

1979

# In the Matter of the Estate of Joanne Ashley Walker, William M. Walsh, Harmon Smith Walker : Reply Brief of Petitioner - Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.T. Quentin Cannon; Attornes for RespondentJohn Walsh; Attorney for Appellant

---

## Recommended Citation

Brief of Appellant, *In re Walker*, No. 16136 (Utah Supreme Court, 1979).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/1479](https://digitalcommons.law.byu.edu/uofu_sc2/1479)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF THE STATE OF UTAH

---

No. ~~46136~~ 16135

---

IN THE MATTER OF THE ESTATE  
OF JOANNE ASHLEY WALKER,

Deceased.

WILLIAM M. WALSH

Petitioner-Appellant,

HARMON SMITH WALKER,

Personal Representative-Respondent

---

REPLY BRIEF OF PETITIONER - APPELLANT

---

PETITIONER APPEALS FROM AN ORDER  
DENYING PETITION FOR THE REMOVAL  
OF HARMON SMITH WALKER  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF JOANNE ASHLEY WALKER  
DECEASED.

THIRD DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY  
STATE OF UTAH  
HONORABLE G. HAL TAYLOR, DISTRICT JUDGE

---

JOHN WALSH  
ATTORNEY FOR THE APPELLANT  
2870 SOUTH STATE STREET  
SALT LAKE CITY, UTAH  
84115  
Telephone: 486-9636

FILED

APR 21 1979

T. QUINN  
ATTORNEY  
TEN BRIDGE  
SUITE 510  
SALT LAKE  
84101  
Telephone

IN THE SUPREME COURT OF THE STATE OF UTAH

---

No. 16136

---

IN THE MATTER OF THE ESTATE  
OF JOANNE ASHLEY WALKER,

Deceased.

WILLIAM M. WALSH

Petitioner-Appellant,

HARMON SMITH WALKER,

Personal Representative-Respondent

---

REPLY BRIEF OF PETITIONER - APPELLANT

---

PETITIONER APPEALS FROM AN ORDER  
DENYING PETITION FOR THE REMOVAL  
OF HARMON SMITH WALKER  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF JOANNE ASHLEY WALKER  
DECEASED.

THIRD DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY  
STATE OF UTAH  
HONORABLE G. HAL TAYLOR, DISTRICT JUDGE

---

JOHN WALSH  
ATTORNEY FOR THE APPELLANT  
2870 SOUTH STATE STREET  
SALT LAKE CITY, UTAH  
84115  
Telephone: 486-9636

T. QUENTIN CANNON  
ATTORNEY FOR THE RESPONDENT  
TEN BROADWAY BUILDING  
SUITE 510  
SALT LAKE CITY, UTAH  
84101  
Telephone: 521-3600

## TABLE OF CONTENTS

Table of Contents . . . . .	(i)
Table of Statutes cited . . . . .	(ii)
Table of Rules of Civil Procedure cited . . . . .	(ii)
Statement of the Kind of Case . . . . .	1
Disposition in the Lower Court . . . . .	1
Relief sought on Appeal . . . . .	1
Statement of the Facts . . . . .	2
Argument One . . . . .	5
Argument Two . . . . .	7
Argument Three . . . . .	9
Argument Four . . . . .	10
Argument Five . . . . .	12
Argument Six . . . . .	15
Argument Seven . . . . .	16
Argument Eight . . . . .	17
Argument Nine . . . . .	18
Conclusion . . . . .	19
Certificate of Mailing . . . . .	22

TABLE OF STATUTES CITED  
UTAH CODE ANNOTATED, 1953

75-3-701 . . . . .	6
75-3-103 . . . . .	6
75-3-703 . . . . .	8
75-2-804 . . . . .	19

UTAH RULES OF CIVIL PROCEDURE

Rule 13(a) . . . . .	18
Rule 13(a) . . . . .	19

IN THE SUPREME COURT OF THE STATE OF UTAH

---

No. 16135

---

IN THE MATTER OF THE ESTATE OF  
JOANNE ASHLEY WALKER,

Deceased.

WILLIAM M. WALSH

Petitioner-Appellant,

HARMON SMITH WALKER

Personal Representative-Respondent.

---

REPLY BRIEF OF PETITIONER - APPELLANT

---

STATEMENT OF THE KIND OF CASE

Action by the Petitioner to remove the Personal  
Representative of the Estate of Joanne Ashley Walker.

DISPOSITION IN LOWER COURT

The Court denied the Petition of the Petitioner  
to remove the Personal Representative and appoint a succe-  
sor.

RELIEF SOUGHT ON APPEAL

Petitioner seeks an order vacating the order of  
the District Court, and remanding the above-named case to  
the District Court to remove the Personal Representative  
and replacing the same with an appropriate individual.

## STATEMENT OF THE FACTS

The decedent was a very sick individual and had thirty plus major surgical operations over her adult life. She had special needs because of her inability to get around, so her uncle, William M. Walsh, would clean her house, pay her bills, visit her when in the hospital, etc.

While she ran her own affairs, he would be the one that she would call when she was depressed or had any special physical need.

As compensation for his many kindnesses, the decedent, engaged her own attorney and prepared for all of her property to be placed in joint tenancy with William M. Walsh. It was her intention that Mr. Walsh, be compensated for all his past and future services to her.

In September, 1975, the decedent placed all of the real property in joint tenancy with William M. Walsh, and executed a Bill of Sale for the personal property. As compensation flowing from Mr. Walsh to Joanne he was to continue to care for her physical needs, ie: cleaning her house, doing the dishes, paying her utilities, and renewing her licenses, etc. Mr. Walsh did not have any control or influence over the decedent, nor was he in a position of trust or confidence.

In the Spring of 1977, Mr. Harmon Smith Walker, needed a place to stay for an evening, so a friend of the decedent, asked if he could stay at her home for the night. That evening, he prepared a lovely meal for the decedent and others. The uniqueness of his ability to prepare meals, quickly won the admiration of all. (He is an excellent chef - a professional chef) So as it were, he stayed in the decedent's home until the end of June, 1977, when she in a very failing condition, and he were married.

At the time of the marriage, the uncle, Mr. Walsh, and Mr. Walker discussed the situation of the decedent, and Mr. Walker acknowledged the fact that the property was already sold in joint tenancy to Mr. Walsh, and Mr. Walker represented that he did not care about it all because he knew that it was what the decedent wanted.

The decedent's health deteriorated greatly thereafter, and she died on September 29, 1977, which was almost three months to the day, that she married Mr. Walker.

Mr. Walsh stood personally for the expenses of her passing.

On November 9, 1977, T. Quentin Cannon wrote a letter to Mr. Walsh, wherein he stated that Mr. Walsh had dispossessed Mr. Walker of his home, and that Mr. Walsh should provide Mr. Cannon with copies reflecting the trans-



action which occurred in September, 1975, where the decedent sold certain properties to Mr. Walsh.

Then on November 28, 1977, Mr. Cannon threatened Mr. Walsh with suit if Mr. Walsh did not provide him with copies reflecting the transaction in 1975, within ten days.

No one at this time had petitioned the Court to be appointed the Personal Representative of the Estate to take care of the estate, so as it were, Mr. Cannon had no right to the documents, nor was he in any position of authority to require Mr. Walsh to provide him with the said documents.

It is clear however, that Mr. Cannon was not acting in the furtherance of any fiduciary duty which he may later be assigned by the court, nor was he acting in furtherance of any fiduciary duty which Mr. Walker had either, because no one at this time had petitioned the court to administer the estate.

However, three weeks later, Mr. Walker petitioned the Court in formal proceedings to become the Personal Representative of the Estate. He gave notice of his Petition by publication and no one showed to object. His Petition was granted and Letters of Intestacy were issued on or about February 3, 1978.

Some six weeks after becoming the Personal Representative of the Estate, Mr. Walker filed suit against

Mr. Walsh, in the name and at the expense of the Estate, to set aside the sale which occurred in September 1975.

This suit is maintained by a different law firm than is representing the Estate's administration.

Mr. Cannon as Attorney for the Estate of Joanne Ashley Walker, and Harmon Smith Walker, as Personal Representative for the Estate of Joanne Ashley Walker, did literally nothing, either in the furtherance of their duties to the Estate nor in acting in the best interests of the Estate, from the time that the Letters were issued, ie: February 3, 1978, until an action was brought on October 4, 1978 to have a new personal representative for the Estate appointed.

Only then, did Mr. Cannon file his Notice to Creditors.

The Petition for the Removal of Harmon Smith Walker, which was filed on October 4, 1978, was heard before the Honorable Judge Hal Taylor on the 25th day of October, 1978.

From the order denying the Petition, the Petitioner-Appellant appeals.

#### ARGUMENT ONE

Counsel for the Respondent would have the Court believe that since he had written two letters to Mr. Walsh, demanding under threat of suit, that Mr. Walsh provide him with copies of the documents reflecting the transaction in

September 1975, he has somehow fulfilled his and his clients duties to administer the Estate.

This is a sham.

In the Utah Code Annotated, 75-3-701 is the following:

75-3-701 TIME AND ACCRUAL OF DUTIES AND POWERS.  
-- The duties and powers of a personal representative commence upon his appointment.

Also in 75-3-103, of the Utah Code Annotated, is the following:

75-3-103 NECESSITY OF APPOINTMENT FOR ADMINISTRATION -- Except as otherwise provided in Chapter 4 of Title 75, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

In the facts of this case, Mr. Cannon had no right to demand the documents. He was not the attorney for the estate, and they were none of his business.

As an attorney, I may at times request information from different people, but I do not from their response conclude that my fiduciary duty to my clients or estates are fulfilled. Rather, if I am entitled to a document, and it is not forthcoming, I properly motion the matter before the proper court and thereby request an order for the document. Or more often, I, pursuant to Rule 34 of the Utah Rules of Civil Procedure, merely file a request for the pro-

duction of documents.

But of course, I would have no business being before the Court, unless I had, (1) Standing and (2) the right to the document, for inspection and copying.

Likewise, Mr. Cannon is not entitled to the document under the facts because, (1) he had no standing, and (2) he otherwise had no right to the document. But if he did, then the remedy is before the proper court with a motion to order the document presented, or mere compliance with Rule 34.

Surely one as experienced and knowledgeable as Mr. Cannon, is aware of Rule 34 and the potential for the information one may acquire thereby.

But to conclude that because he wrote two letters, at a time when he had no authority to ask for documents, and he does not get his desired response, that he has reached the bounds of his remedy, and furthermore fulfilled his fiduciary duties to the Estate is absurd.

#### ARGUMENT TWO

Counsel for the Respondent would have the Court believe that, "because we were getting nowhere (in getting the documents) I told Mr. Walker, he better get an independent counsel to represent him . . ." so he could marshal the assets of the estate and pay off the creditors.

This too is a sham.

First, if Mr. Cannon is entitled to the documents as the Attorney for the Estate, it is his duty to be the one to require the production of the document, and independant counsel has nothing to do with it either in fact or in law.

As stated above, Mr. Cannon could under Rule 34 of the Utah Rules of Civil Procedure have acquired the document, if he wanted it.

Mr. Cannon could as well, under the special provisions of the Utah Uniform Probate Code have had an order from the Court requiring the production of the document as well. This all could have been had pursuant to 75-3-703, of the Utah Code Annotated, as amended in 1953.

As a matter of fact, Mr. Walker sought and retained at the expense of the estate, independant counsel, notwithstanding, but this had nothing to do with marshalling the assets of the estate, or otherwise fulfilling his obligation to the Estate. Rather, it was to set aside the transaction which occurred in September, 1975.

Yet, Mr. Cannon states on page #10, of his brief:

It should be noted that Mr. Walker was issued letters of administration on February 3, 1978, and an action against petitioner-appellant to marshal the assets was filed March 17, 1978.

This, I submit, accentuates the sham Mr. Cannon is attempting to bring on the Supreme Court of the State

of Utah.

The law suits are completely different. What takes place in the one has nothing to do with the other.

The one suit is for alleged, (1) Fraud, (2) Undue Influence, (3) Duress and (4) Breach of Trust, involving a transaction that occurred between the decedent and Mr. Walsh, three plus years before there ever was an estate to administer.

The other matter before the Court is the administration of the Estate of Joanne Ashley Walker.

What Mr. Walker does in the one suit as to responding to requests for admission, answers to interrogatories, etc., is completely irrelevant and immaterial, when it comes to his duties to administer the Estate which he actively sought the Court to assign him.

### ARGUMENT THREE

Counsel for the Respondent would have the Court believe that the Appellant is not a heir.

Mr. Walsh is an uncle, he is clearly an heir. He is a next of kin as well, and he would take under either position, should he prevail on his counterclaim against Mr. Walker, in the other lawsuit. (This will be discussed later)

Notwithstanding, he unequivocally has standing to bring this action because he is a Creditor of the Estate.

#### ARGUMENT FOUR

Counsel for the Respondent would have the Court believe that the assertion that the Respondent has a past criminal record which would make him neither trustworthy nor competent to administer the Estate, has no basis either as a matter of fact nor as a matter of evidence.

Mr. Cannon states on page #11:

As to Criminal Record: " .

A search of the affidavits and records fails to reveal in any manner whatsoever what the nature of the criminal record of Harmon Smith Walker, might be. Was it jaywalking, over-parking, speeding, when or how long ago it was, was it a misdemeanor and of what class, or was it a felony? Few in life could deny that they have ever violated the law. There is no claim Mr. Walker was found guilty or convicted of a crime. The bland charge is that Mr. Walker, had a 'criminal record'. It was with anticipation the Mr. Walker went to court to hear what the criminal record might be. When such statements and allegations are made they should be made with specificity. Mr. Walker was apprehended for drunken driving once in California but was never convicted. The allegation is not sufficient to be cause for removal.

While it is true, that only criminal matters which have resulted in a conviction can be utilized in subsequent proceedings and then only under limited conditions, yet but for the mention by the Counsel for the Respondent, that Mr. Walker was apprehended for drunken driving once in California but was never convicted, I would not, otherwise I submit, be entitled to mention other offenses which I have been informed as to his criminal record. (Although, it should be

understood that I do not know the results of the various arrests) The Personal Representative was arrested in Utah for driving under the influence within the last two years; the Personal Representative was arrested for driving on a revoked driver's license within the last two years, and the Personal Representative was arrested for the felony of writing bad checks, while in California, within the last two years.

Admittedly, however, the only issue before the Court is the evidence that was before the lower Court.

In the verified petition made and executed October 3, 1978, and filed with the Third District Court on October 4, 1978, was the following:

"Cause for removal of Harmon Smith Walker as Personal Representative exists because:

- (a) His past criminal record indicates that he is neither trustworthy nor competent to administer the estate."

Counsel for the Respondent stated that, "It was with anticipation that Mr. Walker went to Court to hear what the criminal record might be." So the Personal Representative was clearly aware of what was before the Court, by way of the verified petition, and he even had a foreknowledge of the evidence before the said Court.

However, there was no objection to the evidence, and with no objection, without a flagrant violation of a Constitutional Right, Counsel for the Respondent is



precluded from raising the issue on appeal.

But even more importantly, there was never proffered any evidence to the contrary, or any evidence which would be inconsistent with the evidence already before the Court, even with the foreknowledge, which the Counsel for the Respondent admits.

All in all, it may be a bland charge, but it was under oath, it went unobjected to, and there is no evidence which is contrary or inconsistent therewith, even with the admission of a foreknowledge for the same.

#### ARGUMENT FIVE

In the Petition for the Removal of the Personal Representative of the Estate of Joanne Ashley Walker, the Appellant stated while under oath:

3. Cause for the removal of Harmon Smith Walker as Personal Representative exists because:

(b) Harmon Smith Walker has mismanaged the Estate in that he has made no effort to inventory the assets and personal property of the Estate and has made no effort in the ascertaining and paying of creditors.

In response thereto, Counsel for the Respondent states on page #16 of his reply brief:

2. The personal representative filed suit in the district court of Salt Lake County, State of Utah, in Case No. C-78-1735 trying to get an inventory and accounting of the properties of the Estate of Joanne Ashley Walker, deceased as petitioner-appellant has all of the assets of the estate in his "safe keeping" so what basis could there be to claim said personal representative "has mismanaged the estate in that he has made no effort to inventory the assets and personal property of the estate, and has made no effort in the ascertaining and paying of creditors."

Again, the Counsel for the Respondent would have the Court believe that somehow by way of an independant lawsuit, which's intended purpose is to set aside a transaction which the decedent engaged in some two years before her death, fulfills Mr. Cannons affirmative duties and obligations to administer the Estate.

The two matters are wholly unrelated. One matter is a lawsuit to set aside a transaction which occurred in 1975, and the other is to handle those items in the Estate that are outside the transaction, and administer the same.

Then the Counsel for the Respondent states on page #16:

. . . as petitioner-appellant has all of the assets of the estate in his "safe keeping" so what basis could there be to claim said personal representative "has mismanaged the estate in that he has made no effort to inventory the assets and personal property of the estate, and has made no effort in the ascertaining and paying creditors.

It appears that Counsel for the Respondent is actually saying, "My client has so neglected his duty to safe keep the assets of the estate; that he has neglected to make an inventory; that he has made no effort in ascertaining the creditors; and he has made no effort in paying the said creditors, and since Mr. Walsh has done the same, what basis does Mr. Walsh have, for saying that Mr. Walker has not managed, ie: mismanaged, the Estate."

Mr. Walker, actively and overtly sought the Court to assign him the duty to safe keep the assets. He actively and overtly sought to Court to assign him the duty to make an inventory of the assets. He actively and overtly sought the Court to assign him the duty to ascertain the creditors of the Estate. And he actively and overtly sought the Court to assign him the duty to pay the creditors.

As stated in the original brief of the Appellant, Mr. Walker has failed, and more importantly failed as to the mere effort to fulfill the fiduciary duty which he asked the Court to assign him.

Now, the Counsel for the Respondent asks what basis there could be that the personal representative has mismanaged the Estate. Again, I submit it is a sham!

Mr. Walsh, steps in when no one is doing anything about the Estate. Mr. Walsh stands personally for some of the debts. Mr. Walsh watches over and safe keeps the assets of the Estate. It is the Estate after all that this whole matter is all about, not the setting aside of some transaction that occurred between the Decedent and Mr. Walsh better than two years before.

Mr. Walker did nothing literally, with the exception of filing a frivolous lawsuit, which has no basis either in law nor fact, (this will be discussed later) at the expense of the Estate, so that he can reap where he has not sown.

Now, when there is an action to get someone as Personal Representative of the Estate to fulfill the position, he pleads that someone else has handled it, so what basis is there that he has not performed.

On page #16 and #17, Counsel for the Respondent states in his brief:

3. Harmon Smith Walker has failed to file an inventory because petitioner-appellant "is personally and first-hand aware of the state of being of the Estate of Joanne Ashley Walker, in that he has exercised due care in the protection of the assets and personal property of said Estate.

Is it not true, that Counsel for the Respondent is saying that Mr. Walker did not need to file an inventory because Mr. Walsh is aware of what is going on.

Is the fact, that Mr. Walsh is aware of what is going on, relevant to the issue that Mr. Walker has a duty to the Estate to file an Inventory. It seems that Counsel for the Respondent is arguing that Mr. Walsh has no interest because he is not an heir, then they here seem to argue that he and the estate are being protected because he is aware. I submit that because Mr. Walsh is aware of the condition of the Estate is wholly irrelevant and immaterial when it comes to Mr. Walker's fiduciary duty, the highest legal cognizable duty, to administer the Estate.

#### ARGUMENT SIX

The independent action against Mr. Walsh is frivolous, unmeritorious and with no substance, as a matter

The Decedent was the Attorney for the Appellant's cousin. He knew her as a friend and as a loved one. Moreover, he knows how his Father spent many hours away from home, caring for her needs and looking after her well being.

Counsel was at home with his Father, when the call came in the middle of the night informing Mr. Walsh of the passing of his neice.

Counsel knew the disposition of the decedant, and how she was uncontrollable when she was sober and outrageous when she was not.

Counsel submits to the Court that Mr. Walsh, lacked the apparent ability to commit the alleged tortious acts which are the basis for the suit.

#### ARGUMENT SEVEN

The independant action against Mr. Walsh is frivolous, unmeritorious and with no substance, as a matter of law.

The alleged actions by the Defendant of (1) Fraud, (2) Duress, (3) Undue Influence and (4) Breach of Trust, do not survive the decedant as a matter of law.

Furthermore, each of alleged actions occurred long before Mr. Walker even knew the decedant, and they would not pass to Mr. Walker by virtue of the marriage, and they would never accrue to his interests thereby.

## ARGUMENT EIGHT

Even if the independent action against Mr. Walsh was not frivolous, not unmeritorious and had substance, Mr. Walker could never prove the same, and so the lawsuit at the expense of the Estate is another basis for mismanagement.

According to the development of the testimony which has come by way of depositions, etc. there was no one present outside the parties, when the alleged acts took place. And all of the evidence which has any bearing on the matter is hearsay, at best.

Yet, Counsel for the Plaintiff in the actions suggests that this testimony can be taken because it goes to state of mind and is not offered for the truth of the matter asserted.

But, even if that were true, still the Plaintiff would have to establish that Mr. Walsh, was the proximate cause for her state of mind, and with no one present, anything to that effect would be offered for the truth of the matter asserted, ie: the logical nexes between her state of mind and Mr. Walsh's influence.

Too that element is fatal to the causes of action because her state of mind, without a showing that Mr. Walsh caused the same, is immaterial and irrelevant, and any testimony to the same would be offered for the truth of the matter asserted, and would therefore be hearsay, and

inadmissible.

Hence, the lawsuit could never be proved even if it were meritorious, and so to maintain the same at the expense of the Estate is in and of itself mismanagement.

#### ARGUMENT NINE

The lawsuit, which Counsel for the Respondent, suggests fulfills the fiduciary duty of the Personal Representative of the Estate, also includes a compulsory counterclaim. The defense of the counterclaim against Mr. Walker, for causing the death of the decedent, at the expense of the Estate is further mismanagement.

In the counterclaim Mr. Walker is being sued for conversion, misappropriation and trespass to chattel, as well as for causing the wrongful death of the decedent.

As a matter of law, the counterclaim is compulsory under Rule 13(a) of the Utah Rules of Civil Procedure, hence Mr. Walker has a conflict of interest, which I submit is another and independent ground for his removal.

First, he in the name of the estate maintains an action at the expense of the estate, and in the same action he must defend for the very causing of the death of the decedent.

If the Estate should be maintaining a frivolous and unmeritorious lawsuit is one matter for the Court to resolve, but it seems unquestionably clear that the Estate

should not have to pay for the defense of Mr. Walker's alleged misconduct. Especially when it is the said misconduct that terminated the life which gives rise to there even being an Estate.

Should the Defendant prevail, then Mr. Walker would not be entitled to any benefits under the intestacy of the Estate, and he would be passed over as if he had predeceased the decedent, according to 75-2-804, of the Utah Code Annotated in 1953.

#### C O N C L U S I O N

The Attorney for the Appellant, respectfully submits that the independent action brought by the Personal Representative of the Estate, is wholly immaterial and irrelevant, and frankly even uninteresting, when it comes to his fiduciary duty, the highest legal cognizable duty, which he actively and overtly sought to be assigned by the Court, to administer the Estate, ie: to inventory the assets; to ascertain the creditors of the Estate; to pay said creditors, to safe guard the assets; to file the notice to creditors, and to file an appraisalment, etc.

The independent action does have relevance when it comes to a conflict of interest by virtue of the counter-claim, and the payment of the defense of the same with Estate funds, especially when it is his alleged misconduct that caused the death of the decedent, and concomitantly the existence of an estate.

Without duplicating all that was stated in the



Appellants brief, the Attorney for the Appellant refers this Court to that brief and its statutory and case law authority for the removal of the Personal Representative of the Estate of Joanne Ashley Walker.

The Petitioner, William M. Walsh, has standing to bring the Petition for the Removal of the Personal Representative and Appointment of Successor.

Cause for the removal of Harmon Smith Walker exists because: (1) It would be in the best interests of the Estate; (2) He has mismanaged the Estate; and (3) Because he has failed to perform his duties as Personal Representative of the Estate.

There is no evidence which is contrary nor inconsistent with:

(1) The assertion that he is not trustworthy nor competent to administer the Estate because of his past criminal record.

(2) The assertion that he has made no effort to inventory the assets and personal property.

(3) The assertion that he has made no effort in the ascertaining and paying of creditors.

(4) The assertion that he has not so much as inquired of the person safeguarding the personal assets as to their location, safety or amounts as to value.

(5) The assertion that Harmon Smith Walker has totally neglected and failed in his fiduciary duty to administer the Estate.

(6) The assertion that Harmon Smith Walker has not filed his Notice to Creditors, which should have been filed upon his appointment as Personal Representative of the Estate.

(7) The assertion that Harmon Smith Walker has not filed and Inventory nor Appraisement, which should be filed before the expiration of three months from his appointment.

(8) The assertion that Harmon Smith Walker, has breached his fiduciary duty in that he has not performed as would a prudent man dealing with the property of another, which is the standard placed on the Personal Representative by the Uniform Probate Code.

(9) The assertion that there is gross mismanagement of the Estate, when funds of the same are used to maintain a frivolous, unmeritorious lawsuit, which has no basis as a matter of fact.

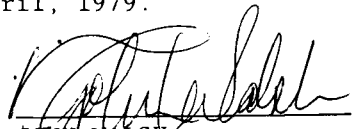
(10) The assertion that there is gross mismanagement of the Estate, when funds of the same are used to maintain a frivolous, unmeritorious lawsuit, which has no basis as a matter of law.

(11) The assertion that there is gross mismanagement of the Estate, when funds of the same are used to maintain a lawsuit which could never be proved.

(12) The assertion that there is an inherent conflict of interest by virtue of the counterclaim, and the payment of the defense of the same with Estate funds, especially when it is Mr. Walker's alleged misconduct that caused the death of the decedent, and concomitantly the existence of an estate.

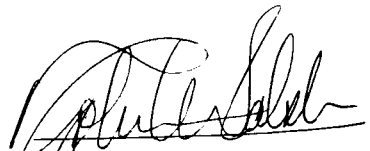
As a result, the Appellant respectfully submits that the case be remanded to the Third District Court with instructions to remove Harmon Smith Walker as Personal Representative of the Estate of Joanne Ashley Walker, and replacing the Representative with an appropriate individual.

Dated this 28th day of April, 1979.

  
JOHN WALSH  
ATTORNEY FOR THE APPELLANT  
2870 SOUTH STATE STREET  
SALT LAKE CITY, UTAH  
84115  
Telephone: 486-9636

#### CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed three copies of the foregoing REPLY BRIEF OF PETITIONER-APPELLANT to T. Quentin Cannon, Attorney for the Estate, Ten Broadway Building, Suite 510, Salt Lake City, Utah, 84101, this 28th day of May, 1979.

  
JOHN WALSH