven days after Leigh visited Harold. The *Declaration* continues: "1. Leigh Bennett had stop representing me prior to seeing me at Pacifica...5. Leigh Bennett got me to sign papers I did not understand...I cannot state clearly enough that I did not intend, nor want my son Brian to be discontinued...Please do not take my son Brian away from me."
- Leigh Bennett through his attorney Randy Boyer states: "As shown by the Declaration of Grant Cummings witnessing Brian place a Declaration of Harold in front of him and told him to sign it as his own free will. Harold did not have the time to review it before signing it" (*No. 86433-5, CP#68, pg. 395*). This statement is not supported by any evidence produced. The Declaration of Grant Cummings (*CP#14, pg. 270*) states: "6. I handed the papers to Harold Malnes, Brian appeared to be highly agitated and stated to me 'we did not welcome you into this room and am not acknowledging you were ever here.' At the same time, I observed Brian handing papers to Harold Malnes and witnessed him stating 'Dad, sign these papers and you are signing these papers of your

own free will' and then handed him a pen." This is another example of pure testimony by Randy, on behalf of Leigh. Grant Cummings did not, nor could he, declare what the paper was, or even if the paper was signed.

- In his *Reply to Declaration of Grant Cummings*, Brian states: "In fact, the Declarant himself demonstrated how he did not follow, 'Instruction for Process Server: Service of the Notice to the Vulnerable Adult,' Vai-1.021 (Exhibit 1). As a registered process server in Washington, the Declarant should be very familiar with these instructions. Nowhere in his 'Declaration,' does he identify any of the prescribed methods of service. Instead, he states: 'Upon arriving at the location, I checked in with the office and was met by Executive Director. She reviewed the papers to be served and then escorted me to the residence building.' The Declarant does not state that the Executive Director, Tammy Ray (Ray), was dressed as the green Teletubbies, 'Dipsy,' as it was Halloween. The Declarant describes a scene that does not correspond to what Ray, and Jake Call (Call), Ray's supervisor at Pacifica Senior Living have stated in writing via e-mail. Call states: 'While I am not able to obtain the documentation you referred to regarding the statement of process server Grant Cummings, we disagree with the comments that Tammy Ray reviewed papers to be served. We have witness statements to the same effect that state Tammy escorted

the individual to apartment and nothing more.”” (*CP#19*, 262-263).

- Laura Mangarella, in her *Declaration of Laura Mangarella* (No. 86433-5, *CP#19*, pg. 499), states: “19. I was a part of conversations where Harry told us everything in his Declaration.” Laura’s signed *Declaration* continues: “21. When Brian talks with Harry he takes a long time with him, he wants his dad to know what is going on.”
- In her signed *Declaration of Bertella Hansen* (No. 86433-5, *CP#52*, pg. 434), she states: “I see no reason why David should take control. He doesn’t live there. He lives far away. Brian has been doing the job very well and should continue to be their legal representative.”
- Leigh, through his attorney Randy states: “The only one coercing Harold to sign documents was Brian having Harold sign a document without the chance to review it?” (No. 86433-5, *CP#68*, pg. 396). There is no evidence in the record to support this statement by the Respondent.
- Leigh states that three days after he visited Harold on 10/20/2023: “Shortly thereafter, on October 23, 2023, I e-mailed both David and Brian to let them know that I had visited Harold privately, that Harold wanted me not to withdraw and continue as his attorney, and based on my advice, that he had signed a new Durable Power of Attorney designating David as POA Agent” (No. 86433-5,

CP#51, pg. 439). Leigh is seemingly stating that the first David received, or knew about his new job as sole POA was on 10.23.2024. “On the same day (October 23, 2023) I then received an email from Julia Lindeman (David Malnes’s attorney) informing me that Brian saw his father later that day and Had Harold sign a revocation” (*No. 86433-5, CP#51, pg. 439-440*).

- On 10/23/2023, at 2:00 in the afternoon, Julia e-mailed Brian: “I represent David Malnes as Attorney-in-Fact for your father, Harry Malnes” (*CP#5, pg. 349*).
- However, Harold raised concerns about what he’d signed with Leigh. So, on Monday, 10/23/2023 Harry, Laura, and Brian went to a UPS store and Harry corrected his mistake, putting back in place his initial decision to sign the POA of 10/16/2023, by signing a new *Revocation of DPOA* for David and a new DPOA assigning Brian as his sole Agent (*CP#5, pg. 338*).
- On 10/23/2023, at 3:30 p.m., Brian responded to Julia with a copy of the *Revocation of DPOA* from her client David (*CP#5, pg. 351*).
- Because of the incredible circumstances surrounding Leigh’s visit to Harold and the unravelling set of facts, Brian petitioned for, and received a Vulnerable Adult Protection Order against Leigh Bennett that was signed by the Commissioner Kim on 10/23/2023 (*No. 86433-5, CP#1, pg. 666-711*).

- On 10/24/2023, Randy, Leigh’s attorney, sent a seven-word e-mail to Brian that said: “Maybe a referral to APS is warranted” (*No. 86433-5, CP#57, pg. 421-422*).
- On 10/27/2023, David signed a *Petition for Guardianship* (Snohomish County Superior Court Case #23-4-02071-31, several *Orders* in that case are under review with this Court *No. 86687-7*), that was also signed by attorney’s Julia Lindeman and Christopher Lee, who have stopped representing David as Agent for his father, and now are attempting to get a Guardianship for Harold.
- Having attempted many times to work out a resolution with David through his attorneys Julia and Chris, and Brian fearing that Leigh and David would again try something nefarious, filed for a VAPO for David on 10/31/2023. At the time he filed, Brian was unaware that a Guardianship had been petitioned for and granted by Commissioner Kim on the same day, while the VAPO Brian petitioned for was denied by the same Commissioner Solomon Kim on 10/312/2023 (*No. 86433-5, CP#5*).
- The Court Visitor appointed in the guardianship proceedings for Harold Malnes (Snohomish County Superior Court Case #23-4-02071-31), Shannon Marsh states: “On November 1, 2023, this Court Visitor met with Respondent, Harold Malnes, at his residence in Lynnwood. That same day, a teleconference with Mr.

Malnes' preferred attorney for guardianship proceedings, Leigh Bennett, took place" (No. 86433-5, CP#49, pg. 484).

- On 11/6/2023 at 6:30 p.m. in the evening, Brian received an e-mail from Randy that included a recording along with the message, "Attached is a voice mail we found on Leigh Bennett phone and a translation we made." The attachment was *Declaration of Jennifer Jones* (No. 86433-5, CP#20, pg. 496-497).
- The *Declaration of Jennifer Jones*, clearly states, "recording of a conversation between Brian Malnes, Harold Malnes, and unknown party" (No. 86433-5, CP#20, Pg. 496-497). Of the three persons identified in the recorded conversation, no one gave consent to be recorded.
- Brian attempted to file a *Motion to Show Cause*, to bring a charge of contempt against Leigh Bennett on 11/7/2023. Due to contradictory information from the Snohomish County Superior Court, it took several filings, and the use of certain forms in order to have a Commissioner sign the *Order to Show Cause* on 11/28/2023, which was then served on Leigh (No. 86433-5, CP#59, pg. 418).
- On 1/4/2024, Randy Boyer signed and filed his *Memorandum in Response*... in which he states: "Under Washington law a felony barred Brian from serving in a fiduciary capacity (See In re Guardianship of Black. 7 Wn. App. 2d 1077 (2019))" (No. 86433-

5, CP#68, pg. 392-393). A footnote to the citation explains that it is an unpublished opinion, and that consideration may be granted via GR 14.1. Randy also states: “Brian’s previous convictions of a felony (crimes based upon the taking of another’s money by lethal force)” (No. 86433-5, CP#68, pg. 392). A copy of Brian’s FBI file can be found at (No. 86433-5, CP#15, pg. 543).

- On 1/11/2024 the Motion Hearing for both cases were heard together. Commissioner Lisa Micheli stated: “I don’t know if attorneys are intending to offer testimony or not, but on the off chance that you are, I’m going to swear all the parties in... You do have the ability to offer testimony because these are special proceedings” (RT pg.7). During the presentation of Brian’s argument by his appointed attorney Natalie Findley-Wolf, the Commissioner asked, “Wasn’t it a voicemail that was left on Mr. Bennett’s phone? Isn’t that how it came to be recorded?” (RT pg. 16).
- During the Motion Hearing on 1/11/2024, Randy Boyer testified: “[D]eclarations, one of which was witnessed by the process server” (RT pg. 20). Randy continues: “So clearly Mr. Bennett wanted to know what his client, Harold, really wanted...met with him, had a half-hour conference explaining everything to him, and Harold elected to appoint David as his power of attorney...This is all

appropriate situations. Yes, he didn't notify David – excuse me – Brian in advance of the meeting” (*RT pg. 21*).

- On 1/11/2024, the Commissioner stated to Randy: “[M]aybe you know the answer to this question; maybe you don’t. But given your familiarity in this area of law...” (*RT pg. 23*).
- On 1/11/2024, during the hearing the Commissioner brought up that Randy has claimed that a POA who has a felony cannot serve as a fiduciary. Randy then testifies: But they do look it it’s a serious felony, talking about physical or threatening, and I think the conviction of Mr. Malnes still falls under that. So, he couldn’t be a guardian. And so, I believe, from my experience, and I think the case law supports it, that he’s not entitled to be power of attorney”
- On 1/11/2024, Julia Lindeman testified: “David rerouting his father’s Social Security and retirement income payments so that they point to his father’s account is not exploitation...David asking his brother for receipts so that any funds...is not exploitation... And, in fact, his actions have been ratified by Bank of America directly (*RT pg. 27*). Julia continues her testimony: “Brian hasn’t demonstrated that any money is missing or being actively misused” (*RT pg. 28*).
- The Commissioner stated: “[S]o that’s why I want to make sure that I explore that with the assistance, of course, with counsel who

specialize in this area of law, as the Court does not” (*RT pg. 38*).

The Commissioner continued: “Thank you for your very concise answer, Mr. Boyer, I can always count on you for that” (*RT pg. 39*).

- On 1/11/2024, Natalie Findley-Wolf stated: “He also had a \$5,000 check, and we gave the check number in our declaration. We don’t know personally whether it’s one of the three checks, but [Harold] tried to cash it and it bounced (*RT pg. 43*). Natalie continued: “I’m still frustrated by the explanation given Ms. Lindeman by BOA because I’m looking at this now, and all of these say ‘cleared.’ None of them say ‘posted’” (*RT pg. 46*).
- The Commissioner stated in her judgment: “Mr. Bennett – there have been some ethical violations that have been raised...I guess, collusion or planning without – between David and Mr. Bennett without Brian’s involvement” (*RT pg. 51-52*). “And that is [Leigh’s] purview. He is not required to share information with Brian” (*RT pg. 54*).
- On 1/11/2024 Commissioner Micheli denied the VAPO for both Leigh and David. Additionally, the Commissioner did not find enough evidence to support a contempt of order against Leigh (*No. 86433-5, CP# 71, pg. 369-375*).
- Brian filed a *Motion for Revision*, on 1/22/2023.

- Brian did not get information on where the hearing was, and how he could access via Zoom. As a result, an *Order of Dismissal*, was signed on 2/6/2024, and then corrected on 2/8/2024.
- On 2/9/2024, Brian filed a *Notice of Appeals to Court of Appeals* (CP#69 pg. 1-10), which began the proceeding in this court.

III. ARGUMENT

1. There is ample evidence to demonstrate that David, and his wife Lori, committed computer trespass by impersonating Harold to access his retirement account and Social Security, and then divert the monthly funds to another bank account. This is a violation of RCW 9A.90.040(1)(b). Finding out this information from DRS was ultimately the reason Brian discussed the matter with Harold, and it was decided to execute a revocation for David, and making Brian sole Agent on 10/16/2023.

Computer trespass is defined by RCW 9A.90.040(1)(b):

“A person is guilty of computer trespass in the first degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another; and [t]he violation involves a computer or database maintained by a government agency.”

Further, the term ‘access’ is defined by statute RCW 9A.90.030(1):

“‘Access’ means to gain entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of electronic data, data network, or data system, including via electronic means.”

This is the “work around” Lori described doing in her e-mail (CP#21, pg. 232). According to DRS, it is illegal to act as another while setting up an online account. It is only though an online account could Lori divert

funds to the BOA account set up in Idaho. And the only person who can set up an online account with DRS is the beneficiary themselves. This is clearly stated by Joe Humphreys, DRS Retirement Specialist, in his e-mail:

“Since the Power of Attorney rules do not grant you access to the online account” (CP#21, pg. 245).

Thus, Lori does not have the authority as POA, or POA’s wife, to create and use an online account.

In *State v. Olsen*, 47 Wn. App. 514 (1987):

“In determining legislative intent, the title of an act bears consideration. *Godfrey v. State*, 84 Wn.2d 959, 530 P.2d 630 (1975). The title of the act is Computer Trespass, Laws of 1984, ch. 273. Historically, a trespass was an intrusion or invasion into tangible property which interfered with the right of exclusive possession. See W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on Torts* § 13 (5th ed. 1984). In the context of computers, a trespass is an invasion or intrusion upon the data base. The general trespass statutes criminalize the entering and remaining upon premises when not licensed, invited, or privileged to enter or remain. By analogy, the computer trespass statute criminalizes the entry into the computer base, not the use of the information obtained.”

State v. Olsen finds that:

“The actus reus of the computer trespass statute is accessing a computer without authorization.”

The case of *State v. Novick*, 196 Wash. App. 513 (2016), found that each time an individual accesses a database without authorization constitutes another incident of computer trespass:

“The plain language of the statutes support the conclusion that the units of prosecution for first degree computer trespass and

recording private communication are each separate unauthorized access and each recording of a conversation without consent.”

Federal law prohibits the creation of authentication features (user name and a password) to access government databases. 18 U.S. Code § 1028 - Fraud and related activity in connection with identification documents, authentication features, and information, section (a)(1) states:

“Whoever, in a circumstance described in subsection (c) of this section knowingly and without lawful authority section knowingly produces an identification document, authentication feature, or a false identification document.” § 1028(c)(1): “The circumstance referred to in subsection (a) of this section is that the identification document, authentication feature, or false identification document is or appears to be issued by or under the authority of the United States.”

According to 18 U.S. Code § 1030(a)(2)(B):

“Whoever—intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—information from any department or agency of the United States.”

In Musacchio v. United States, 577 U.S. 237 (2016), Fraud and related activity in connection with computers is defined:

“Under that provision, a person commits a crime when he ‘intentionally accesses a computer without authorization *or* exceeds authorized access,’ and in doing so ‘obtains . . . information from any protected computer.’ (Emphasis added.) The statute thus provides two ways of committing the crime of improperly accessing a protected computer: (1) obtaining access without authorization; and (2) obtaining access with authorization but then using that access improperly. See *ibid.*; §1030(e)(6) (defining ‘exceeds authorized access’).”

When Lori and David created a log in user name and password as Harold, instead of for him, they clearly further violated 42 U.S. Code § 1307(b)(1):

“Whoever, with the intent to elicit information as to the social security account number, date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Commissioner of Social Security or the Secretary that he is such individual, or the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual...shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding \$10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.”

Harold’s SSA entitlement is further protected against the actions of Lori and David by 42 U.S. Code § 408(a)(6):

“willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title.”

Further proof that David and Lori were committing violations of the law regarding forging the digital signature of Harold. RCW 9.38.060(1) states:

“A person shall not knowingly misrepresent the person's identity or authorization to obtain a public key certificate used to reference a private key for creating a digital signature.”

RCW 1.80.010(10) states:

“‘Electronic signature’ means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”

Brian attempt to reach out to the attorney who Harold and Carolyn used to draw up a will and other documents. Brian wrote Leigh on 10/13/2023:

“I am going to see Harry this afternoon. I was going to look into POA forms in accordance with RCW 11.125.050. If you have a form that would be great Mr. Bennett. Mr. Bennett, I am concerned that David continues to violate the law via financial exploitation. Harry also needs to arrange a meeting with you.”

As an attorney whose firm has provided legal counsel to Harold and Carolyn Malnes, “for the past 24 years (since 1999),”¹ it would be malpractice, verging on incompetence, for the Respondent to have failed to investigate these claims.

2. In accordance with RCW 11.125.110(4), Brian spoke with the principal and took action else he too be liable for any damages caused by David and Lori’s fraud. An attempt was made to communicate with Leigh privately, but Leigh had already made up his mind in favor of David.

RCW 11.125.110(4) states:

“An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.”

¹ The Respondent has intimated he has personally overseen the Malnes account, it has actually been his brother, a partner, who has done the majority of work for Harold and Carolyn Malnes.

Brian acted after many attempts to get information from his brother and Lori regarding the DRS and SSA accounts. All Brian got was silence, or as Julia stated in the hearing on 1/11/2024:

“The actions that Brian describes sound like Brian being confused with information being given him again and again...he doesn’t seem to understand...how a power of attorney works” (*RT pg. 28*). But of course, Julia herself might not understand the law, “David rerouting his father’s Social Security and retirement income payments so that they point to his father’s account is not exploitation” (*RT pg. 27*).

Having talked with DRS and the SSA, Brian conferred with Harold about the money being diverted. Harold was concerned that the actions of his son David did not conform to the law, and so he decided to elected Brian sole agent and revoke the POA of David. The alleged crimes committed by David were ongoing, and given that Leigh was not forthcoming in his communication Harold executed a new POA on 10/16/2023. Laura Mangarella, in her *Declaration*:

“19. I was a part of conversations where Harry told us everything in his Declaration.” Laura’s signed *Declaration* continues: “21. When Brian talks with Harry he takes a long time with him, he wants his dad to know what is going on” (*CP#19, pg. 499*).

3. The Uniform Power of Attorney Act, Chapter 11.125 RCW, guarantees certain powers which, according to RCW 11.125.030(1): “This chapter applies to all powers of attorney,” the exceptions do not apply in this case. As such RCW 11.125 gives Brian certain rights and powers as Harold’s agent that Leigh and David did not abide by.

The POA signed by Harold on 10/16/2023 is valid in accordance with RCW 11.125.060(1):

“A power of attorney executed in this state on or after January 1, 2017, is valid if its execution complies with RCW 11.125.050.”

The POA requirements laid out in RCW 11.125.050(1), which states:

“A power of attorney must be signed and dated by the principal, and the signature must be either acknowledged before a notary public.”

On 10/16/2023 Harold signed the new POA in front of a notary republic, and several other witnesses. This is stark contrast to the fact Leigh coerced Harold with a threat of abandonment, got him to sign papers he could not possibly understand within a half-an-hour, and to top it off Leigh notarized the POA of 10/20/2023, not a witness in sight.

Despite what David and Lori believed, and a fact that was echoed by both Leigh and Julia, receipts are not required to be disclosed according to RCW 11.125.125(8):

“Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal.”

Additionally, reimbursements are required, and nothing is mentioned in the statute that requires receipts. RCW 11.125.120 states:

“Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to reasonable compensation.”

Instead of having a new POA signed on 10/20/2023, both David and Leigh had the option under RCW 11.125.200(1)(a):

“A person shall either accept an acknowledged power of attorney or request a certification or a translation no later than seven business days after presentation of the power of attorney for acceptance.”

Neither Leigh or David attempted to request a certification or a translation.

Neither Leigh, nor David filed a Court petition under RCW 11.125.160, instead, they conspired to have a POA executed extra judicially. In addition, RCW 11.125.260(6) provides that an agent can:

“Engage, compensate, and discharge an attorney, accountant, investment manager, expert witness, or other advisor.”

And RCW 11.125.260(9) states that Brian, as agent can:

“Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means.”

These statutes indicate that Brian was entitled to the communications of Harold, and papers, and was authorized to hire an attorney for Harold when Leigh quit his representation of Harold on 10/16/2023, even writing to David and Brian on the same day:

“As such, your parents are now free to obtain other legal counsel going forward” (*CP#1, pg. 705*).

Leigh’s claim and the Commissioner agreed he had the right to seek Harold’s okay to give over he and Carolyn’s legal papers. However, RCW 11.125.240 unequivocally gives Brian the power to any papers that the principal had a right to.

One of the big claims Leigh makes is that Brian cannot be a POA as he is an ex-felon. The fact Brian has a felony that is over thirty-years-old is not relevant. Randy stated that an ex-felon cannot be a fiduciary. RCW 11.125.240(1)(g) states:

“Exercise fiduciary powers that the principal has authority to delegate.”

The language of RCW 11.125.340 begins:

“Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent, without the need for appointment of a guardian or guardian ad litem under Title 4 RCW.”

Here the requirements of a guardian, or a conservator are not necessary to act on behalf of the principal. Making the argument made by Randy that Brian is not eligible to be a POA because he cannot be a guardian are moot. The Uniform Power of Attorney Act does not require anything of an Agent except their willingness to take on the task RCW 11.125.130:

“Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.”

Leigh and David could have addressed their dissatisfaction with Harold’s decisions by petitioning the court under RCW 11.125.160(2), which states:

“A person designated in subsection (1) of this section may file a petition requesting the court to construe a power of attorney or grant any other appropriate relief.”

David’s *Petition for Guardianship*, for Harold happened after the conspiracy between Leigh and David culminated in Leigh coercing Harold to sign papers. Leigh stated:

“I told [Harold] that I would remain his legal counsel provided that he designate David as his sole POA Agent, as David had done an exemplary job managing his assets to date and that I was concerned over having Brian in a position of authority over his assets. So based on my advice, as his legal counsel, Harold signed a new Durable Power of Attorney designating David in that position (which I brought with me to that meeting if Harold so chose)” (CP#51, pg. 68).

Harold stated in his *Declaration*:

“Leigh Bennett got me to sign papers I did not understand...I cannot state clearly enough that I did not intend, nor want my son Brian to be discontinued...Please do not take my son Brian away from me” (CP#10, pg. 653).

In Harold’s own words he is direct in stating he did not want Brian to stop being his agent. Thus, Leigh violated both Harold and Brian’s rights to have the POA on 10/16/2023 lawfully abided by. The Uniform Power of Attorney Act provides rights, authority, and of course liability, but Leigh did not hesitate to take action and threatened to abandon Harold in his own room at Pacifica.

Clearly communication between Leigh and David occurred. An attorney wouldn’t just designate whoever they thought would be the best agent, would they? The time line demonstrates that on 10/20/2023, in the early morning Leigh visits Harold for one half of an hour. With him he has a revocation of POA, and a new POA naming David as sole agent. He has Harold sign them both, and he himself notarizes them. There is not witness, and the notary is Harold’s ex-lawyer, offering threats of abandonment, along with the quid pro quo that Leigh will stay on only if Harold removes Brian.

And what if David were a stand-up guy and when Leigh brought him the new POA naming him as sole agent he screamed foul knowing, and acknowledging Brian as the sole POA. On 10/17/2023, David e-mailed Brian and said:

“Leigh Bennett’s legal representation of our parents has been disappointing at best. He dropped the ball providing legal opinions for consideration – and that did not happen. Lori is in the process of transferring funds. She will be providing a Word document by the end of today that outlines all the actions you will need as sole POA to take on the bill paying” (No. 86434-3, CP#21, pg. 249).

What would Leigh have done then if David refused to be sole agent, go back and change it? Unfortunately, David does not seem to be a straight shooter.

David engaged the services of Julia and Chris who practice elder law. Because Julia sent Brian an e-mail on 10/23/2023 at 2:00 in the afternoon:

“I represent David Malnes as Attorney-in-Fact for your father, Harry Malnes” (No. 86434-3, CP#5, pg. 349).

It is unknown if Julia and Chris had been engaged by David, on behalf of Harry, prior to 10/20/2023 or after. Either way it is clear that on 10/23/2023 Julia and Chris believed they represented Harry’s agent, “attorney-in-fact,” and by extension they represented Harry. However, on 10/27/2023, Lindeman and Lee signed the *Petition for Guardianship*... for Harold Malnes. Because Brian had not heard from Leigh yet, all he could assume was David had hired an attorney to protect the interests of Harold using his newly minted POA under RCW 11.125.260(6):

“Engage, compensate, and discharge an attorney, accountant, investment manager, expert witness, or other advisor.”

David’s hiring an elder law firm can have only two purposes: enforce the POA signed on 10/20/2023, or David, Julia, and Chris had already formulated a plan to petition for the guardianship they all eventually

signed on 10/27/2023. But of course, the need for an attorney only seemed to occur after Leigh coerced Harold to sign the POA making David sole POA.

The case of In re Eugster, 166 Wn. 2d 293 (Wash. 2009) shares many similarities with the petition for a guardianship presented by David and his attorneys Julia and Chris.

“Eugster knowingly filed a guardianship petition with no independent investigation of Mrs. Stead, whom he alleged was his client in the petition. Eugster filed the petition without Mrs. Stead’s knowledge or consent. The petition was drafted in response to Mrs. Stead’s termination of Eugster’s representation. If the petition had been successful, Roger would have been Mrs. Stead’s guardian, which was directly contrary to Mrs. Stead’s objectives. The guardianship would have given Eugster control over her assets and attorney fees for his work. The filing resulted in serious injury to Mrs. Stead. Her relationship with Roger was permanently damaged and she incurred \$13,500 in costs to defend herself against a baseless guardianship petition. The hearing officer and unanimous Board correctly determined under standard 7.1 the presumptive sanction for count nine is disbarment” In re Eugster.

Thus, the Washington Supreme Court disbarred an attorney for similar behavior as that of Julia and Chris, who signed the *Petition*, in this case without an independent investigation of Harold, who they represented as their client. In fact, Julia served paperwork on behalf of Harold in her e-mail to Brian on 10/23/2023.

The facts and the timeline support the conclusion that David and Leigh conspired to have the POA signed on 10/20/2023. Thus, both men conspired to withhold the right of Harold to freely select, without undue persuasion, who he wants to be his agent. And Brian, under the Uniform Power of Attorney Act, had the right to act, unmolested, as Harold’s agent.

Conspiracy against rights is defined in 18 U.S. Code § 241:

“If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.”

This definition is helpful, because it is doubtful the United States Department of Justice will prosecute this conspiracy, however, relief exist in Federal District court under 42 U.S.C. § 1985(3):

“If two or more persons in any State or Territory conspire...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws... the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”

4. Julia Lindeman testified as an expert, but Brian was not able to impeach her testimony in accordance with ER 607, and ER 702? Julia also lied under oath by stating David’s actions were completely normal and legal.

Perjury in the first degree is stated as RCW 9A.72.020(1):

“A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.”

The alternative to Julia lying in open court would be a violation of making a false or misleading statement to a public servant according to RCW 9A.76.175:

“A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. ‘Material statement’ means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.”

On 1/11/2024 Julia stated in court:

“David rerouting his father’s Social Security and retirement income payments so that they point to his father’s account is not exploitation...David asking his brother for receipts so that any funds...is not exploitation... And, in fact, his actions have been ratified by Bank of America directly (*RT pg. 27*). Julia continues her testimony: “Brian hasn’t demonstrated that any money is missing or being actively misused” (*RT pg. 28*).

The Commissioner stated:

“[S]o that’s why I want to make sure that I explore that with the assistance, of course, with counsel who specialize in this area of law, as the Court does not” (*RT pg. 38*).

The Commissioner asked Julia to examine the will as an attorney who “specializes in this area of law.” As such the Commissioner has in fact appointed an expert witness according to ER 706, which states:

“A witness so appointed shall be informed of the witness’ duties by the court in writing, a copy of which shall be filed with the clerk...the witness shall be subject to cross examination by each party.”

None of that happened. In addition, Brian was not afforded the opportunity to impeach the expert witness as is his right under ER 607.

5. Snohomish County Superior Court erred by not providing Brian information on how to access the Zoom meeting for the Hearing to consider his *Motion for Revision* (CP#73) on 2/6/2024.

Under RCW 7.105.205(5)(a):

“If a hearing is held with any parties or witnesses appearing remotely, the following apply: Courts should include directions to access a hearing remotely in the order setting the hearing and in any order granting a party’s request for a remote appearance. Such orders shall also include directions to request an interpreter and accommodations for disabilities.”

Brian was not given the information necessary from the ADA Coordinator and the Judge's clerk. Documents are available for this claim. Brian is simply aware that he cannot introduce new material to this court with prior approval. At this time Brian request permission to add documents to the record.

IV. CONCLUSION

Under RCW 7.105.225, the Court "shall issue a protection order if it finds by a preponderance of the evidence that the petitioner has provided the required criteria." RCW 7.105.225(1). Brian has met his burden against David Malnes. The evidence demonstrates that David acted illegally while dealing with Harold's finances. He further took it upon himself, in a conspiracy with Leigh Bennett to deprive Harold and Brian of their civil rights.

Brian asks the court to grant his VAPO against David Malnes. .

Brian asks the court to find that Julia Lindeman lied to the court in normalizing the illegal behavior of her client. Brian asks the court to sanction Julia and find her guilty of perjury.

Brian asks the court to issue an advisement to the Superior Court of Snohomish County to publish dates and times of all Zoom meeting for not only Commissioners, but for the Judges who Review Commissioners under RCW 2.24.050.

I certify that this document contains 8459 words, pursuant to RAP

18.17.

December 10th, 2024



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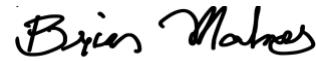
DECLARATION OF SERVICE

The undersigned declares that on this date I caused to be served by U.S. First-Class mail postage prepaid and via-e-mail the foregoing document upon the following party:

Julia Lindeman
Northwest Elder Law
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Julia@nwelg.com

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

DATED this 10th day of December 2024.



Brian Malnes, *pro se*

BRIAN MALNES - FILING PRO SE

December 10, 2024 - 1:17 PM

Transmittal Information

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