

FILED
Court of Appeals
Division I
State of Washington
11/15/2018 4:36 PM

No. 96545-5

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

TRACY S. MCNAMARA, an individual,

Plaintiff/Appellant/Petitioner

v.

KAREN KOEHLER, AKA "THE VELVET HAMMER";
JOHN DOE KOEHLER; JOHN DOE HAMMER;
STRITMATTER KESSLER WHELAN KOEHLER MOORE KAHLER,
a Washington professional corporation,

Defendants/Respondents.

PETITION FOR REVIEW

Division One of the Court of Appeals No. 77157-4-I

JOHN HENRY BROWNE
Attorney for Petitioner

LAW OFFICES OF JOHN HENRY BROWNE, P.S.
800 Norton Building
801 Second Avenue
Seattle, WA 98104
(206)388-0777

TABLE OF CONTENTS

	Page
I. <u>IDENTITY OF PETITIONER</u>	1
II. <u>COURT OF APPEALS DECISION</u>	1
III. <u>ISSUES PRESENTED FOR REVIEW</u>	2
IV. <u>STATEMENT OF THE CASE</u>	3
V. <u>ARGUMENT</u>	6
A. FOR NEARLY FORTY YEARS, WASHINGTON COURTS HAVE CONSISTENTLY APPLIED THE FAIR REPORTING PRIVILEGE TO <i>ONLY</i> NEWS MEDIA OUTLETS.....	7
B. DIVISION ONE’S REJECTION OF THE RESTATEMENT (SECOND) OF TORTS § 611, COMMENT C, CONFLICTS WITH A PUBLISHED APPELLATE DECISION AND CONSTITUTES AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE TO BE DETERMINED BY THIS COURT.....	8
VI. CONCLUSION	10

TABLE OF AUTHORITIES

	Page
WASHINGTON CASES	
<u>Alpine Indus. Computers, Inc. v. Cowles Pub. Co.</u> , 114 Wn.App. 371, 57 P.3d 1178 (2002).....	7
<u>Clapp v. Olympic View Publ’g Co.</u> , 137 Wn.App. 470, 154 P.3d 230 (2007).....	7
<u>Herron v. Tribune Publ’g Co.</u> , 108 Wn.2d 162, 736 P.2d 249 (1987).....	7
<u>Mark v. Seattle Times</u> , 96 Wn.2d 473, 635 P.2d 1081 (1981).....	7
<u>McNamara v. Koehler</u> , 429 P.3d 6 (Division One No. 77157-4-I) (filed on August 6, 2018; publication ordered October 16, 2018).....	1,2
<u>Moloney v. Tribune Pub. Co.</u> , 26 Wn.App. 357, 613 P.2d 1179 (1980), <u>disapproved of on other grounds by Bender v. City of Seattle</u> , 99 Wn.2d 582, 664 P.2d 492 (1983), and <u>Chambers-Castanes v. King Cty.</u> , 100 Wn.2d 275, 669 P.2d 451 (1983).....	8
CASES FROM OTHER JURISDICTIONS	
<u>Kurczaba v. Pollock</u> , 318 Ill.App.3d 686, 742 N.E.2d 425 (2000).....	9
<u>Park v. Detroit Free Press Co.</u> , 72 Mich. 560, 40 N.W. 731 (1888).....	4
<u>STATUTES, RULES, AND OTHERS</u>	
RAP 4.2.....	6
RAP 12.3.....	2
RAP 13.4.....	1
Restatement (Second) of Torts § 611, comment C.....	1, 2, 6, 8, 9, 10
Washington Consumer Protection Act.....	5

I. IDENTITY OF PETITIONER

Petitioner Tracy McNamara, by and through her attorney, John Henry Browne, respectfully requests, pursuant to RAP 13.4, that this Court accept review of this matter of first impression, which is also a matter of significant public interest given the proliferation of attorney advertising.

II. COURT OF APPEALS DECISION

On August 6, 2018, Division One of the Court of Appeals entered an unpublished decision in No. 77157-4-I, McNamara v. Koehler.

Despite the lack of any supporting case precedent—and contrary to years of consistent jurisprudence—the Court held that “the fair reporting privilege applies to news media and other types of media, including websites, webpages, and blogs, reporting on official proceedings ...” Opinion at 7. The Court acknowledged that “Washington courts have not expressly decided whether the fair report privilege is applicable to parties other than traditional news media.” Id. But, based upon our State’s “strong public interest in having access to public proceedings,” the Court eschewed years of consistent jurisprudence holding that the privilege is available only to actual news media. See id.

The Court also declined to adopt comment C to the Restatement (Second) of Torts § 611: “While Washington courts have followed RESTATEMENT (SECOND) OF TORTS § 611, we have not adopted the

self-reporting exception in comment C. We decline to do so here.” Id. at 7 n.7.

On August 22, 2018, Ms. McNamara filed a timely Motion to Publish. She argued that because the Court determined unsettled or new questions of law or modified, clarified, or reversed an established principle of law in extending the applicability of the fair reporting privilege beyond the news media and rejecting the adoption of comment C to the Restatement (Second) of Torts § 611—both of which are matters of public opinion and importance—publication pursuant to RAP 12.3(3) was warranted.

On October 16, 2018, Division One granted the Motion to Publish. See Appendix, Exhibit A, McNamara v. Koehler, 429 P.3d 6 (2018).

III. ISSUES PRESENTED FOR REVIEW

1. Whether Division One’s decision that the fair reporting privilege extends to entities beyond the news media, including entrepreneurial lawyer website advertising containing falsehoods, conflicts with a decision of this Court or a published appellate decision?
2. Whether Division One’s decision that the State of Washington does not recognize comment C to the Restatement (Second) of Torts § 611 conflicts with a decision of this Court or a published appellate decision?
3. Whether these issues involve matters of substantial public interest that should be determined by this Court?

IV. STATEMENT OF THE CASE¹

Ms. McNamara is the Defendant in a wrongful death lawsuit pending in Grant Co. and is alleged to have murdered her husband, Tim McNamara (they thought they were legally married under the law of Belize), to gain property she already owned and gain from life insurance policies she did not even know about. The Plaintiffs, Mr. McNamara's children, Caleb and Jennifer, were, in effect, disinherited by their father.

Tim McNamara took his own life on Christmas Day, 2014. The cause of death as determined by Belizean law enforcement was suicide. His last email to his children was "I have LOVED being your Dad."

Ms. McNamara was now a single woman alone in a third world country known not only for corruption (the lead investigator, Orlando Vera, was convicted of corruption and sentenced to 24 months in prison), but also for violence against women. She cooperated with the Belizean police and then, with their permission, returned home to work on the family farm that Tim deeded to her in 2012, well before his suicide.

Caleb and Jennifer attempted to settle the estate with Ms. McNamara, who relied on Tim's will and thus declined cooperation. The children then traveled to Belize; sold farm equipment that belonged to Ms.

¹ For a complete factual distillation, see Appendix, Exhibit B, which consists of the Exhibits attached to the Plaintiff's Opening Brief.

McNamara for over \$10,000; and met with and lobbied Belize officials, who then changed the cause of death to “Murder.”

The children also hired the defendants in this matter, Stritmatter Kessler Whelan Koehler Moore Kahler (hereinafter “SKW”), to represent them in the wrongful death undue influence case filed in Grant County. One of the partners, Karen Koehler, is the lead attorney. She refers to herself as “The Velvet Hammer,” which she trademarked. She, as does SKW, maintains a prolific social media program, and she even has a blog under “The Velvet Hammer” moniker. A reading of her blog will see how impressed she is with her need and the need of other lawyers to maintain social media contacts.

SKW then proceeded to post the following false information about Ms. McNamara on its website:

1. An Interpol warrant existed for her arrest;
2. She had been found guilty of murder;
3. She had been found guilty of incest;
4. SKW obtained at least a \$10 million settlement for its clients against her; and
5. Tim McNamara’s assets at the time of his death included assets that she owned.

These postings precipitated Ms. McNamara’s defamation and

Consumer Protection Act claims against SKW.²

SKW not only promoted the falsities against Ms. McNamara on its website, but also began a prolific media campaign against her. SKW issued national press releases repeating the falsehoods and, more importantly, spread the lies to the small town newspapers where the jury will be chosen. They solicited TV interviews involving interviews with the children and Ms. Koehler herself, again repeating these lies.

The damage to Ms. McNamara is obvious—she lives in a small community and has been shunned. In addition to damaging her reputation in her close-knit community, the defendants caused actual damages as well. On Thanksgiving Day in 2015 at the Ephrata Walmart, a customer contacted the police specifically based upon SKW’s posting about a warrant for Ms. McNamara’s arrest. She was detained in this small town parking lot while the police looked in vain for outstanding warrants, found none, and released her. This ordeal lasted over 45 minutes. SKW suggests that the “warrant” information could have come from news media outlets, which ignores the fact that any and all news media reports are based on SKW's inaccurate press releases.

² Counsel later discovered that SKW and the Velvet Hammer were recently sanctioned for this very same type of behavior in King County Superior Court No. 17-2-23731-1-SEA. See Exhibit C, Order Granting Defendants’ Motion for Civil Rule 11 Sanctions and to Strike Inadmissible Materials Denying Plaintiffs’ Improper Motion.

Despite these facts, on November 18th, 2016, the Honorable Jim Rogers of the King County Superior Court entered an Order granting Defendants' Motion for Summary Judgment and dismissing Plaintiff's case with prejudice. See Ex. B at Ex. C.

Ms. McNamara filed Notice of Appeal on December 2, 2016, requesting direct review by the Supreme Court pursuant to RAP 4.2, and filed Statement of Grounds for Direct Review on December 16, 2016. After the parties filed their respective briefs, on June 28, 2017, this Court entered an Order transferring the case to Division One for consideration. Division One affirmed the trial court's decision in an unpublished decision, which it decided to publish pursuant to Ms. McNamara's Motion.

V. ARGUMENT

As Division One's panel decision that the fair reporting privilege applies to media beyond the traditional news media is in conflict with years of consistent jurisprudence by both this Court and our appellate Courts is a matter of substantial public importance that should be determined by this Court, review is warranted. Review is further warranted because Division One's panel decision rejecting the adoption of comment C to the Restatement (Second) of Torts § 611 is an issue of first impression that is also a matter of substantial public importance to be determined by this Court.

A. FOR NEARLY FORTY YEARS, WASHINGTON COURTS HAVE CONSISTENTLY APPLIED THE FAIR REPORTING PRIVILEGE TO *ONLY* NEWS MEDIA OUTLETS

Washington cases *solely and specifically* refer to the “news media”—with no extension for law firm advertising or any other media outlets or sources—when the fair reporting privilege is invoked. See, e.g., Clapp v. Olympic View Publ’g Co., 137 Wn.App. 470, 154 P.3d 230 (2007) (“Washington affords *news media* defendants a privilege for reporting on defamatory statements contained in official proceedings and records.”) (emphasis added) (citing Alpine Indus. Computers, Inc. v. Cowles Pub. Co., 114 Wn.App. 371, 382–83, 57 P.3d 1178 (2002)); Herron v. Tribune Publ’g Co., 108 Wn.2d 162, 179, 736 P.2d 249 (1987); Mark v. Seattle Times, 96 Wn.2d 473, 487–88, 635 P.2d 1081 (1981). In all of the above-cited cases—and all of the Washington cases cited by the Defendants—the defendants are actual media outlets. This is because there is *no Washington case* which holds that the privilege applies to media beyond traditional news media.

As Division One’s panel decision thus conflicts with longstanding precedent established by both this Court and our appellate courts, review is warranted.

Given that advertising by attorneys has evolved from being fully prohibited just decades ago to now being inescapable—on buses, benches,

and all over the internet—and the proliferation of social media blogs and other postings by individuals, this is an issue of substantial public interest and importance calling for review by this Court.

B. DIVISION ONE’S REJECTION OF THE RESTATEMENT (SECOND) OF TORTS § 611, COMMENT C, CONFLICTS WITH A PUBLISHED APPELLATE DECISION AND CONSTITUTES AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE TO BE DETERMINED BY THIS COURT

Without citation to any authority and in a footnote, the Division One panel decided to reject adoption of comment C to the Second Restatement of Torts § 611. See 429 P.3d at 7, n.7. The Court, more specifically, held: “While Washington courts have followed Restatement (Second) of Torts § 611, we have not adopted the self-reporting exception in comment C. We decline to do so here.” Id.

The sole Washington case that counsel could locate which cites to comment C is Moloney v. Tribune Pub. Co., 26 Wn.App. 357, 361, 613 P.2d 1179 (1980), disapproved of on other grounds by Bender v. City of Seattle, 99 Wn.2d 582, 664 P.2d 492 (1983), and Chambers-Castanes v. King Cty., 100 Wn.2d 275, 669 P.2d 451 (1983). The Moloney Court pronounced that the fair reporting privilege is “a qualified privilege commonly exercised by newspapers, broadcasting stations, and others who are in the business of reporting news to the public.” Id. at 361 (citing Restatement (Second) of Torts s 611, comment c). There is no mention of

the self-reporting exception.

Cases from other jurisdictions, however, are explicit. See, e.g., Kurczaba v. Pollock, 318 Ill.App.3d 686, 708, 742 N.E.2d 425 (2000) (“In the instant case, defendant made the original defamatory publication (the *Malus* complaint) and then ‘reported’ the same matter to others. Based on this alone, the fair reporting of judicial proceedings privilege is not available to defendant.”); Park v. Detroit Free Press Co., 72 Mich. 560, 568, 40 N.W. 731 (1888) (“... no more effectual way of doing malicious mischief with impunity could be devised than filing papers containing false and scurrilous charges, and getting those printed as news.”); Restatement (Second) of Torts § 611, cmt. C (“A person cannot confer this privilege upon himself by making the original defamatory publication himself and then reporting to other people what he had stated. This is true whether the original publication was privileged or not”).

The defendants are taking advantage of an apparent legal loophole permitted by Division One which enables a party to not only file a complaint full of defamatory remarks, but also repeat the deceitful allegations on social media and in law firm advertising. It seems axiomatic that the law would certainly prohibit a law firm from publishing such defamatory allegations on its website, yet unless and until this Court acts to distinguish advertising and other social media posts from actual “reporting” by news

media, private persons will continue to suffer damages by virtue of such intentionally harmful acts.

Division One's panel decision thus conflicts with another published appellate decision. The rejection of Comment C is also a matter of substantial public importance insofar as any person is now legally permitted to file any sort of salacious and unfounded allegations against another person or entity and then republish their own defamatory and/or false statements on their own websites or blogs as official reports under the fair reporting privilege. The Park Court recognized this form of "malicious mischief" 130 years ago, yet Division One seems to approve of this practice by rejecting adoption of comment C. These considerations seem to mandate review by this Court.

V. CONCLUSION

The panel decision by Division One not only conflicts with opinions of this Court and other appellate decisions, but also determines two issues of substantial public importance—that the fair reporting privilege applies to sources beyond traditional news media and that a person or entity can be protected from their own defamatory allegations by filing legal pleadings and then reporting such accusations on their own websites or blogs. Given the exponential growth in social networking by law firms and the ongoing efforts to ease the regulatory rules on social media and advertising, these

issues are of general public interest and importance. Review by this Court is thus appropriate.

DATED this 15th day of November, 2018.

Respectively submitted,

LAW OFFICES OF JOHN HENRY BROWNE, P.S.

By: */s/ John Henry Browne*
John Henry Browne, WSBA #4677
Attorney for Tracy McNamara

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on this 15th day of November, 2018, I electronically filed the foregoing document with the Washington State Court of Appeals, Division I, which will send notification of such filing to the attorney of record listed below:

Bruce E. H. Johnson at brucejohnson@dwt.com

I also electronically mailed said document to Plaintiff, Tracy McNamara.

DATED at Seattle, Washington, this 15th day of November, 2018.

LAW OFFICES OF JOHN HENRY BROWNE, P.S.

/s/ Craig Suffian
Craig Suffian

EXHIBIT A

429 P.3d 6

Court of Appeals of Washington, Division 1.

Tracy S. MCNAMARA, an individual, Appellant,

v.

Karen KOEHLER; aka "The Velvet Hammer;"

John Doe Koehler; John Doe "Hammer";

Stritmatter Kessler Whelan Koehler Moore Kahler, a
Washington professional corporation, Respondents.

No. 77157-4-I

|

FILED: August 6, 2018

|

Publication Ordered 10/16/2018

Synopsis

Background: Defendant in a pending wrongful death lawsuit brought action against attorney and law firm representing wrongful death plaintiffs, alleging defamation and violations of the Consumer Protection Act (CPA). Attorneys and firm moved to dismiss the claims. Because the pleadings included multiple attachments, the Superior Court, King County, James E. Rogers, J., converted the motion to dismiss to a motion for summary judgment, and granted summary judgment in favor of attorney and firm, dismissing wrongful death defendant's case with prejudice. Wrongful death defendant sought direct review by the State Supreme Court, which transferred the case to the Court of Appeals.

Holdings: The Court of Appeals, Mann, A.C.J., held that:

motion to dismiss was properly converted to motion for summary judgment;

attorney and law firm could invoke the fair report privilege;

statements on law firm's website were accurate or a fair abridgement in wrongful death plaintiffs' original complaint, and therefore protected under the fair report privilege; and

wrongful death defendant failed to demonstrate that any of attorney's or firm's business practices were unfair or deceptive under the CPA.

Affirmed.

Appeal from King County Superior Court, Docket No: 16-2-16400-5, Honorable James E. Rogers, Judge

Attorneys and Law Firms

John Henry Browne, Law Offices of John Henry Browne PS, 801 2nd Ave. Ste. 800, Seattle, WA, 98104-1573, for Appellant.

Bruce Edward Humble Johnson, Davis Wright Tremaine LLP, 1201 3rd Ave. Ste. 2200, Seattle, WA, 98101-3045, for Respondent.

Opinion

Mann, A.C.J.

¶ 1 The fair report privilege is a conditional privilege that protects from liability for defamation a republisher of a statement made in the course of an official public proceeding, including judicial proceedings. Tracy McNamara appeals a trial court order dismissing her defamation and Consumer Protection Act (CPA)¹ claims against attorneys Karen Koehler and Stritmatter Kessler Whelan Koehler Moore and Kahler (collectively SKW). McNamara alleged that SKW defamed her by posting false information on SKW's website about a pending wrongful death action that SKW filed against McNamara. Because the fair report privilege protects the statements made on the SKW website and McNamara failed to demonstrate a violation of the CPA, we affirm.

¹ Ch. 19.86 RCW.

FACTS

¶ 2 Karen Koehler, a partner at SKW, represents Jennifer Ralston and Caleb McNamara in a wrongful death lawsuit against Tracy McNamara for the alleged murder of Ralston and Caleb McNamara's father, Timothy McNamara. The complaint alleged that McNamara financially exploited and then murdered Timothy McNamara, her biological uncle, on December 25, 2014, in Belize.

¶ 3 SKW maintains a webpage dedicated to the Ralston v. Nessler, a.k.a. McNamara wrongful death lawsuit on the firm's website. This page features a picture of McNamara above the words "INTERPOL WARRANT." Next to the picture is a statement that Tracy Shannon Nessler [McNamara] "is wanted by the judicial authorities of Belize for prosecution to serve a sentence."² Beneath the picture of McNamara the webpage states, "Murder & incest in Belize with ties to WA State: Defendant Tracy Nessler a.k.a. McNamara is a Grant County resident with a warrant out for her arrest/prosecution." SKW's website also includes a webpage titled "Sample Cases." After describing the firm's personal injury and wrongful death practice, the page states "Below is a small sample of just a few of our over 150 cases resulting in at least seven and eight figures for our client." The page then provides a summary of SKW's ongoing litigation on behalf of plaintiffs involved in the 2015 Ride the Ducks crash on Aurora Avenue, links to several settled injury actions, and then two ongoing wrongful death actions including the action against McNamara.³ Following that are multiple pages containing description of cases handled by SKW lawyers; some list settlement amounts and some do not.

² The webpage refers to McNamara by her prior name, Tracy Shannon Nessler. The parties refer to appellant as Tracy McNamara. We also refer to the appellant as McNamara.

³ The page states:
The wrongful death case involves an alleged murder of Mr. McNamara by Defendant Tracy Nessler (a.k.a. Tracy McNamara). The motive is believed to include Ms. McNamara's wish to acquire Mr. McNamara's financial assets. These assets included the family farm, property in North Carolina and a bed and breakfast estate in Belize. Jennifer Ralston, the adult daughter of the decedent (Timothy Patrick McNamara) and Caleb McNamara are Plaintiffs in this wrongful death case.

¶ 4 In July 2016, McNamara sued Koehler and SKW for defamation and for violating the CPA. The complaint alleged that SKW's website was defamatory due to false statements about McNamara. The complaint identified the following false statements: (1) An Interpol Warrant exists for McNamara's arrest, (2) McNamara has been found guilty of murder, (3) McNamara had been found guilty of Incest, (4) SKW is responsible for obtaining at least a \$10 million dollar settlement for its clients against

McNamara, and (5) that Tim McNamara's assets at the time of his death included assets owned by McNamara.

¶ 5 SKW moved to dismiss McNamara's complaint under CR 12(c). SKW asserted that the information on the website was absolutely privileged under the litigation privilege and conditionally privileged under the fair report privilege, and that McNamara's CPA claim failed as a matter of law. Because the pleadings included multiple attachments, the trial court converted the CR 12(b) motion to a motion for summary judgment. The trial court granted summary judgment in favor of SKW and dismissed McNamara's case with prejudice.⁴

⁴ At the time of the trial court's ruling, the underlying wrongful death action against McNamara remained pending.

¶ 6 McNamara sought direct review by the Washington Supreme Court under RAP 4.2(a)(4). The Supreme Court transferred the case to this court.

ANALYSIS

Conversion to Summary Judgment

¶ 7 As a preliminary matter, McNamara claims that the trial court erred by converting the CR 12(b)(6) motion to dismiss into a CR 56 motion for summary judgment. We disagree.

¶ 8 Where a court hearing a motion for judgment on the pleadings considers matters outside of the pleadings, then that motion must be treated as a summary judgment motion. CR 12(c). McNamara recognized the trial court's duty under CR 12(c) and in its opposition to the motion to dismiss, asked that the trial court either strike the attachments to SKW's motion or convert the motion into a motion for summary judgment. This is precisely what the trial court did. As the court explained, the "motion contains a great deal of evidence, and therefore the Court converts the Motion into one for summary judgment under CR 56. All submitted evidence is admitted and was considered."

¶ 9 While McNamara argues on appeal that she should have been afforded additional time and an opportunity to present additional materials under CR 12(c), she ignores

that the parties stipulated to a briefing schedule on the motion to dismiss that allowed more time for the response and reply briefs than ordinarily allowed under CR 56(c).⁵ Moreover, McNamara fails to identify any additional evidence that would have been relevant to the court's consideration beyond the wrongful death complaint, the SKW website, and McNamara's complaint—all of which were before the trial court and attached to McNamara's appellate brief. Where, as here, there is no dispute of the underlying facts, and the questions presented are question of law, "[c]ompliance with the formalities of CR 56 was not necessary." Loger v. Washington Timber Prods., 8 Wash. App. 921, 926, 509 P.2d 1009 (1973). This matter is properly considered under CR 56.

⁵ CR 56(c) ordinarily allows a party responding to a motion for summary judgment 17 days to file a response followed by 6 days for the moving party to file a reply. The parties here stipulated to a briefing schedule that provided McNamara 20 days to file a response brief and 7 days for SKW to file its reply.

¶ 10 Summary judgment is proper if the pleadings, depositions, and answers on file show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party bears the burden of showing that there is no genuine dispute of material fact. Folsom v. Burger King, 135 Wash.2d 658, 663, 958 P.2d 301 (1998). All reasonable inferences from the evidence are resolved against the moving party. Folsom, 135 Wash.2d at 663, 958 P.2d 301.

¶ 11 In a defamation action, summary judgment serves as an early test of the plaintiff's evidence. Mark v. Seattle Times, 96 Wash.2d 473, 486-87, 635 P.2d 1081 (1981). To defeat a defendant's motion for summary judgment, the plaintiff "must establish a prima facie case by evidence of convincing clarity." Mark, 96 Wash.2d at 487, 635 P.2d 1081.

Defamation

¶ 12 A defamation plaintiff must establish four elements: falsity, damages, fault, and an unprivileged communication. Mark, 96 Wash.2d at 486, 635 P.2d 1081 (citing RESTATEMENT (SECOND) OF TORTS § 558 (1977)). There are absolute and conditional privileges that may shield a "defendant from liability for uttering an otherwise defamatory statement." Alpine

Indus. Computers, Inc. v. Cowles Publ'g Co., 114 Wash. App. 371, 381, 57 P.3d 1178 (2002). An absolute privilege absolves the defendant from all liability for defamatory statements. A conditional or qualified privilege "may be lost if it can be shown that the privilege has been abused." Bender v. City of Seattle, 99 Wash.2d 582, 600, 664 P.2d 492 (1983).

1. The Fair Report Privilege⁶

⁶ SKW argued below that the statements contained on its website are privileged under both the litigation privilege and the fair report privilege. Because the fair report privilege is dispositive, we do not address the litigation privilege.

¶ 13 Washington recognizes the fair report privilege—a conditional privilege that protects a republisher of a statement "when the original defamatory statement was made in the course of an official public proceeding or contained in an official public record." Herron v. Tribune Publ'g Co., 108 Wash.2d 162, 179, 736 P.2d 249 (1987). The purpose of the fair report privilege "is to serve the public's interest 'in having information made available to it as to what occurs in official proceedings and public meetings.'" Herron, 108 Wash.2d at 179, 736 P.2d 249 (quoting RESTATEMENT (SECOND) OF TORTS § 611). The fair report privilege extends to both civil and criminal judicial proceedings. Herron, 108 Wash.2d at 179, 736 P.2d 249 "Because the filing of a pleading is a public and official act in the course of judicial proceedings, the fair reporting privilege attaches to pleadings even if the court has yet to action them." Clapp v. Olympic View Publ'g Co., 137 Wash. App. 470, 476, 154 P.3d 230 (2007). See also WASH. CONST. art. I, § 10 ("Justice in all cases shall be administered openly, and without unnecessary delay.").

¶ 14 The fair report privilege protects the reporting of official proceedings if (1) the report is attributable to an official proceeding and (2) the report is an accurate or a fair abridgement. Clapp, 137 Wash. App. at 477, 154 P.3d 230. See also Herron, 108 Wash.2d at 179, 736 P.2d 249; Mark, 96 Wash.2d at 487, 635 P.2d 1081; Alpine, 114 Wash. App. at 383, 57 P.3d 1178; (all quoting RESTATEMENT (SECOND) OF TORTS § 611).

2. Application to SKW's Webpages

¶ 15 McNamara contends first that SKW cannot invoke the fair report privilege because it only applies to members of the news media. We disagree.

¶ 16 Washington courts have not expressly decided whether the fair report privilege is applicable to parties other than traditional news media. However, as we discuss above, Washington has long recognized a strong public interest in having access to public proceedings, including a constitutional mandate for the open administration of justice. As such, neither the type of media nor entity republishing reports of official public proceedings is relevant to determining whether the fair report privilege applies. We hold that the fair report privilege applies to news media and other types of media, including websites, webpages, and blogs, reporting on official public proceedings, including judicial proceedings, so long as (1) the report is attributable to an official proceeding and (2) the report is an accurate or a fair abridgment of the official report.⁷

⁷ McNamara argues that under comment C to RESTATEMENT (SECOND) OF TORTS § 611, a party may not rely on the fair report privilege by making the original defamatory publication himself and then reporting what was stated in the original publication. Consequently, McNamara contends, because SKW prepared the underlying complaint in the wrongful death action SKW cannot invoke the fair report privilege to protect republication of information in the complaint on its website. We disagree. While Washington courts have followed RESTATEMENT (SECOND) OF TORTS § 611, we have not adopted the self-reporting exception in comment C. We decline to do so here.

¶ 17 McNamara argues next that SKW may not invoke the fair report privilege because SKW's website and webpages are not an accurate or fair abridgment of plaintiff's complaint in the wrongful death action against McNamara. We disagree.

¶ 18 "For a report to be a fair abridgment of an official proceeding, surgical precision is not required so long as the report is substantially accurate and fair." *Alpine*, 114 Wash. App. at 386, 57 P.3d 1178. "In the summary judgment context, the plaintiff will not overcome the fair reporting privilege if the reviewing court determines as a matter of law that the challenged report is a fair abridgment." *Alpine*, 114 Wash. App. at 386, 57 P.3d

1178. We address each of the false statements alleged by McNamara in her complaint.

¶ 19 McNamara's complaint alleged that the statement "Interpol Warrant Issued" on the SKW webpage was false. While it is not precisely accurate that an "Interpol warrant" was issued, the statement on the website is a fair abridgment of the allegations in the complaint that "[s]ince Defendant's return to Washington, Belize authorities have issued a warrant for Defendant's arrest on the charge of murdering Mr. McNamara, Attachment 4 is Interpol's posting regarding Defendant's warrant for murder."⁸

⁸ Attachment 4 to the wrongful death complaint is a copy of an Interpol notice containing the same photo of McNamara used on SKW's webpage and identifying that Tracy Shannon Nessler is "wanted by the judicial authorities of Belize for prosecution/to serve a sentence" on the charge of murder.

¶ 20 McNamara's complaint next alleged that the statement "Ms. McNamara has been found guilty of Incest" on SKW's website is false. This allegation fails because the SKW webpages in the record do not state that McNamara was found guilty of incest. The only statement concerning incest is the sentence beneath McNamara's photo "Murder & incest with ties to WA State: Defendant Tracy Nassl a.k.a. McNamara is a Grant County resident with a warrant out for her arrest/prosecution." In her briefing, McNamara asserts that SKW lied by claiming that McNamara was wanted not only for murder but for incest. While it was not surgically precise to state that McNamara was wanted for incest, the statement is a fair abridgment of the allegation in the complaint that "[McNamara], a waitress and the natural daughter of Mr. McNamara's brother, began spending time with Mr. McNamara. The two ultimately entered into a romantic relationship."⁹

⁹ "Incest" means "[s]exual relations between family members or close relatives" and "[i]nter-marriage between persons related in any degree of consanguinity or affinity within which marriage is prohibited—for example, through the uncle-niece or aunt-nephew relationship." *Incest*, BLACK'S LAW DICTIONARY 879 (10th ed. 2014). See also RCW 9A.64.020(2)(a) ("A person is guilty of incest ... if he or she engages in sexual contact with a person whom he or she knows to be related to him or her,

either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.”).

¶ 21 McNamara’s complaint next alleged that the statement “Ms. McNamara has been found guilty of Murder” on SKW’s webpage is false. Again, this allegation fails because the SKW webpages in the record do not state that McNamara was found guilty of murder. The webpages state only that McNamara was wanted for arrest and prosecution for murder. In her briefing, McNamara asserts that SKW lied by claiming McNamara was wanted for murder. This statement is an accurate or fair abridgment of the complaint. The complaint alleges that Belize officials had issued a warrant for McNamara’s arrest for murder and includes a copy of the Interpol notice that identifies the charge as murder.

¶ 22 McNamara’s complaint next alleged that the statement on SKW’s website that it had obtained at least a \$10 million settlement against McNamara was false. Once again, the SKW webpages in the record do not make this statement. McNamara’s brief alleges that SKW’s inclusion of its wrongful death action against her within the webpage identifying “successful verdicts and settlements” was false. We disagree. While the SKW webpage does contain a statement that cases identified are a sample of SKW’s successes, the featured and first case highlighted was the “Ride the Ducks” case which, as is clear from the site, far from settled and there is no mention of a verdict or settlement. This is true for at least one of case in addition to case involving McNamara. The description of the wrongful death proceedings is a fair and accurate account of the complaint.

¶ 23 Finally, while not identified in the complaint, McNamara’s brief challenges SKW’s statement on its webpage that the motive for murder was her desire to acquire her uncle’s property. These properties, she claims, were transferred to her in 2012, years before his death. The statement on SKW’s website is substantially accurate and fair abridgment of the complaint. The complaint stated that (1) McNamara’s motive for murder was the “acquisition of [Timothy McNamara’s] financial assets”; (2) she “enticed [Timothy McNamara] into gifting three properties to her by quitclaim deed, including the family farm”; (3) she “enticed [Timothy McNamara] to pay for her debts and expenses related to her ownership interest in a piece of property located in [North Carolina]”; and

(4) she “enticed [Timothy McNamara] to purchase real property in Belize to operate a bed and breakfast.”

¶ 24 In summary, we agree with the trial court that the statements made on SKW’s website are accurate or a fair abridgment of the wrongful death complaint filed against McNamara. Consequently the statements on SKW’s website are protected by the fair report privilege. Summary judgment and dismissal of McNamara’s defamation claims was appropriate.

Consumer Protection Act

¶ 25 Under the CPA, “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are ... unlawful.” RCW 19.86.020. To establish a CPA claim, McNamara was required to show (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) that impacts the public interest, and (4) and causes injury to the plaintiff’s business or property. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 780, 719 P.2d 531 (1986). Certain “entrepreneurial aspects of the practice of law may fall within the ‘trade or commerce’ definition of the CPA,” such as “the way a law firm obtains, retains, and dismisses clients.” Short v. Demopolis, 103 Wash.2d 52, 60-61, 691 P.2d 163 (1984). McNamara’s complaint does not identify the unfair or deceptive acts or practices of SKW’s business result in the violation of the CPA. In her opposition to SKW’s motion to dismiss, however, McNamara asserts that SKW’s false and deceptive website advertising violates the CPA. As discussed above, the statements on SKW’s website are an accurate and a fair abridgment of plaintiff’s complaint and protected by the fair report privilege. Consequently, McNamara cannot demonstrate that the statements constitute an unfair or deceptive act. Because McNamara failed to demonstrate SKW’s unfair or deceptive acts, her claim under the CPA fails and dismissal was appropriate.

¶ 26 Affirmed.

WE CONCUR:

Leach, J.

Schindler, J.

All Citations

429 P.3d 6

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

TRACY S. MCNAMARA, an individual,)	NO.
)	
Plaintiff,)	VERIFIED COMPLAINT FOR
)	DAMAGES AND FOR INJUNCTIVE
vs.)	RELIEF
)	
KAREN KOEHLER; AKA "THE VELVET)	
HAMMER;" JOHN DOE KOEHLER;)	
JOHN DOE "HAMMER";)	
STRITMATTER KESSLER WHELAN)	
KOEHLER MOORE KAHLER, a)	
Washington professional corporation,)	
)	
Defendant.)	
)	

Plaintiff, TRACY S. MCNAMARA, through her attorneys of record, Law Offices of John Henry Browne, P.S., by John Henry Browne, for cause of action against the Defendant herein, alleges as follows:

I. PARTIES

1.1 Plaintiff Tracy S. McNamara ("Ms. McNamara") is and at all times material hereto was a resident of Grant County, Washington.

1 1.2 Defendant Stritmatter Kessler Whelan Koehler Moore Kahler (“SKW”) is
2 and at all times relative hereto was a Washington professional corporation providing
3 professional legal services throughout Washington State, including King County. SKW’s
4 principle place of business is located in King County.

5 **II. JURISDICTION AND VENUE**

6 2.1 This is an action for damages and for injunctive relief. Jurisdiction is vested
7 in this Court.

8 2.2 Venue is appropriate in the King County Superior Court pursuant to RCW
9 4.12.025(1).

10 **III. FACTS**

11 Background

12 3.1 Ms. McNamara is the Defendant in a wrongful death action involving the
13 death of Tim McNamara on December 25, 2014. The lawsuit was filed on August 31,
14 2015, in Grant County, Washington; Cause No. 15-2-01064-2. Tim McNamara died from
15 a gunshot wound to the head suffered in the backyard of his and Ms. McNamara’s residence
16 in Belize. SKW is the attorney of record for the Plaintiffs in that action, Jennifer Ralston
17 and Caleb McNamara. Ms. Ralston and Caleb McNamara are the biological children of
18 Tim McNamara. Ms. McNamara is Tim McNamara’s biological niece.

19 3.2 Tim McNamara’s death was originally ruled a suicide, but after a visit to
20 Belize by Caleb McNamara and Jennifer Ralston in May of 2015 and a meeting between
21 them and Belize authorities, Tim McNamara’s cause of death was changed to murder and,

1 on information and belief, a warrant was issued by Belize authorities for Ms. McNamara's
2 arrest.¹ At this point, Ms. McNamara had already been questioned by Belize authorities
3 and given permission to freely leave the country, which she did, returning to her home in
4 Soap Lake, Washington.

5 3.3 The claims alleged by Jennifer Ralston and Caleb McNamara against Ms.
6 McNamara are unsupported and unsupportable. They are based on purchased opinions and
7 inadmissible reports manufactured by charlatan "experts." Their suit is nothing more than
8 a spiteful money grab by two children whom Tim McNamara rejected because they could
9 not accept his relationship with Ms. McNamara. Ultimately, Ms. McNamara will be found
10 not liable for the death of Tim McNamara.

11 3.4 Because admissible evidence against Ms. McNamara is nonexistent, SKW
12 has sought to try its clients' case in the court of public opinion. Immediately after filing
13 suit, SKW launched a prolific publicity campaign to besmirch Ms. McNamara and taint
14 the potential juror pool, including interviews with SKW's clients on regional television and
15 in newspapers.

16 SKW's False Statements

17 3.5 SKW focuses its practice on personal injury plaintiffs' claims. SKW
18 maintains a website (<http://www.stritmatter.com>) where it touts its purported prowess as
19 aggressive and zealous plaintiffs' advocates and encourages injured parties to retain SKM
20

21 ¹ Counsel for Ms. McNamara has requested access to evidence in Belize and a copy of any
arrest warrant. Belize authorities have refused to provide this information.

1 to represent them in matters involving their injuries.

2 3.6 In an effort to aggressively and zealously advertise for additional business
3 and to prejudice potential jurors against Ms. McNamara, SKW featured their clients' suit
4 against Ms. McNamara on multiple pages of its website, including on its home page.
5 SKW's featuring of Ms. McNamara's case is so prevalent and pervasive on the internet
6 that a Google search of the single term "Nessl" (Ms. McNamara's maiden name and the
7 name SKW prefers to use) returns as the first result a link to a page on SKW's website
8 dedicated entirely and exclusively to Ms. McNamara's case:
9 "http://www.stritmatter.com/case/ralston-v-nessl-a-k-a-tracy-mcnamara/". This link to
10 SKW's website is more prevalent than even the links to reports on New York Daily News
11 and King 5 websites. A true and correct copy of a January 8, 2016 Google search of the
12 term "Nessl" is attached to this Complaint as Exhibit 1.

13 3.7 SKW's website contained and contains numerous false statements, which
14 Ms. McNamara's counsel, in phone conversations, written demands, emails, and pleadings,
15 repeatedly notified SKW about and demanded correction. Despite these repeated
16 notifications and demands, SKW refused to correct its false statements and continues to
17 include numerous false statements on its website. Such false statements have remained
18 for more than six months. The specific false statements on SKW's website are described
19 below.

20 3.8 SKW's webpage "http://www.stritmatter.com/case/ralston-v-nessl-a-k-a-
21 tracy-mcnamara/" contains the following false statements:

1 3.8.1 Under a photograph of Ms. McNamara, in bright red, all-caps, bold-
2 face font is the phrase “INTERPOL WARRANT”. Interpol does not issue warrants;
3 therefore, this is a false statement. The gist or sting of this statement is that Ms. McNamara
4 is wanted by a globally-respected international consortium of law enforcement
5 investigative bodies. In reality, a warrant may or may not exist for Ms. McNamara’s arrest
6 in Belize—a third-world, Central American country with a long and recent history of law-
7 enforcement corruption. However, no warrant has ever been disclosed or presented to Ms.
8 McNamara by Belize authorities. SKW removed this false statement on or about January
9 4, 2015. On information and belief this false statement was published on SKW’s website
10 for at least four months prior to its removal.

11 3.8.2 Under a photograph of Ms. McNamara is the phrase “Murder &
12 incest in Belize with ties to WA State: Defendant Tracy Nessler a.k.a. McNamara is a Grant
13 County resident with a warrant out for her arrest/prosecution.” “Murder” is a criminal
14 charge that must be proved to a jury beyond a reasonable doubt. Ms. McNamara has not
15 been convicted of murder. Therefore this is a false statement. The gist or sting of this false
16 statement is that Ms. McNamara has already been tried and convicted for the murder of
17 Tim McNamara. “Incest” is a criminal charge that must be proved to a jury beyond a
18 reasonable doubt. Ms. McNamara has not been convicted of Incest. Therefore this is a
19 false statement. The gist or sting of this false statement is that Ms. McNamara has already
20 been tried and convicted of Incest. In addition, under the criminal codes of both
21 Washington State and Belize, Ms. McNamara’s relationship with Mr. McNamara does not

1 and cannot constitute Incest. Therefore, the gist or sting of this false statement also is that
2 Ms. McNamara has been involved in a criminally-prohibited relationship with Tim
3 McNamara when she has not.

4
5 3.8.3 A true and correct copy of “<http://www.stritmatter.com/case/ralston-v-nessl-a-k-a-tracy-mcnamara/>” is attached to this Complaint as Exhibit 2. The false statements
6 described in Paragraph 3.8.2 of this Complaint are also published on SKW’s home page,
7 “<http://www.stritmatter.com/>”, a true and correct copy of which is attached to this Complaint as
8 Exhibit 3.

9
10 3.9 A true and correct copy of SKW’s webpage <http://www.stritmatter.com/cases/>
11 is attached hereto as Exhibit 4. This webpage contains the following false statements:

12 3.9.1 Among pictures of smiling purported clients of SKW is the
13 following phrase: “Below is small sample of just a few of our over 150 cases resulting at
14 least seven and eight figures for our clients.” Below this syntactically-flawed sentence is
15 the following:

16 **Ralston v. Nessler, a.k.a. Tracy McNamara**

17 The wrongful death case involves an alleged murder of Mr.
18 McNamara by Defendant Tracy Nessler (a.k.a. Tracy
19 McNamara). The motive is believed to include Ms.
20 McNamara’s wish to acquire Mr. McNamara’s financial
21 assets. These assets included the family farm, property in
North Carolina and a bed and breakfast estate in Belize.
Jennifer Ralston, the adult daughter of the decedent
(Timothy Patrick McNamara) and Caleb McNamara are
Plaintiffs in this wrongful death case.

1 3.9.2 The statement that the lawsuit against Ms. McNamara is one of a
2 “small sample of just a few of [SKW’s] over 150 cases resulting [in] at least seven and
3 eight figures for [its] clients” is false. Ms. McNamara has been found liable to SKW’s
4 clients for nothing, much less “seven or eight figures.” The gist or sting of this false
5 statement is that Ms. McNamara has been found liable for the death of Tim McNamara
6 and, because of SKW’s zealous and aggressive representation, has at least a \$10 Million
7 dollar judgment against her.

8 3.9.3 The sentence “These assets included the family farm, property in
9 North Carolina and a bed and breakfast estate in Belize” is a false statement. At the time
10 of Mr. McNamara’s death, Tim McNamara’s “assets” did not include “the family farm,”
11 or “property in North Carolina.” Rather, the “family farm” had belonged to Ms. McNamara
12 for years and the “property in North Carolina” was never owned by Tim McNamara. Also,
13 Ms. McNamara and Tim McNamara owned the “bed and breakfast estate in Belize” jointly.
14 The gist or sting of this false statement is that Ms. McNamara’s relationship with Tim
15 McNamara and his purported murder were for the purpose of acquiring assets that he did
16 not possess. Stated otherwise, this false statement portrays Ms. McNamara as a cold-
17 hearted gold-digger who murdered Tim McNamara for property she already owned.

18 3.10 On each of the web pages that are of issue in this suit, SKW includes the
19 phrase “Call Us For A Free Consultation or a Free Online Consultation” along with a phone
20 number and links to numerous social media accounts maintained by SKW for
21 advertisement purposes. In other words, SKW posted false statements on its website about

1 Ms. McNamara in order to make more money.

2 3.11 The sting or gist of the false statements on SKW's website as a whole is that
3 Ms. McNamara has been found guilty of incest and of murdering Tim McNamara for his
4 money, that there is an international warrant out for her arrest, and that SKW has obtained
5 at least a seven-figure civil judgment against her. Therefore, potential clients should trust
6 SKW to do the same for them so that SKW can make more money.

7 The Effect of SKW's False Statements

8 3.12 On November 28, 2015, Ms. McNamara was detained by local police in
9 public while shopping at the Ephrata Wal-Mart. On information and belief, a customer at
10 Wal-Mart identified Ms. McNamara from SKW's website as a felon wanted by Interpol
11 for incest and murder and reported Ms. McNamara's whereabouts to the police. Ms.
12 McNamara was detained in public while the police officer searched for any outstanding
13 warrants against Ms. McNamara. Ms. McNamara was released after the police officer's
14 search returned no outstanding warrants.

15 3.13 Because of SKW's publicity campaign, including the false statements
16 published on its website, Ms. McNamara has become a pariah in the small town in which
17 she lives. She cannot find employment, cannot go out in public without being subject to
18 ridicule, and has lost contact with friends and acquaintances who refuse to speak with her.

19 3.14 SKW's false statements caused Ms. McNamara separate, additional harm
20 from what would have resulted from an accurate reporting of the facts.

21 3.15 Recognizing that its statements are irrefutably false and defamatory, SKW,

1 by letter to Ms. McNamara's counsel received January 8, 2016, offered to correct its false
2 statements by "inserting the word 'allege' in applicable forms, in the web post, if you feel
3 that is fairer to your client." SKW cannot escape liability by couching its false statements
4 in such terms.

5 3.16 Service of this Complaint and accompanying Summons on SKW constitutes
6 an adequate request for correction or clarification pursuant to RCW 7.96.040(4).

7 IV. CAUSE OF ACTION: DEFAMATION

8 4.1 SKW made the following false statements about Ms. McNamara:

9 4.1.1 An Interpol Warrant exists for Ms. McNamara's arrest.

10 4.1.2 Ms. McNamara has been found guilty of Murder.

11 4.1.3 Ms. McNamara has been found guilty of Incest.

12 4.1.4 SMK is responsible for obtaining at least a \$10 million dollar
13 settlement for its clients against Ms. McNamara.

14 4.1.5 Tim McNamara's assets at the time of his death included assets
15 owned by Ms. McNamara.

16 4.2 SKW's false statements have subjected Ms. McNamara to hatred, contempt,
17 ridicule, and obloquy separate from what would have resulted from an accurate reporting
18 of the facts.

19 4.3 SKW's false statements injured Ms. McNamara's reputation by causing her
20 to be shunned by others and hurt in her business relations separate from what would have
21 resulted from an accurate reporting of the facts.

1 4.4 SKW's false statements were published such that those false statements
2 were communicated to one or more third persons via SKW's website. Each and every
3 viewing, or 'click', by third persons of SKW's false statements constitutes a separate
4 publication of those false statements.

5 4.5 SKW's false statements were ones of fact and not of nonactionable opinion.
6 The false statements were published on the internet for the purposes of advertising
7 professional legal services and were intended to be relied upon by potential clients and did
8 not imply undisclosed facts.

9 4.6 SKW's false statements are not subject to any absolute, qualified,
10 conditional, legislative, or governmental proceedings privilege in that they were published
11 on SKW's website for the purposes of advertising and for the offering of legal services to
12 potential clients for profit.

13 4.7 As attorneys for Jennifer Ralston and Caleb McNamara in their suit against
14 Ms. McNamara and therefore familiar with the actual facts of their case, SKW knew or in
15 the exercise of reasonable care should have known that the statements it published were
16 false or would create a false impression in some material respect.

17 4.8 SKW acted with actual malice when it published its false statements in that
18 SKW intentionally published such false statements to exaggerate SKW's prowess as a
19 plaintiffs' personal injury firm for the purpose of attracting more clients, and for the
20 purpose of injuring Ms. McNamara's reputation, including in the eyes of potential jurors.
21 SKW's malice is further evidenced by the fact that it published its false statements in

1 | contravention of Rules of Professional Conduct (RPC) 3.6, 7.1, and 7.2—Rules which as
2 | licensed practitioners in the state of Washington, SKW was required to know and follow
3 | but chose to ignore.

4 | 4.9 SKW's false statements constitute defamatory statements for which SKW
5 | is liable to Ms. McNamara. As a direct and proximate result of SKW's publishing of
6 | defamatory statements, Ms. McNamara suffered actual damages to be proven at trial
7 | including harm to Ms. McNamara's property, business, trade, profession, and occupation;
8 | expenses Ms. McNamara incurred; harm to Ms. McNamara's reputation; and Ms.
9 | McNamara's shame, mortification, and hurt feelings. Ms. McNamara is also entitled to
10 | presumed damages because SKW acted with actual malice when it published its false
11 | statements.

12 | 4.10 SKW's false statements that Ms. McNamara has been convicted of Murder
13 | and of Incest impute to Ms. McNamara's commission of serious crimes and therefore
14 | constitute defamation per se. As a direct and proximate result of SKW's per se defamatory
15 | statements, the law assumes that Ms. McNamara has suffered harm to reputation, shame,
16 | mortification, and hurt feelings without Ms. McNamara presenting evidence of damage.

17 | **V. CAUSE OF ACTION: VIOLATION OF WASHINGTON CONSUMER**
18 | **PROTECTION ACT, RCW 19.86**

19 | 5.1 Plaintiff re-alleges and incorporates by reference paragraphs 1 through 4.10,
20 | and further alleges the cause of action of Violation of the Washington Consumer Protection
21 | Act (CPA), RCW 19.86 *et.seq.*

1 5.2 The conduct, acts, errors, omissions, deceptive and unfair acts and practices
2 pertaining to the entrepreneurial aspects of defendant SKW's law practice; that is,
3 entrepreneurial aspects of the practice of law that fall within the "trade or commerce"
4 definition of the CPA, pursuant to *Short v. Demopolis*, 691 P.2d 163, 103 Wn.2d 52 (1984),
5 including but not limited to how SKW obtains and retains their clients through their
6 website--or other means that violate the CPA—and how they bill and collect fees,
7 constituted unfair and deceptive acts or practices in the conduct of trade or commerce
8 which has the capacity to harm the public interest, and which violates the CPA.

9 5.3 Defendant SKW's violations of the CPA proximately caused the Plaintiff,
10 Tracy McNamara, to suffer economic harm and damages.

11 VI. RELIEF REQUESTED

12 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 13 1. For entry of a judgment in favor of the Plaintiff and against the Defendant in
14 an amount to be proven at trial, including an award of prejudgment interest at the rate provided
15 by law, pursuant to RCW 19.52;
- 16 2. For an order enjoining Defendant from publishing false statements about
17 Plaintiff and to remove false statements about Plaintiff from Defendants website;
- 18 3. That the Plaintiff be awarded treble damages pursuant to RCW 19.86.090;
- 19 4. That the Plaintiff be awarded reasonable costs, disbursements, and attorneys'
20 fees, including but not limited to attorney's fees awarded pursuant to RCW 19.86, and
21

1 | prejudgment interest on all liquidated costs and expenses of litigation and additional taxes
2 | resulting from the payment to Plaintiff of all of the foregoing;

3 | 5. For such other and further relief as the Court deems just and equitable.

4 | DATED this 6 day of July, 2016.

5 | LAW OFFICES OF JOHN HENRY BROWNE, P.S.
6 |

7 | By  _____

8 | JOHN HENRY BROWNE, WSBA #4677
9 | Attorneys for Plaintiff
10 |
11 |
12 |
13 |
14 |
15 |
16 |
17 |
18 |
19 |
20 |
21 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21


DECLARATION OF TRACY S. MCNAMARA

TRACY S. MCNAMARA, pursuant to RCW 9A.72.085, declares:

This Declaration is based upon my own personal knowledge. I am over the age of eighteen and competent to testify to the matters asserted herein. I am the Plaintiff in the above-entitled action. I have read the foregoing Complaint, know the contents thereof and believe the same to be true, except those matters therein stated upon information and belief, and as to those matters I believe them also to be true.

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

JULY 12, 2016
Date



TRACY S. MCNAMARA
EPHRATA, WA
Location of Signing

The Honorable Jim Rogers
Noted: 10/21/16 at 10:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

TRACY S. MCNAMARA, an individual,

Plaintiff,

v.

KAREN KOEHLER; AKA "THE VELVET
HAMMER;" JOHN DOE KOEHLER;
JOHN DOE "HAMMER"; STRITMATTER
KESSLER WHELAN KOEHLER MOORE
KAHLER, a Washington professional
corporation.

Defendants.

No. 16-2-16400-5 SEA

AMENDED VERIFIED COMPLAINT FOR
DAMAGES AND FOR INJUNCTIVE
RELIEF TO ATTACH EXHIBITS

Plaintiff, Tracy S. McNamara, through her attorneys of record, The Law Office of
John Henry Browne, P.S., by John Henry Browne, for cause of action against the Defendants
herein enter Exhibits 1, 2, 3 and 4.

Respectfully Submitted this 19th day of October, 2016.

THE LAW OFFICES OF JOHN HENRY BROWNE, P.S.
/s John Henry Browne
John Henry Browne, WSBA 4677
Attorney for Plaintiff

EXHIBIT 1



nessl

Sign in

All News Images Shopping Videos More Search tools

About 63,100 results (0.33 seconds)

Including results for **nessl**

Search only for **nessl**

Ralston v. Nessler, aka Tracy McNamara - Stritmatter Kessler ... www.stritmatter.com/.../ralston-v-nes... Stritmatter Kessler Whelan Coluccio On Christmas Day 2014, in Belize, Tim McNamara, a 66 year old grandfather, was murdered in cold blood with a gun shot to the back of his head. His niece and ...

NESLL | New England Select Lacrosse League www.nesll.org/ NESLL Winter League - Boys NESLL Indoor Lacrosse League-Topsfield - 2015/2016. NESLL Winter Clinics - Boys & Girls Tuesday Night Clinics - Tw0 [...].

Siblings say cousin killed dad amid incestuous relationship ... www.nydailynews.com/.../siblings-cousin-killed-dad-incestuous... Daily News Sep 7, 2015 - Two Washington state siblings say their cousin, Tracy Shannon Nessler, killed their dad after she started a romantic relationship with him.

National Evangelical Synod of Syria and Lebanon (NESLL ... https://www.linkedin.com/.../national-evangelical-synod-of-syri... LinkedIn Learn about working at National Evangelical Synod of Syria and Lebanon (NESLL). Join LinkedIn today for free. See who you know at National Evangelical...

Family hopes civil murder suit brings justice - KING5.com www.king5.com/story/news/local/2015/09/.../71751772/ KING-TV Sep 5, 2015 - That's when they say their cousin, a woman named Tracy Shannon Nessler, began a romantic relationship with their recently divorced father.

Images for nessler Report images



More images for nessler

Belize rules former Soap Lake man's death was murder ... www.ifiberone.com/.../article_3081c6ea-567d-11e5-a018-db52b87da913... Sep 8, 2015 - Nessler reportedly told police McNamara grabbed the gun, which was registered to Nessler, and accidentally shot himself. She later said the victim ...

NESLL Newsletter-June 2015 - Global Ministries www.globalministries.org News NESLL Newsletter-June 2015. By Global Ministries on June 04, 2015. Written by Dr. Mary Mikhael*. I greet you personally and on behalf of the National ...

NESLL-Easter message - Global Ministries www.globalministries.org News Written by Dr. Mary Mikhael*. Today is Easter Day! Jesus is risen! He is Risen Indeed! Yes all the church traditions that follow the Eastern Calendar celebrate ...

NESLL update and Advent wishes--2015 - Global Ministries www.globalministries.org News

EXHIBIT 2

Call Us For A Free Consultation or a Free Online Consultation

(206) 448-1777

Connect With Us



Personal Injury Practice Areas

- Airplane Crash / Cruise Injuries
- Alcohol Sales and Service Liability
- Appeals
- Automobile Accidents
- Bike Accidents / Bicycle Injuries
- Brain Injury
- Class Action
- Diving Accidents / Aquatic Injuries
- Government Liability
- Highway Safety
- Insurance Bad Faith
- Insurance Coverage Disputes
- Maritime Injuries
- Medical Malpractice
- Nursing Home / Daycare Abuse
- Premises Liability
- Product Liability
- Sexual Assault
- Spinal Cord Injury
- Toxic Exposure
- Trucking Injury
- Workplace Injury
- Wrongful Death

150+ Cases Resulting in > \$1 Million

Recent Injury Law Blog Posts

- [WSDOT & SDOT form Aurora Bridge "safety team"](#)
October 17, 2015
- [Head injury results in young football player's death](#)
October 9, 2015
- [Were you the victim of the T-Mobile/Experian Data Breach?](#)
October 9, 2015
- [Deadly Aurora Bridge accident is a wake up call](#)
September 29, 2015
- [Median Barriers & Today's Deadly Aurora Bridge Crash](#)
September 24, 2015

Ralston v. Nessl, a.k.a. Tracy McNamara

Practice Area(s) [Wrongful Death](#)



NESSL, TRACY SHANNON
WANTED BY THE JUDICIAL AUTHORITIES OF BELIZE FOR PROSECUTION TO SERVE A SENTENCE

IDENTITY PARTICULARS

Present/family name: **NESSL**
Forename: **TRACY SHANNON**
Sex: **Female**
Date of birth: **24/01/1971 (44 years old)**
Place of birth: **WASHINGTON, United states**
Language spoken: **English**
Nationality: **United states**

PHYSICAL DESCRIPTION

Colour of hair: **Brown**
Colour of eyes: **Grey**

INTERPOL WARRANT

Murder & incest in Belize with ties to WA State. Defendant Tracy Nessl a.k.a. McNamara is a Grant County resident with an Interpol warrant out for her arrest/prosecution.

On Christmas Day 2014, in Belize, Tim McNamara, a 66 year old grandfather, was murdered in cold blood with a gun shot to the back of his head. His niece and lover Tracy Nessl, now age 44, first told police that Mr. McNamara had taken her gun, went to see what the dogs were barking about, and then shot himself. She later implied that he committed suicide. While the authorities were conducting their investigation, Nessl fled to Washington State. She lives on the McNamara family farm in Grant County.

Experts determined that Mr. McNamara could not have shot himself at the base of the skull based upon the forensic evidence. They have now issued a warrant for Nessl's arrest.

Before Mr. McNamara's death, the complaint alleges to just before on Christmas day that Nessl seduced, manipulated and deceived him into giving her all of his real estate – including the family farm, the Belize bed and breakfast and other pieces of property. He also changed his life insurance policies to cut out his own children and name Nessl as the sole beneficiary.

Jennifer Ralston and Caleb McNamara, the adult children have filed a Civil Murder/wrongful death case against Nessl. One of the insurance companies has filed a federal lawsuit because under the stayer statutes – it cannot pay insurance proceeds to someone who may have committed murder.

Read a copy of the [Ralston v. McNamara Complaint](#) (NOTE: All attachments except [the first attachment of the complaint](#) have been intentionally omitted due to their graphic nature.)

Learn more about the story as reported on [KING5](#) TV news on this bizarre story of murder and fraud.

Check back often for more details.



Plaintiff Jennifer Ralston is pictured here with her now deceased father (allegedly murdered by Def. McNamara).



Clients Jennifer Ralston & Caleb McNamara talk to KING5 TV about the horrific murder of their father.

EXHIBIT 3

Call Us For A Free Consultation or a Free Online Consultation

(206) 448-1777

Connect With Us



Personal Injury Practice Areas

- Airplane Crash / Cruise Injuries
- Appeals
- Automobile Accidents
- Bike Accidents
- Brain Injury
- Class Action
- Diving Accidents / Aquatic Injuries
- Drunk Driver Accidents
- Government Liability
- Highway Safety
- Insurance Bad Faith
- Insurance Coverage Disputes
- Maritime Injuries
- Medical Malpractice
- Nursing Home / Daycare Abuse
- Premises Liability
- Product Liability
- Sexual Abuse
- Spinal Cord Injury
- Toxic Exposure
- Trucking Injury
- Workplace Injury
- Wrongful Death

150+ Cases Resulting in ≥ \$1 Million

Recent Injury Law Blog Posts

- [Garmin's Varta may convince me to ride my bike more](#)
 January 6, 2016
- [Two new Ducks victims file lawsuits today](#)
 December 23, 2015
- [Please help Ride the Ducks Victim for living & recovery expenses](#)
 December 15, 2015
- [Ride the Ducks victim hopes to get needed health care](#)
 December 5, 2015
- [Woman accused of tampering cell phone records in fatal pedestrian-car accident](#)
 December 2, 2015

NESSL, TRACY SHANNON
 WANTED BY THE JUDICIAL AUTHORITIES OF BELIZE FOR PROSECUTION (TO SERVE A SENTENCE)

IDENTITY PARTICULARS

Present family name: **NESSL**
 Forename: **TRACY SHANNON**
 Sex: **Female**
 Date of birth: **2/9/1971 (44 years)** (M)
 Place of birth: **WASHINGTON, United states**
 Language spoken: **English**
 Nationality: **United states**

PHYSICAL DESCRIPTION
 Colour of hair: **Blond**

Murder & incest in Belize with ties to WA State. Defendant Tracy Nessler a.k.a McNamara is a Grant County resident with a warrant out for her arrest/prosecution.

Seattle Personal Injury Lawyers Represent Clients Throughout Washington State

For good reason, Stritmatter Kessler Whelan (SKW) has earned more awards than any other personal injury law firm in the state. Our attorneys fight for the rights of clients throughout Washington and beyond.

Along with the entire legal industry, other Seattle based injury/wrongful death law firms recognize our leadership. For Stritmatter Kessler Whelan's successes include numerous landmark cases that have shaped the law on behalf of those seriously injured. We demand accountability from insurance companies, the government, the nation's biggest corporations and multinational businesses. See our list of over 150 cases with results of \$1,000,000 or more.

SKW is the law firm that other lawyers turn for help on large and complex cases. We have the resources necessary to engage in hard fought legal battles. We have the reputation needed to obtain the best possible settlement offers. Ultimately, we have the skill required to take cases to trial. For these reasons, the vast majority SKW is the law firm that other lawyers turn for help on large and complex cases. We have the resources necessary to engage in hard fought legal battles. We have the reputation needed to obtain the best possible settlement offers. Ultimately, we have the skill required to take cases to trial. For these reasons, the vast majority of law firms that you may come across along your search often ask to team up with our firm.

Our FAQs on how to choose an attorney will help you understand what to look for when you think you have a serious injury or wrongful death case.

Featured Cases

[Ride the Ducks victim seeks justice](#)

[Aurora Bridge victims vs State of WA & City of Seattle](#)

SKW clients sustained serious injuries as the result of a Metro bus crashing into oncoming traffic on the Aurora Bridge. A Metro bus driver was shot, and the bus traveled across the Aurora Bridge and through the railing -- plunging to the ground. We deposed SDOT employees. From those depositions, we learned that the State and City has talked about installing a barrier for many years. At that time, we reviewed plans for adding a pedestrian walkway at a level just below the bridge, enabling the City to remove the sidewalk, and move the lanes over to accommodate the median barrier.

[Cooper v. Ralph's Concrete Pumping & Miles Sand & Gravel](#)

Wrongful death of 30 year old worker, where compressed air hose tore loose and whipped Allan Cooper in the head. Tragedy left widow Teresa Cooper traumatized and in a deep depression.

[Lan Remme v. City of Seattle and State of Washington](#)

Fit cyclists Lan Remme, hit a dangerous section on the Montlake Bridge. (\$4,000,000) WSDOT Bridge inspectors photo-documented and reported a 2-inch vertical change between concrete sidewalk panels, calling it a Priority One "tripping hazard". After assigning it a repair number, WSDOT did nothing else. One year later, on April 2, 2011, Lan Remme rode his bicycle onto this Montlake Bridge sidewalk, traveling at 5 mph. According to an eyewitness at the very point of the 2-inch "tripping hazard", his front wheel abruptly stopped, pitching him over the handlebars. His helmeted head struck the sidewalk, and he was left motionless. Lan is now an incomplete quadriplegia and suffered serious injuries including right sinus and orbital facial fractures.

[Owen v. State of Washington](#)

State settles with Owen family for Hwy 2 tree fall for \$10 million.

[Magana v. Hyundai Motor America](#)

After years of fighting with Hyundai and appearing before the state Supreme Court, Jesse Magana received a large settlement from Hyundai.

[Munich v. Skagit Emergency Communications Center, et al.](#)

After Bill Munich called 911 twice, a successful entrepreneur, was gunned down by his drunken neighbor. The 911 dispatch operator had miscategorized Bill's call as Priority 2, so that the responding officer did not turn his sirens on or speed to Bill's rescue. His family received a \$2.3 million settlement.

[Hesse, et al. v. Sprint Spectrum L.P.](#)

SKW obtained a \$20 million settlement in a class action lawsuit against Sprint PCS.

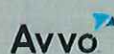


EXHIBIT 4

Call Us For A Free Consultation or a
[Free Online Consultation](#)

☐ (206) 448-1777

Sample Cases



State settles with Owen family for Hwy 2 tree fall for \$10 million.

With each successful verdict and settlement, Stritmatter Kessler Whelan (SKW) continues to garner national recognition. We are proud of the results that we have obtained for our Seattle-Everett-Tacoma and Washington State clients. The work of our highly experienced injury attorneys has helped change the law to prevent similar tragedies or to provide consumers with adequate protection. Our cases are typically **high profile**. Due to the nature of our cases, we often obtain in excess of **\$1 million** for our clients. Below is just a sample of our trial lawyers' successes.

We at SKW feel privileged and honored to be the top choice for some of the most significant personal

injury and wrongful death claims in the Northwest. Our attorneys are committed to providing top notch representation to our clients. This might be the reason why [no other personal injury law firm in Washington State has as many Super Lawyers as our law firm.](#)

Below is small sample of just a few of our over 150 cases resulting at least seven and eight figures for our clients.

[Ride the Ducks victim seeks justice](#)



Ride the Ducks victim fights to get justice. (Ellen M. Bonner/Seattle Times)

On September 24, 2015, a Ride the Duck modified amphibious military vehicle crossed the centerline of the SR 99 Aurora Bridge and into a tour bus. The passenger compartment of the bus was penetrated. 5 people in the bus died and approximately 64 people were injured. Phuong Dihn, an 18 year old international student from Vietnam, was seriously injured.

The Duck was re-manufactured by Ride the Ducks International, who sold the vehicle to Ride the Ducks Seattle in 2005. In 2013, RTD International realized the axel housing was dangerously defective. It issued a service bulletin to it purchasers, warning of the defect and advising of the need for repair. RTD Seattle did not perform the repair. The preliminary report from the National Transportation Safety Board is that the left axle of the Duck failed.



NTSB graphic of Ride the Ducks amphibious vehicle.

Phuong is one of the four of the injured students who remain in a nursing home. Her parents came to care for her but had to leave their other young children behind. She is unable to attend school. When she is discharged, she will need to find a new host parent who will be able to provide accessible housing due to her injuries.

Please help Phuong, as she struggles to recover at [this secure site](#). Donations may also be made by mailing checks to our firm (please include "C/O: Dinh, P: Seattle Aurora Bus Crash 10.2015")

[You may also help Phuong and the other students injured in the crash by donating to the special fund set up by the Salvation Army.](#)



Tour bus that Ride the Ducks crashed into. Image Credit: NTSB.

Read:

- [Ride the Ducks crash victim Phuong Dinh worries about her future](#), KING5 News, Dec.. 2. 2015.
- Stritmatter client shares how her choice of seat is a large part of why she survived the October 2015 crash – [KOMO NEWS: "Seat choice 'saved my life' Aurora Bridge crash victim files lawsuit,"](#) Dec. 2, 2015
- Seattle Times' article about our client's plight: "[Two months later, victim of Ride the Ducks crash struggles with recovery, expenses.](#)" Dec. 3, 2015.
- Seattle Times' article about WA State Insurance Commissioner's response, after learning about client's soon-to-lapse healthcare, "[Ride the Ducks crash victim to get help from state, college,](#)" Dec. 4, 2015.

Cruise ship injury case – disputed liability

Voigt v. Nguyen

\$500,000 legal malpractice judgment

\$210,000 low speed accident settlement

Semi vs. Prius Car Crash

\$357,000 pretrial settlement.

Stewart v. Nnanabu

\$1,500,000 settlement in landlord-tenant case where client shot multiple times by another tenant.

Aurora Bridge victims vs State of WA & City of Seattle

SKW clients sustained serious injuries as the result of a Metro bus crashing into oncoming traffic on the Aurora Bridge. A Metro bus driver was shot, and the bus traveled across the Aurora Bridge and through the railing -- plunging to the ground. We deposed SDOT employees. From those depositions, we learned that the State and City has talked about installing a barrier for many years. At that time, we reviewed plans for adding a pedestrian walkway at a level just below the bridge, enabling the City to remove the sidewalk, and move the lanes over to accommodate the median barrier.

Dreher v. Redmond Town Center

On July 1, 2015, two year old Susie Dreher was her usual, playful and joyful self. She was playing in the play area at Redmond Town Center across from the Marriott. Eyeing the fountain in front of the hotel, she ran through the eight-foot opening of the play area and ran towards the spouting water. But she never made to the fountain. A driver hit her and ran over her twice, while her younger sister and nanny watched in horror. RTC management indicated plans to install a barrier to prevent future tragedies like the one that cost the life of Susie.

Ralston v. Nessler, a.k.a. Tracy McNamara

The wrongful death case involves an alleged murder of Mr. McNamara by Defendant Tracy Nessler (a.k.a. Tracy McNamara). The motive is believed to include Ms. McNamara's wish to acquire Mr. McNamara's financial assets. These assets included the family farm, property in North Carolina and a bed and breakfast estate in Belize. Jennifer Ralston, the adult daughter of the decedent (Timothy Patrick McNamara) and Caleb McNamara are Plaintiffs in this wrongful death case.

Personal Injury Practice Areas

Airplane Crash / Cruise Injuries
Appeals
Automobile Accidents
Bike Accidents
Brain Injury
Class Action
Diving Accidents / Aquatic Injuries
Drunk Driver Accidents
Government Liability
Highway Safety
Insurance Bad Faith
Insurance Coverage Disputes
Maritime Injuries
Medical Malpractice
Nursing Home / Daycare Abuse
Premises Liability
Product Liability
Sexual Abuse
Spinal Cord Injury
Toxic Exposure
Trucking Injury
Workplace Injury
Wrongful Death

150+ Cases Resulting in \geq \$1 Million

Recent Injury Law Blog Posts

[Garmin's Varia may convince me to ride my bike more](#)

January 6, 2016

[Two new Ducks victims file lawsuits today](#)

December 23, 2015

[Please help Ride the Ducks Victim for living & recovery expenses](#)

December 15, 2015

[Ride the Ducks victim hopes to get needed health care](#)

December 5, 2015

[Woman accused of tampering cell phone records in fatal pedestrian-car accident](#)

December 2, 2015

Seattle Attorneys: 3600 15th Avenue West | Seattle, WA 98119 | (206) 448-1777

Hoquiam Attorneys: 413 8th St. | Hoquiam, WA 98550 | (360) 533-2710

Stritmatter

KESSLER WHELAN KOEHLER MOORE KAHLER

[Home](#) | [Contact Us](#)

© Stritmatter 2016 All Rights Reserved

EXHIBIT B

1 **FBI INTERVIEW OF TRACY MCNAMARA**
2 **September 9, 2016**

3 (TELEPHONIC /POOR QUALITY RECORDING)

4 MR. BROWNE: Okay. Today is September 9, 2016. It is
5 three o'clock. Conversation with some Special Agents and Tracy
6 McNamara. We'll have everybody identify themselves as we go.
7 Speaker?

8 MR. BROWNE: Hello.

9 MS. MCNAMARA: Okay. We're on speaker.

10 MR. BROWNE: Okay. Would everybody please identify
11 themselves? We are -- and we also need permission to record.
12 This is John Henry Browne, attorney at law. My paralegal, Lorie
13 Hutt, H-u-t-t is with me --

14 MS. HUTT: And you have my permission to record.

15 MR. BROWNE: -- and we are about three o'clock on
16 September 9th, 2016. Could everybody there identify themselves
17 and give permission to record?

18 SA MOTTA: Sure. This is Special Agent Fernando Motta
19 with the FBI out of the Miami field office. And I give
20 permission to record.

21 MR. BROWNE: Could you spell your last name, Special
22 Agent?

23 SA MOTTA: Sure. M (BREAK IN RECORDING) t-t-a.

24 MR. BROWNE: You broke up a little bit.

25 SPECIAL AGENT: That's okay. I'll do it phonetically.

1 It's Mike Oscar Tango Tango Alpha.

2 MR. BROWNE: Great. Thank you. Who else?

3 SA BRYDEN: This is Special Agent Charles Bryden in
4 the Miami Field Office, and yes, you have permission to record.

5 MR. BROWNE: Thank you Special Agent; could you spell
6 your last name for us?

7 SA BRYDEN: Sure. B-r-y-d-e-n.

8 MR. BROWNE: Great. Is there someone else there, other
9 than Ms. McNamara?

10 SPECIAL AGENT: No it's (UNINTELLIGIBLE) that's all.

11 MR. BROWNE: Just the two of you?

12 MS. MCNAMARA: (UNINTELLIGIBLE) record

13 (UNINTELLIGIBLE)

14 MR. BROWNE: And Ms. McNamara, do we have your
15 permission to record?

16 MS. MCNAMARA: Yes, sir.

17 MR. BROWNE: Okay. Go ahead, Special Agents.

18 SPECIAL AGENT: So basically, the reason that we're
19 here is because the Belizean government asked for our assistance
20 last year with -- with the death of a US citizen in Belize.
21 Normally the FBI does not get involved with murders; it's --
22 tends to be a local matter. State and local governments, police
23 departments will get involved; will conduct the investigation.
24 When it happens overseas, it's the same thing. We rely on the
25 foreign government -- those foreign police departments to

1 | conduct their own investigation, much like they would here in
2 | the states. The only time when we get involved is when we end up
3 | getting assist -- request for assistance, whether it's technical
4 | assistance; assistance for the DNA analysis, and in some
5 | instances, we can actually assist them by conducting a parallel
6 | investigation when, you know, certain countries are unable to
7 | conduct an investigation? And/or the -- there are two US
8 | citizens involved, not just one.

9 | MR. BROWNE: Well that all makes sense.

10 | SPECIAL AGENT: Yes. So essentially, the reason that
11 | we're here again is--because, as you are all aware, the Belizean
12 | government -- not the government (INDISTINCT) -- the Belizean
13 | police department -- and it ended up issuing a -- an arrest
14 | warrant and submitted it to Interpol.

15 | MR. BROWNE: Correct.

16 | SPECIAL AGENT: That's one of the reasons we initially
17 | found out.

18 | MR. BROWNE: Right.

19 | SPECIAL AGENT: And I believe the US Marshals were
20 | also notified. But it has now been vetted out that -- I do not
21 | believe that that arrest warrant is valid. It was more of a
22 | summons, for lack of a better term. The police can issue their
23 | own -- their own warrants out there, and essentially it's just a
24 | detainment document, to be able to bring somebody in for
25 | questioning and hold them as long as they deem necessary, until

1 | they're able to vet out their investigation.

2 | MR. BROWNE: Right. No, I agree with you on everything
3 | you've said so far. I've done -- obviously done -- this is John
4 | Henry Browne, by the way; I've done my own investigation a lot;
5 | even talked to US attorneys in DC and the State Department, and
6 | I agree the -- what appears to be a warrant out of Belize, first
7 | of all, looks like it was typed on a typewriter by a sixth
8 | grader, but they -- you're right. They can -- the police can
9 | sign their own warrants, which is kind of weird. But I'll stop
10 | talking and let you guys go ahead. And normally, as I told the
11 | first Special Agent I spoke with, I tell my clients not to talk
12 | to authorities, but I believe Ms. McNamara's told the truth
13 | about this from the beginning and so I -- I am doing the unusual
14 | thing which is -- letting you guys go ahead and talk to her.

15 | SPECIAL AGENT: Okay. Great. Thank you very much; I
16 | appreciate that. And to be honest with you, unless you have any
17 | other questions before we start, I would just like to open up
18 | the floor to you, Ms. McNamara, and just kind of tell us, you
19 | know, what happened. What's your -- what -- what -- from the
20 | beginning, I guess. From that night.

21 | MS. MCNAMARA: I think I would prefer if you asked me
22 | questions.

23 | SPECIAL AGENT: Okay.

24 | MS. MCNAMARA: If you would --

25 | SPECIAL AGENT: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECLARATION OF TRANSCRIPTIONIST

STATE OF WASHINGTON

County of Pierce

I, MARGARET A. SHEPARD, hereby declare under penalty of perjury under the laws of the State of Washington as follows:

In accordance with RCW 9A.72.085, I prepared the foregoing transcript, consisting of 93 pages including this one, from an electronic recording internally identified:

Dictation Name	Sender	Date	Time	Duration
Tracy Nessl Interview w...	Linknown	2016-09-15	09:32:59	99:35

That the above is a true and correct transcript of all audible portions of the recording made at the time of the proceeding, prepared by me to the best of my ability. Areas of the recording that were not decipherable for any reason are noted as (INDISTINCT).

I further declare that I am in no way related to or employed by any party in this matter, or any counsel, and that I have no interest in the outcome.

Dated this 20th day of September, 2016 at University Place, WA.

Margaret A. Shepard, AAERT CET-710

EXHIBIT C

Copies sent via:

 e-mail
 e-working
 US mail

Honorable Jim Rogers
Noted: 10/21/16 at 10:00 am
With Oral argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

TRACY S. MCNAMARA, an individual,)

Plaintiff,)

v.)

KAREN KOEHLER; AKA "THE VELVET)

HAMMER;" JOHN DOE KOEHLER;)

JOHN DOE "HAMMER"; STRITMATTER)

KESSLER WHELAN KOEHLER MOORE)

KAHLER, a Washington professional)

corporation,)

Defendants.)

No. 16-2-16400-5 SEA

[PROPOSED] ORDER
GRANTING DEFENDANTS'
MOTION FOR DISMISSAL
UNDER CR 12(c) 56

[Clerk's Action Required]

This matter came before the Court on Defendants' Motion for Dismissal Under CR 12(c). Having reviewed the pleadings and files in this matter, heard argument of counsel, and issued an oral opinion, the Court rules as follows:

Defendants' Motion to Dismiss under CR 12(c) is hereby GRANTED, and the Complaint is hereby dismissed with prejudice.

//

//

as a CR 56 motion

ORDER GRANTING DEFENDANTS' MOTION FOR
DISMISSAL UNDER CR 12(c) - 1
DWT 30328954v1 0107086-000001

15

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 • 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 • Fax: (206) 757-7700

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

ORDER

The plaintiff's Complaint is dismissed with prejudice.

IT IS SO ORDERED.

ENTERED thi: *18 November 2016*



The Honorable Jim Rogers
SUPERIOR COURT JUDGE

PRESENTED BY:
Davis Wright Tremaine LLP
Attorneys for Defendants

By s/ Bruce E. H. Johnson
Bruce E. H. Johnson, WSBA #7667
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 757-8069
Fax: (206) 757-7069
E-mail: brucejohnson@dwt.com

1 Order 16-2-16400-5 SEA

2
3
4 Preliminarily, this motion contains a great deal of evidence, and therefore the Court
5 converts the Motion into one for summary judgment under CR 56. All submitted evidence is
6 admitted and was considered. All inferences are against the nonmoving party.

7 The Stritmatter firm posted certain statements about Ms. McNamara/Nessl
8 (“McNamara”) on its firm’s web site. These statements are based upon a lawsuit it filed in
9 Grant County. The Stritmatter complaint is for wrongful death and undue influence. Ralston
10 et al v. Nessler, 15-2-01064-2, Sup. Ct. Grant County. The factual allegations in the complaint
11 are incendiary: incest, undue influence in financial matters, deliberate isolation from family
12 members, and murder in a foreign country. Of course, Ms. McNamara hotly disputes these
13 allegations. The parties agree that the fair reporting privilege could apply if the web site
14 accurately reported the facts of the complaint. The issue is whether these statements made on
15 the Stritmatter web site are fair reports of the complaint.
16

17
18 The firm posted (for a time, until it was complained of) that Ms. McNamara had an
19 “Interpol warrant” for her arrest. In fact, she did not have an Interpol warrant. Interpol had
20 posted a “red notice,” and the Belize police had issued a warrant for her. It appears that a
21 warrant in Belize does not have the same legal meaning as it does in the United States and
22 resembles a summons in effect, and can be issued by the police. While the use of the term
23 “Interpol warrant” claim was inaccurate, strictly speaking, it was true that there was a legal
24 document called a warrant, issued by the Belize police, and it was true that there was an
25

315

~~Page~~
Hon. Jim Rogers
King County Superior Court
Dept. 45
516 3rd Avenue
KCC-SC-0203
Seattle, Washington 98104

1 Interpol posting. (Defense points out that after Ms. McNamara's counsel pointed out the
2 inaccuracy about the warrant, that part of the posting was changed, though the rest remained).

3 The Stritmatter firm also listed this case under a web page noting successful verdicts
4 and cases. However, the firm made no claim of recovery about the case itself on that page, and
5 for certain other cases. In fact, the featured case on the page is the "Ride the Ducks" case
6 which, it is clear from the site, is far from settled, as one victim is asking for donations and
7 there is no mention of a verdict or settlement. Another case on the page is pending before this
8 Court, and no claim there is made that the case is settled. The rest of the discrepancies, in light
9 of the actual allegations made in the complaint, do not stray far from the complaint.
10

11 The Court concludes that based upon the undisputed evidence, that the statements are
12 privileged under the fair reporting privilege. *Cox Broadcasting Corp v. Cohn*.

13 The defense also claims that the statements are absolutely privileged under *Demopolis*
14 and *Jeckle v. Crotty*. That is a closer question because the statements in question are arguably
15 for advertising and not for the administration of justice. This Court does not decide the case
16 under that privilege.
17
18
19
20
21
22
23
24
25

415

1 The CPA claim is dismissed. Under *Short v. Demopolis*, the claim does not relate to
2 the “entrepreneurial aspects” of the Strittmater practice, and therefore not under the trade or
3 commerce section of RCW 19.86. The relationship between this Plaintiff and the defendant is
4 one of adversary, not customer.
5

6 IT IS SO ORDERED.

7 November 17, 2016

8
9
10 
11 _____
12 Hon. James E. Rogers
13 King County Superior Court
14
15
16
17
18
19
20
21
22
23
24
25

5/8

~~3~~ Page
Hon. Jim Rogers
King County Superior Court
Dept. 45
516 3rd Avenue
KCC-SC-0203
Seattle, Washington 98104

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

TRACY S. MCNAMARA,)
an unmarried individual,) No. 16-2-16400-5 SEA
Plaintiff,) Supreme Court 93897-1
vs.)
KAREN KOEHLER, AKA "THE VELVET)
HAMMER," ET AL.,)
Defendants.)

VERBATIM TRANSCRIPT OF PROCEEDINGS
OF
A HEARING
BEFORE THE HONORABLE JIM ROGERS
10/21/2016

APPEARANCES
For Plaintiff: John Henry Browne
For Defendants: Bruce Johnson

Transcribed at the Request of John Henry Browne

Transcribed by Brian Killgore

TABLE OF CONTENTS

Proceedings

1. Proceedings of 10/21/2016.....3

Argument

1. Argument by Mr. Johnson.....3
2. Argument by Mr. Browne.....11
3. Rebuttal by Mr. Johnson.....35

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Proceedings of 10/21/2016)

THE COURT: All right, I have read the materials and I will hear brief argument.

I will probably end up issuing a short written decision by next week on the case, and Mr. Browne moved for judicial notice. It sounds like you take the same position, I should be reviewing the -- all of the various complaints, so I take it there is no objection to that?

MR. JOHNSON: That's correct. I think everybody acknowledges judicial notice is --

THE COURT: Yeah, that's what I assumed. I am stating the obvious here.

So it is your motion?

MR. JOHNSON: Thank you.

THE COURT: Yes.

MR. JOHNSON: Your honor, my name is Bruce Johnson and I am representing the defendants in this case, attorney Karen Koehler and her law firm, the Stritmatter Kessler firm. Here today is Andrew Ackley, a lawyer from that law firm.

This is a 12C motion. It is basically a 12B6 motion filed after an answer. It is designed to address here issues of the law and it is a very rare motion in the Washington judicial system, so it is important for me to stress why this is an issue of law, why these are all issues

1 of law and why the case should be dismissed.

2 The importance of a 12C motion in this context is that
3 it enables the court and the parties to avoid completely
4 unnecessary and wasteful litigation; a meritless lawsuit is
5 disposed of at the outset.

6 There are four basic legal issues here that I just want
7 to stress.

8 Number 1, the first legal issue is this presents legal
9 issues. We have brought -- we cited to the court the cases
10 dealing with the litigation privilege and the fair report
11 privilege. In both situations those are questions of law
12 that are resolved by the court.

13 In addition, the CPA claim also presents a pure
14 question of law that can be resolved by the court, whether
15 the defendants' undisputed conduct in the circumstances,
16 accepting all facts well pleaded as pleaded, constitutes a
17 violation of the act.

18 And again, we cited the Keyes v. Bollinger case. The
19 question of whether particular actions give rise to a
20 violation of the CPA is reviewable as a question of law.

21 The second point, the fair report privilege applies
22 here.

23 The defendants' website attached and quoted from the
24 Grant County lawsuit that was filed against the plaintiff
25 and explained what were the issues in that case.

1 The fair report privilege, we have argued, clearly
2 should apply.

3 Plaintiff's main argument appears to be that the
4 privilege should not be available to someone who files a
5 document in court themselves -- their own pleadings,
6 essentially -- and they cite a 2009 Illinois intermediate
7 appellate case that basically analyzes different states and
8 how they have come out on this issue, and concludes that
9 there should be an exception if somebody is reporting on
10 their own -- on their own lawsuit.

11 I would stress, this is also an issue of law, the scope
12 of the privilege and whether there should be an exception
13 here for parties that quote from their own pleadings, or
14 lawyers for parties who quote from their own pleadings; that
15 is an issue of law as well that the court can resolve on
16 this motion.

17 I want to touch briefly with an anecdote on the
18 implications if we were to adopt Mr. Browne's theory of the
19 fair report privilege.

20 Rhinehart v. Seattle Times was a lawsuit I handled at
21 the beginning of 1979. It was filed in front of Judge
22 Schofield -- Schofield, I think -- and it basically turned
23 on claims filed by Keith Milton Rhinehart, a local religious
24 leader, and the Aquarian Foundation, against the Seattle
25 Times, which used the term "cult" to describe the Aquarian

1 Foundation.

2 Early in the case there were discovery orders and a
3 protective order which went to the Washington Supreme Court,
4 which decided to affirm both of them in late 1982. They
5 then went to the US Supreme Court, which affirmed Judge
6 Schofield's discovery order -- protective order, nine to
7 nothing in the case called Rhinehart v. Seattle Times, which
8 the US Supreme Court issued in 1984.

9 During that time the Seattle Times covered all of this
10 news, and thereafter a lawsuit was filed by Keith Milton
11 Rhinehart and the Aquarian Foundation because the Times had
12 quoted from the pleadings that were filed in the case, the
13 court briefs that were quoted in the US Supreme Court, and
14 described what happened.

15 He filed a defamation lawsuit; basely said, "You quoted
16 from your own brief."

17 It went to Judge Armstrong, who ruled that the claims
18 were frivolous, violated Rule 11, and the Frivolous Claims
19 Statute -- imposed about \$42,000 of sanctions, and the
20 foundation representative came to my office, paid those
21 sanctions with gigantic bags of quarters, which she then put
22 one by one in front of me.

23 And the Court of Appeals affirmed that dismissal, ruled
24 that the case was basically frivolous on appeal as well.

25 I believe that if you adopt this particular view of the

1 fair report privilege, you end up going down a rabbit hole
2 of lawsuits about lawsuits, and lawsuits about the lawsuits
3 about the lawsuits. And this unintended mischief that I saw
4 30 years ago in the Rhinehart case is basically where we end
5 up.

6 THE COURT: Let me ask you a couple of questions.

7 You agree that the fair report privilege is a qualified
8 privilege, correct?

9 MR. BROWNE: The fair report privilege is a
10 qualified privilege. It is an absolute privilege once it
11 applies, but it is technically a qualified privilege because
12 you have to establish the qualifications for it. Correct.

13 THE COURT: Right.

14 There appears to be some dispute between yourself and
15 the plaintiffs in this case about whether or not the
16 allegations are -- well, are they -- the statements made on
17 the website are accurately reporting of a lawsuit or not;
18 does that make any difference to my decision, in your view?

19 Mr. Browne clearly takes a completely different view
20 than you do as to whether or not -- you know, on page 4 of
21 your reply you talk about how they are really substantially
22 the same. On page 5 of his response he says no, they are
23 quite different.

24 Does that make any difference to the decision I need to
25 make to that?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. JOHNSON: Not really.

THE COURT: Under the fair reporting?

MR. JOHNSON: Under the fair report provision, it simply needs to more or less describe what was at issue. It doesn't have to have an exact quote. We cited the Clapp v. Sequim Gazette, or Clapp v. Olympic Publishing case out of Division II where they said it just has to be a fair account of what was at issue. You don't have to quote it exactly or verbatim. And there's a lot of editorial discretion allowed when you are citing to the public record.

The second anecdote is a case we cited, the Virginia State Bar v. Hunter case. This is a Virginia Supreme Court case from 2013.

Mr. Hunter is an African-American lawyer who handles police brutality cases. He blogs regularly about them. The Virginia State Bar decided he should be sanctioned because in his blog he mentioned one of his own cases and that he shouldn't be allowed to talk about those.

The Virginia Supreme Court said there's a First Amendment right, even for a lawyer to discuss cases of public interest, and concluded that there was a First Amendment right at issue there, so at the bottom of the report privilege is a First Amendment right. We cited the Cox v. -- Cox Broadcasting v. Cohn case in that regard in our initial motion.

1 So at bottom we think there's a First Amendment
2 privilege involved in reporting the contents of public
3 records.

4 Third point, the litigation privilege also applies.

5 I have an article from the Pepperdine Law Review from
6 2004 called "Absolute Immunity from Civil Liability, Lessons
7 for Litigation Lawyers." I can give a copy to Mr. Browne,
8 or to the court. I just want to read the first paragraph of
9 that Law Review article because I think it summarizes the
10 legal policies at issue here.

11 "Lawsuits filed against litigation lawyers, by their
12 clients' adversaries, primarily seek vengeance. Lawyers,
13 however, are absolutely immune from civil liability for
14 statements or conduct that may have injured, offended, or
15 otherwise damaged an opposing party during the litigation
16 process. This protection also often referred to as the
17 litigation privilege shields a litigator regardless of
18 malice, bad faith or ill will of any kind. It originated at
19 the very beginning of English jurisprudence for the purpose
20 of protecting the advocacy system and its participants, and
21 it crossed the Atlantic Ocean to reach the shores of America
22 after colonization."

23 That is precisely what happened here. We believe that
24 the litigation privilege itself stems from First Amendment
25 sources as well -- also should apply.

1 The plaintiff was suing Grant County by plaintiffs
2 represented by these lawyer defendants and these lawyer
3 defendants were targeted for litigation. As I said, it
4 becomes potentially a rabbit hole of litigation about
5 litigation about litigation.

6 The final point, the CPA. The allegation is in here
7 that there was some sort of entrepreneurial aspect, which
8 the Supreme Court in Short v. Demopolis says "the way a law
9 firm obtains, retains and dismisses clients."

10 This is not brought by a client or a prospective
11 client. This person is not seeking to allege anything about
12 the way the firm obtained, retained or dismissed her. She
13 is the adverse party in litigation and we believe the CPA
14 liability should also be thrown out.

15 I should add that, based on this Pepperdine article,
16 the litigation privilege also would apply, even if you state
17 a CPA claim, because again, whatever the nature of the
18 claim, the litigation privilege applies as a matter of First
19 Amendment protection.

20 So we would ask the court to grant our 12C motion and
21 if I can answer any questions?

22 THE COURT: No, thank you.

23 Mr. Browne?

24 MR. BROWNE: Yes. Good morning, your honor.

25 THE COURT: Good morning.

1 MR. BROWNE: The woman on your left -- right,
2 excuse me --

3 THE COURT: My right.

4 MR. BROWNE: -- is -- Yeah, your right, is
5 McNamara, and for your interest, that is Marist Moore
6 (phonetic), my new employee who is sitting next to you --
7 and who helped me with some of the materials.

8 Nice to see everybody again.

9 I am just going to introduce a few things. My argument
10 might be a little longer, just because I have got to talk
11 about some cases that actually counsel mentioned, but more
12 in detail.

13 THE COURT: That's fine.

14 MR. BROWNE: Is that all right?

15 THE COURT: Yes.

16 MR. BROWNE: So I was advised, since, you know, I
17 don't do a lot of civil cases, but I have done civil cases
18 before -- I wanted to know if this should be marked as a
19 demonstrative exhibit?

20 THE COURT: It doesn't need to be.

21 MR. BROWNE: It doesn't need to be?

22 THE COURT: Yeah.

23 MR. BROWNE: It is all exhibits that are before
24 you. I blew them up for the purpose of this.

25 So the first one is -- and I have showed these to

1 counsel already -- this is the Interpol posting, unedited,
2 and you'll notice, and I have done a lot of research about
3 Interpol and it is in my brief and I will talk about it in a
4 little bit.

5 Any country that is a member of Interpol, of which a
6 lot are, but not all, can basically ask to have what is
7 called a red warrant put out for someone.

8 A red warrant -- I just had this issue in a federal
9 case -- a red warrant is not an arrest warrant; nobody in
10 the United States can arrest anybody on the basis of a red
11 notice.

12 A red notice is basically just telling other member
13 countries that a person is wanted for questioning, or -- you
14 can't detain on the basis of a red notice.

15 You can take judicial notice of that by just reading
16 the Interpol statute, which is a federal statute.

17 So all this says is Tracy Shannon Nessler -- her name
18 actually legally is McNamara, but they have it under
19 Nessler -- last name, first name, female; where she resides,
20 on the bottom here, and then it says the charge is for
21 murder.

22 But it says "prosecution to serve a sentence."
23 Obviously she hasn't been convicted of anything, so but that
24 is Interpol. That is what they post. And any country can
25 get it posted as long as they are a member of the pact.

1 The second sheet is from the defendant's website, web
2 page, and you will see at the very top -- clearly it is an
3 advertisement -- "Call for a free consultation." And then
4 it talks, and this is -- for a long time was the first thing
5 that came up when you went to the defendants' website.

6 And this was taken -- information was taken from the
7 Interpol site, which I just read, and then the defendants
8 added in very large red letters underneath the photograph of
9 Ms. McNamara, "Interpol warrant," which was -- it is not an
10 exaggeration, it is just a plain out lie. It is not true.
11 Period, not true.

12 Now is that a fair representation? I will talk about
13 that in a minute.

14 Everything I have highlighted here -- I don't know if
15 you can see the highlights from there -- but first of all in
16 the yellow is "Call us for a free consultation," and then
17 they have added on their website, "Murder and incest," when
18 of course the police, the Interpol thing says nothing about
19 it.

20 The defendants in this case seem obsessed with -- and
21 we can, you and I could probably agree that maybe incest is
22 not a good thing, just morally, but it really has nothing to
23 do with this case whatsoever.

24 But the defendants use that as telling their story, as
25 a hook, basically.

1 And so this is their words: "Murder, incest and
2 police, ties to Washington state. The defendant, Tracy
3 Nessler, a.k.a. McNamara, with an Interpol warrant out for her
4 arrest and prosecution."

5 So we have a warrant here, we have a warrant here.
6 This still remains.

7 Now then they go through the drama of their position by
8 saying, "On Christmas Day in Belize, Tim McNamara died."
9 And they say, "Was murdered." It doesn't say, "In our
10 opinion it was murder" -- it's "murder"; it doesn't say
11 "perhaps" or "allegedly."

12 And then it says here, which is highlighted, which is a
13 lie -- not true, excuse me -- "Nessler fled to Washington
14 State."

15 They know for a fact that's not true that the police
16 authorities gave Ms. McNamara her passport back so she could
17 leave. She wasn't fleeing anything. The original finding,
18 as they know, was suicide.

19 And then it says: "Because she lives on the McNamara
20 family farm in Grant County."

21 What they don't say is that two years before Mr.
22 McNamara died -- two years -- he transferred the property
23 into her name, to keep it in the family because she was
24 afraid he wouldn't have.

25 I need to get some water. I took an antihistamine this

1 morning.

2 THE COURT: I have got some here.

3 (Brief Pause in Proceedings)

4 THE COURT: You have to unscrew that.

5 MR. BROWNE: Sorry, your honor, I didn't hear
6 that?

7 THE COURT: You have to unscrew the top of that
8 pitcher a little bit. It is -- always throws people.

9 MR. BROWNE: Then they have in the -- this is
10 still their web post.

11 THE COURT: Right.

12 MR. BROWNE: Which came up first for a long time.

13 "They have now issued a warrant for Nessler's arrest."

14 The reason I highlighted that is we have found only on
15 the ninth of October, from talking to the FBI, and I gave
16 you that interview, which was transcribed, that the FBI does
17 not believe there is a warrant, but at the time I filed this
18 original complaint, we didn't have that information because
19 Belize wouldn't talk to me at all about anything, after many
20 times talking to them.

21 Then the other highlighted portion here, "just
22 before" -- the grammar here is very poor but "just before,
23 on Christmas Day," that "Nessler seduced, manipulated,
24 deceived him into giving her all of his real estate."

25 That is an out and out lie. That happened two years

1 prior to Mr. McNamara's death. How they can say this is
2 fair reporting, or accurate is beyond imagination. Just --
3 because it reads like a soap opera.

4 "Just before Christmas Day, Nessler seduced,
5 manipulated" -- into giving the real estate. That was two
6 years before. As a matter of fact, there were facts in this
7 case which defendants know is -- Ms. McNamara didn't even
8 know about some of the transfers until after his death, but
9 it was two years before, it wasn't just before Christmas
10 Day.

11 Is that a fair reporting, "just before Christmas Day"?

12 "He also changed his life insurance policies to cut out
13 his own children and named Nessler the sole beneficiary."

14 That was also years before his death and the pleadings
15 indicate -- the pleadings from the defendants in this case
16 are fairly accurate, from their position -- you know, from a
17 good advocate's position the pleadings are quite fair from
18 their position. I am not saying it's true.

19 THE COURT: Yeah. No, my understanding is that
20 you -- that is your position on that, but that the website
21 differs from the pleadings?

22 MR. BROWNE: Quite a bit.

23 THE COURT: Yeah.

24 MR. BROWNE: And I believe under the cases -- I am
25 finding it all quite interesting -- under the cases, it can

1 be a fair abridgment, but it has to be a fair abridgment,
2 and you can't add things, but the facts in this case, which
3 the defendants know, is the life insurance policies, one of
4 which she did, Ms. McNamara didn't even know about until
5 after Mr. McNamara died, were done years before his death.

6 So that's a lie.

7 This was the photograph from KING TV where the
8 defendants' law firm actually solicited the interviews and
9 issued press releases about this, containing the same
10 fabrications, and then arrange a TV interview, and KING TV
11 then did contact us in response to that, but that's not
12 really relevant, probably.

13 The reason that I put this up, because I already showed
14 you this right part, is because this is the way it looks on
15 the Internet, and Ms. McNamara's photograph with the red
16 Interpol warrant, which is completely untrue, and
17 certainly -- a police officer actually was shown that, I
18 told you in my brief -- and shown this website, and detained
19 Ms. McNamara on Thanksgiving Day in Ephrata in the Wal-Mart.

20 And the police officer was very pleasant, actually,
21 because he was shown this thing that says "Interpol
22 warrant," and spent about 45 minutes trying to find out if
23 there was a warrant -- any warrants, and found out that
24 there were no warrants.

25 But this -- the reason I provided this is you can see

1 that this is part of their advertising.

2 This just indicates that one of the lawyers for the
3 defendants in this case, Ms. Koehler, just last week -- she
4 has a blog -- it goes on and on and on; lots of personal
5 stuff; some legal stuff -- but this also is her blog, which
6 is called "The Velvet Hammer," a trademark that she gave
7 herself, and then trademarked, and she put this up just last
8 week after a television show was aired, and she indicates in
9 this blog: "A family at war, a very suspicious death and a
10 controversial forbidden romance."

11 It may be a romance that you and I would disapprove of,
12 but I am not sure you would say forbidden. And that is not
13 in their complaint -- but that's just last week -- with Ms.
14 Koehler's photograph.

15 This is just a continuation of that, how she is
16 explaining how this television piece ended up on the air.

17 This exhibit is indicating because, as you do know, we
18 pled this case against the law firm and Ms. Koehler and the
19 Velvet Hammer because that's what she's trademarked herself
20 as and that is what she promotes herself as. I am not
21 exactly sure what that means, but this is her blog.

22 This is interesting. This is -- if you Google -- I am
23 getting more competent with computer things, finally; I must
24 admit, Mr. Harris is helping me a great deal -- but if you
25 Google Tracy McNamara, or Tracy Nessler, as recently as

1 yesterday the first thing that comes up is this lawsuit, and
2 the website that I just showed you, containing the lies, the
3 fabrications and the lies, not fair reporting.

4 It comes up before the New York Daily News, it comes up
5 before the National Evangelical LinkedIn something, it comes
6 up before the KING 5 TV report.

7 This is from Belize. "Belize rules former Soap Lake
8 man's death was murder," what happened after the family went
9 down there, the disinherited children; it was suicide until
10 then.

11 So the first thing that comes up, and I would assume
12 that would happen again today, is this blog/website I just
13 showed you.

14 They did take out in July -- in January, they took out
15 the Interpol warrant because that was after Ms. Nessler was
16 detained by the police, and we did write a letter and got
17 that.

18 Co-counsel, another counsel in the other matter wrote a
19 letter to Ms. Koehler's firm saying -- objecting about all
20 of the lies that are contained in here, but focusing on the
21 Interpol warrant, and they -- in January -- but that was
22 after she had been detained and it had been up already for
23 six months.

24 As I have alleged in my complaint, she has lost any job
25 prospects. This is a small community. Grant County? She

1 was born there; she was raised there. She lived in North
2 Carolina before she and Tim got together. And the
3 defendants in this case issued press releases to every
4 single newspaper in Washington State, including the small
5 newspapers in Grant County, where the wrongful death action
6 is pending, and those press releases contain the same lies
7 that are in the website.

8 This is interesting because this is the page where the
9 defendants' law firm talks about all -- I don't know if you
10 read all of the cases -- I actually did, recited by
11 counsel -- the one involving -- the only blog case involves
12 the lawyer.

13 THE COURT: Right.

14 MR. BROWNE: In Virginia.

15 THE COURT: I did read that.

16 MR. BROWNE: And so this is their advertisement on
17 the website for their law firm. "Call us for a free
18 consultation." And then it has a picture of a family that
19 did recover some money, because of their representation.
20 Another person who did receive some money from their
21 compensation. And then right here -- I will outline and
22 highlight it -- "below is a" -- bad grammar again -- "below
23 is small sample of just a few of our over 150 cases
24 resulting in at least seven and eight figures for our
25 clients." Right there.

1 So then it lists cases, claiming that the cases
2 following the statement have resulted in obviously
3 settlements, or verdicts in their favor for over seven or
4 eight figures.

5 This is a continuation, right? I am doing page by
6 page.

7 These are the cases that they claim that they have won.

8 Look here. "Ralston v. Nessler, a.k.a. Tracy McNamara."

9 They claimed they have won that case for over seven or
10 eight figures. That is the CPA basis, among other things.

11 So they have included in their web post that the case
12 against Ms. McNamara has already been concluded and resulted
13 in a \$10 million verdict.

14 This is a blowup of the transcript of the FBI on
15 September 9.

16 I don't think, in my whole 40+-year career, I have ever
17 let anybody talk to the FBI, whether guilty or innocent; in
18 this case I did, as long as it was recorded. They showed up
19 unannounced and I talked to them and said, "If you record
20 it, I have got no problem."

21 So they recorded it. We actually had to record it
22 because they didn't have a recorder -- the FBI.

23 THE COURT: They [UNINTELLIGIBLE] 302's, I think.

24 MR. BROWNE: Yes. Exactly.

25 THE COURT: Okay.

1 MR. BROWNE: Then they can put down anything they
2 want.

3 So this is the actual transcript. I sent this to
4 counsel and to the law firm.

5 This is where Agent Molta is talking, and myself
6 saying, "Go ahead and talk to her. Just record it."

7 And then on page 3 -- this is Molta, agent Molta; M-O-
8 L-T-A -- "And I believe the US marshals were also" -- and I
9 am quoting -- "were also notified, but it has now been
10 vetted out that I did not believe that the arrest warrant is
11 valid."

12 This is talking about Belize, because we know there's
13 no such thing in Interpol.

14 "It was more of a summons, for lack of a better term.
15 The police can't issue their own," which I found out is true
16 in Belize; they can also act as prosecutors, which is an
17 interesting note.

18 "The police can issue their own -- their own warrants
19 out there and essentially it is just a detainment document
20 to be able to bring somebody in for questioning."

21 So those are my exhibits on that, just for context.

22 I am now going to go over the allegations in our
23 complaint.

24 Our basic -- there are two issues -- or actually three
25 issues because there is the fair reporting privilege, and

1 there is the litigation privilege, and then there is the CPA
2 argument.

3 The defendants in this case cannot -- first of all, the
4 burden -- and you know that from reading all of the cases
5 and because you do a lot of civil cases -- is very high on
6 the defendants at this time, just like it would be in a
7 summary judgment, if not higher -- to prove that the
8 litigation privilege, the fair reporting privilege, or the
9 CPA allegation does not state a case, prima facie case
10 basically. It is actually more than that, any case.

11 Their claims of privilege cannot insulate their
12 admittedly defamatory website.

13 I think the reason I said admittedly is obviously when
14 they took down the big red letters that said Interpol
15 warrant, they knew that was wrong, but that doesn't insulate
16 them from the harm that it prevented, and they continue to
17 indicate on the website, as of today, that there is a
18 warrant out from Belize, so they have admitted at least the
19 Interpol warrant was inappropriate, and the other argument
20 is that the Consumer Protection Act clearly covers their
21 false and deceptive website pleadings because it is an
22 advertisement.

23 CR 12C motions are disfavored and are to be rarely
24 granted, so this is kind of the test.

25 Courts analyze motions under CR 12 -- 12C, in an

1 identical manner. Under these rules, dismissal is warranted
2 where, quote, "It appears beyond doubt" -- "beyond doubt
3 that the plaintiff cannot prove any set of facts that would
4 justify recovery."

5 That is a pretty strong standard. That is Washington
6 Supreme Court case Tenore -- 1998 -- quoting from Tenore.

7 "A plaintiff's allegations are presumed to be true."
8 Ours.

9 "Dismissal is rare" -- this is quoting -- "Dismissal is
10 rare and should be granted sparingly and with care" -- still
11 citing that case -- "to establish a prima facie case of
12 defamation, a private plaintiff," like Ms. McNamara, "must
13 show falsity, unprivileged communication, fault and
14 damages."

15 Here the defendants in this case move for dismissal
16 solely on the ground that Ms. McNamara's complaint does not
17 allege any defamatory statements that are not privileged --
18 speaking of course of the two privileges that I have
19 mentioned already.

20 THE COURT: Right.

21 MR. BROWNE: The other part of the test is the
22 defendants' motion should be denied because they have failed
23 to demonstrate that there is some impenetrable barrier to
24 really bar -- excuse me, bar to really -- you already asked
25 the question about that, because it's not a -- neither of

1 these are absolute privilege. I mean there are very few
2 absolute privilege.

3 The website advertisement done by the firm does not
4 constitute reporting.

5 This is a really interesting issue, whether a website
6 is reporting, because back when I was much younger, and you
7 were around still, we didn't have the Internet like we do
8 now, and lawyers -- first of all, I think social media is
9 one of the worst things that's happened to our profession,
10 in my opinion. I have known a lot of law firms and lawyers
11 who misrepresent and lie about things, and the public relies
12 on it.

13 But there's a real interesting question that this state
14 has not decided yet -- some other states have -- whether
15 reporting means -- is limited to news media or not, but
16 there are cases in other jurisdictions which say no, it is
17 not limited just to news reporting, but there is no case
18 like that in Washington State. So that's -- I think some of
19 the other states' law is persuasive on that issue. I will
20 get to that in a minute.

21 Washington law affords, quote, unquote "news media
22 defendants a privilege for reporting on defamatory
23 statements contained in official proceedings and records."

24 I think we could all understand and even stipulate that
25 the website from the defendants in this case is not an

1 official proceeding or record. Their complaint is, but not
2 the website.

3 Then I cite a bunch of cases on page 3 supporting that
4 position.

5 In all of the cases cited -- in all of the cases cited
6 by the defendants, the defendants are actual media outlets,
7 except for the one involving the blog with the lawyer and
8 the Bar Association in Virginia. That's the only one that
9 doesn't involve the media.

10 Did you want to ask a question?

11 THE COURT: Well no. I think I understand. If
12 Koehler and Stritmatter Kessler had reported on their
13 website something that really tracked their complaint, I
14 take it you wouldn't be here?

15 MR. BROWNE: That's correct.

16 THE COURT: Yeah.

17 MR. BROWNE: And I really don't want to be here,
18 to be honest with you. This is not retribution of any kind.
19 This is real damage to Ms. McNamara, and inexcusable, in my
20 opinion. So that's why we are here.

21 "The fair reporting privileges serves the public's
22 interest when obtaining information about official
23 proceedings and public meetings."

24 Those cases are all talking about newspapers, but let's
25 assume that applies to a website, just for the sake of

1 argument.

2 "The privilege thus attaches to reports of official
3 proceedings or records that attribute such reports to the
4 official record and are" -- this is the really important
5 part -- "are an accurate and complete, fair abridgment of
6 the record."

7 Is what I just showed you a fair abridgment of this
8 record? No. They exaggerated their own complaint and made
9 it hysterical, almost. It reads like a cheap novel.

10 The law firm's publication of defamatory statements
11 related to a complaint it composed. Neither fulfills these
12 policy objectives or constitutes a fair and accurate
13 abridgment.

14 Under defendants' theory, a firm could compose a
15 complaint containing only falsehoods, publish the contents
16 on advertising flyers, and on its website, and then claim
17 immunity under the fair reporting privilege.

18 Courts and commentators deride such scurrilous
19 connections.

20 There's a couple of quotes to some of the cases; if I
21 have time, I will read, which are pretty interesting and
22 directly on point.

23 And then of course the restatement of torts is being
24 used a lot in this case, which is unusual because it also
25 says things have to be fair if you are going to get this

1 privilege.

2 But -- and here is a quote directly from the
3 restatement of torts -- "A person cannot confer the
4 privilege upon themselves by making the original defamatory
5 publication himself," or the law firm, "and then reporting
6 to other people what he had said. This is true whether the
7 original publication was privileged or not," and that's an
8 Illinois case -- that is the Kurczaba case.

9 In that case there was a complaint made by somebody
10 named Malus, believe it or not, M-A-L-U-S, and they made a
11 complaint, and then they reported the same matter to others.
12 "Based on this alone, the fair report of judicial
13 proceedings privilege is not available to the defendant,"
14 citing Park v. Detroit.

15 "No" -- this is a quote -- "No more effectual way of
16 doing malicious mischief with impunity could be devised than
17 filing papers containing false and scurrilous charges and
18 getting those printed as news."

19 So if we are giving the law firm the benefit of being a
20 media, which hasn't been decided by this state, this case
21 strongly says you can't make false allegations in the
22 complaint -- but that in a complaint would be protected, if
23 it is in the complaint -- but you can't take it then and get
24 your own immunity by publishing it and then adding things to
25 it, which is what happened here.

1 The defendants' defamatory statements have no relation
2 to the complaint. Even if the privilege somehow applies,
3 but I am trying to be argumentative -- I am giving them the
4 benefit of the doubt because I don't think it does under
5 state law -- even if the privilege somehow applies, it would
6 not shield the defendants in this case from liability on
7 their website.

8 The first part, an assertion that Ms. McNamara was
9 subject to an Interpol warrant, which is impossible since
10 they don't do that, and they knew that, and was not alleged
11 in -- an act was not alleged in the wrongful death case.
12 The Interpol warrant is not in the complaint, wrongful death
13 complaint.

14 B) Amendment of the Interpol notice in January, after
15 Ms. McNamara was detained --

16 THE COURT: So is it the fact that she was
17 detained? Maybe I missed that. Is that in your materials?

18 MR. BROWNE: Yes.

19 THE COURT: Okay, I --

20 MR. BROWNE: It is in our complaint. That is one
21 of the --

22 THE COURT: Oh, okay. Okay.

23 MR. BROWNE: At some point I think plaintiffs need
24 to -- I'm finding this very fascinating, actually -- at some
25 point in these kinds of cases the plaintiff has to allege

1 some sort of damages, but in this case she was detained in a
2 small parking lot on Thanksgiving Day in Wal-Mart in a small
3 town where she lives where everybody knows her -- by the
4 police detained while they ran -- and because of this
5 website, the officer ran a warrant check and found there was
6 no warrant.

7 But there's other damages. She can't get people to
8 take care of the orchard. People canceling contracts. All
9 kinds of things.

10 As we put in our complaint, she is now a pariah in this
11 small town because of this advertising.

12 The next one, the claim that the complaint alleges that
13 just before Christmas Day, Ms. McNamara "seduced,
14 manipulated" -- I have gone over that; that's not true, and
15 that is not in the complaint. Really important. That is
16 not in the complaint -- because the complaint knows and
17 shows, their complaint, the wrongful death complaint, it is
18 not in there.

19 THE COURT: I am going to --

20 MR. BROWNE: Cut me off?

21 THE COURT: Yeah, well I am going to give you a
22 few more minutes, but let me -- maybe I could summarize
23 where I think things may be at, in order to assist you --

24 MR. BROWNE: Sure.

25 THE COURT: -- in making any final argument.

1 MR. BROWNE: Absolutely. I would appreciate that.

2 THE COURT: It does seem to me under all of the
3 cases cited by the parties, the absolute privilege only
4 applies where there was an intermediary that can regulate
5 the proceeding, such as a judge, so we are talking about a
6 qualified privilege.

7 And then it really comes down to the parties arguing
8 about whether or not the website is essentially similar to
9 what is in the complaint, because it seems the parties take
10 very different positions on that, and I --

11 And I clearly, I think very clearly understand your
12 position on it and counsel maybe can restate his position on
13 it when he gets back up again, and for me, in deciding a 12C
14 motion, the standard is --

15 MR. BROWNE: High?

16 THE COURT: Well, it is -- it is a very
17 preliminary -- it is a very early motion, so that -- that is
18 kind of -- probably the standard governs a lot of what will
19 drive the result in this case.

20 I would like to hear from you on the Consumer
21 Protection Act, because this is a very --

22 MR. BROWNE: Okay.

23 THE COURT: -- unusual case to be asserting a
24 Consumer Protection Act claim where in fact your client is
25 not a client of Ms. Koehler's, but is in fact being sued by

1 her.

2 MR. BROWNE: Sure.

3 And first of all, thank you so much for your direction
4 because I would have probably spent more time than
5 necessary. Okay? So thank you. And I will address that.

6 I consulted an attorney who is a specialist in the
7 Consumer Protection Act about this and it was his idea to
8 put this in here. Now I actually understand it. And this
9 will kind of -- I'm not sure in good faith, but they cite
10 Browne v. Avvo.

11 By the way --

12 THE COURT: I saw that.

13 MR. BROWNE: Well, by the way, I don't disagree at
14 all with Judge Lasnik's ruling in that case. We can talk
15 about that some other time when we are not on the record,
16 probably, but I do not disagree with Judge Lasnik's ruling.

17 So the defendants in this case are trying to say that
18 the Consumer Protection Act doesn't apply, basically because
19 of the First Amendment issues. That was an issue in Avvo.
20 Okay? Because you know -- people said something to Avvo,
21 and Avvo just posted it. So Avvo is just repeating what
22 somebody else has said. Right?

23 So in that case, Avvo and the other cases cited by the
24 plaintiffs -- defendants, excuse me -- there were -- the
25 courts had said there has to be a contractual relationship,

1 more or less, between the person who is wrong, done some
2 wrongful consumer behavior, such as perhaps Avvo, but not
3 according to Lasnik, who I agree with, but in this case
4 there is no question, and you saw they are using this to
5 advertise.

6 The defendants in this case are using and making false
7 statements to mislead their potential clients -- I mean
8 saying they won more than \$10 million in Ms. McNamara's case
9 is an entrepreneurial act.

10 In this case, this state, which is really interesting,
11 we did not adopt these standards of other cases. We
12 specifically did not adopt that it has to be somebody that
13 has a contractual relationship.

14 Our state law, and I will find you the case -- Hangman
15 Ridge --

16 THE COURT: I've read it. Yeah.

17 MR. BROWNE: -- CPA citizens' suit provision
18 provides, quoting from the Supreme Court of our state, "any
19 person who is injured" -- no question she has been -- "in
20 his or her business property, by a violation of the act may
21 bring a civil suit for injunctive relief, damages, attorney
22 fees, costs and treble damages, citing RCW 10.86.090.

23 "To prevail in a private CPA claim, the plaintiff must
24 prove, one, an unfair or deceptive act." No question about
25 that. "Two, occurring in trade or commerce." No question

1 about that, it is an advertisement. "Three, affecting the
2 public interest," people who might become clients of this
3 firm with deceptive advertising. "Four, injury to the
4 plaintiff's business or property." I have mentioned that
5 and we can prove that easily when we get to trial.

6 "Causation." She is detained because of this website.

7 In citing Hangman Ridge, Staples, Inc. v. Safeco, that
8 is what that just came from.

9 "The injury need not be great" -- is from that case.

10 The Supreme Court case in our state involving the CPA
11 is the Panag case.

12 THE COURT: Panag.

13 MR. BROWNE: Panag case.

14 THE COURT: I am going to need you to complete
15 your argument because I am going to have to have --

16 MR. BROWNE: Yeah, I'm just -- I am almost done.

17 THE COURT: Yes. Good.

18 MR. BROWNE: The Panag court refused to adopt the
19 sixth element; our Supreme Court refused, specifically
20 refused to adopt the sixth element from some of the other
21 cases requiring proof of a consumer transaction between the
22 parties.

23 Our Supreme Court did not adopt that as a basis for a
24 defense.

25 So that is my answer. Our Supreme Court specifically

1 did not make that defense.

2 So I have a lot more I could say, but based on what you
3 are telling me, I don't need to. You are pretty much on top
4 of the issues.

5 THE COURT: Well and I --

6 MR. BROWNE: And I don't feel cut off.

7 THE COURT: Frankly, I only have so much time.

8 MR. BROWNE: I don't feel cut off.

9 THE COURT: Okay.

10 MR. BROWNE: But I will be happy to answer
11 questions.

12 I have obviously learned a lot, which I really like,
13 and I have a lot of information. If you ask me any
14 questions, I will be happy to answer them.

15 THE COURT: No, I actually think the parties very
16 thoroughly briefed this issue, and I appreciate that too, so
17 thank you.

18 MR. BROWNE: Thank you. Thank you Judge.

19 MR. JOHNSON: Just a very short summary, your
20 honor.

21 I would like the court to review on pages 5 and 6 of
22 our motion where everything in that advertisement, quote,
23 unquote, or that website goes back to the complaint that was
24 filed in Grant County.

25 The Interpol warrant was there. The fact that she was

1 having a relationship with her uncle is there. And what
2 happened on Christmas Day 2014 was there. All of it is in
3 the complaint filed in Grant County.

4 THE COURT: What about the website listing the
5 cases essentially being -- having been won?

6 MR. JOHNSON: If you read the language that's
7 actually in there, it basically says, "Here's a bunch of
8 cases where we have collected a whole bunch of money." It
9 doesn't necessarily say that "we got money in every case."

10 I think you are really pushing it -- I think that Mr.
11 Browne is really pushing it to push that argument, not to
12 mention the fact that that's not really a defamatory case.
13 Simply saying, "I won a case" does not lead to any
14 defamatory result to the losing party.

15 THE COURT: Here's my thinking out loud here,
16 which is always very ill advised for a judge.

17 I agree that law firms should be able to discuss their
18 cases on their websites, and talk about them, if they are
19 fairly reported, but in a 12C motion, as you know, I have to
20 take all inferences in favor of the nonmoving party.

21 In fact it is a broader standard than summary judgment.
22 And so, for example, on the website, claiming a win, isn't
23 that a -- don't I have to take inference, potentially, that
24 that is a defamatory statement for purposes of a 12C motion
25 only? Or do you think that -- make your argument on that

1 issue for me, for example.

2 MR. JOHNSON: First point, the litigation
3 privilege applies however you characterize the claim. This
4 is a plaintiff suing the other side that filed a lawsuit
5 against her in Grant County.

6 So the litigation privilege encompasses all of that.

7 THE COURT: Well the litigation -- do you think
8 the litigation privilege is an absolute privilege, or is it
9 a qualified privilege when the statements are made outside
10 the context of a courtroom?

11 MR. JOHNSON: I can hand up, to the court's
12 satisfaction, if you'd like, the absolute immunity from
13 civil liability article. It is about 50 pages from
14 Pepperdine Law Review.

15 I believe it is an absolute privilege, once it is
16 established, that this is a litigation matter, and the
17 courts have taken the position going back 400 years.

18 THE COURT: Well, for example, in Demopolis it
19 seemed, that case seemed to draw a distinction between
20 statements made inside the courtroom and statements made
21 outside the courtroom -- and made one absolute and one
22 qualified, because they seem to argue, or they -- not argue,
23 they held that once you are in front of a judge who
24 regulates the speech, then there is always an absolute
25 privilege.

1 It seems to me we are talking about a similar
2 distinction, but if you disagree, let me know.

3 I am happy, by the way, to take any -- any legal -- any
4 legal material you wish to hand forward. I will read it.

5 MR. JOHNSON: I will bring it up and I will hand
6 one to Mr. Browne.

7 THE COURT: All right.

8 MR. JOHNSON: That Demopolis case basically dealt
9 with whispering in the hallway.

10 THE COURT: I understand.

11 MR. JOHNSON: Not related to litigation, basically
12 just whispering about the plaintiff.

13 Chris Demopolis has made a lot of law in this
14 jurisdiction I have to admit.

15 THE COURT: This is true.

16 MR. JOHNSON: This is clearly something directed
17 to and focused on the litigation. The fact that it happens
18 to be on the defendants' website is part and parcel of what
19 passes on the Internet these days -- communications about
20 cases, newsworthy information that people may want to know
21 and things like that.

22 THE COURT: Well let me ask you maybe a -- an
23 extreme question in order to flesh this out.

24 Is there nothing that can be said by Stritmatter
25 Kessler on their website about this case, no matter how

1 false, that would not be covered by a privilege?

2 In other words, can they say anything they want, and
3 will it be covered by the privilege as long as it relates to
4 the lawsuit?

5 MR. JOHNSON: I think as long as it relates to the
6 lawsuit, clearly protected by the litigation privilege -- as
7 long as it is a fair statement, or at least an adequate --
8 an adequate abridgment of the complaint filed in Grant
9 County, and clearly the fair reporting privilege is
10 triggered.

11 THE COURT: So my decision does come down to
12 deciding whether or not, for purposes of a 12C motion, this
13 is a fair summary, correct?

14 MR. JOHNSON: That is correct.

15 THE COURT: Okay. All right.

16 MR. BROWNE: Your honor, may I just make one brief
17 comment?

18 THE COURT: Well I have to -- I am going to let
19 him finish.

20 MR. JOHNSON: I am just going to hand up my
21 Pepperdine Law Review article.

22 I actually represent our law firm, so I see this a lot,
23 and this is an issue of -- that I have seen on many
24 different occasions, but there are basic policies behind why
25 these types of lawsuits really shouldn't go forward and the

1 underlying lawsuit is where you have to adjudicate should
2 this thing have been brought at all.

3 THE COURT: And I am in complete agreement with
4 the basic policy behind this. I am just trying to figure
5 out where I stand in terms of a 12C motion -- if there is --
6 if I am not certain if it is fair reporting. That's where I
7 am.

8 All right, anything else that you wanted to --

9 MR. JOHNSON: I have nothing further, your honor.

10 THE COURT: Okay.

11 MR. JOHNSON: Thank you.

12 MR. BROWNE: Your honor, I just wanted to ask
13 counsel if he could -- he mentioned that the Interpol
14 warrant was mentioned in the complaint, the original
15 complaint filed by Stritmatter, and it is not.

16 I would like to -- I think that is important for him to
17 say that to the court, if it's not in there, so I would like
18 counsel to point out where in the complaint an Interpol
19 warrant is mentioned because there is no such thing.

20 Page number?

21 MR. JOHNSON: I believe it was actually attached
22 as an exhibit, if I am correct, but on page 5 of our
23 motion --

24 THE COURT: Oh, the motion?

25 MR. JOHNSON: Footnote 3. "Since Nessler" --

1 MR. BROWNE: The motion? This motion? Or are you
2 talking about --

3 MR. JOHNSON: This motion.

4 MR. BROWNE: -- the original complaint?

5 Well that's not --

6 MR. JOHNSON: This motion -- I am quoting from
7 footnote 3, page 5 of this motion.

8 "Since Nessler's return to Washington, Belize authorities
9 have issued a warrant for Nessler's arrest on the charge of
10 murdering Mr. McNamara.

11 "Attachment four is Interpol's posting regarding
12 Nessler's warrant for murder."

13 That is paragraph 3.24 of the Grant County complaint.

14 MR. BROWNE: 3.24?

15 (Brief Pause in Proceedings)

16 MR. BROWNE: 3.24 states: "Starting in
17 approximately 2012, while McNamara's last divorce was still
18 pending, Tracy Nessler," yada, yada?

19 THE COURT: Well, I will read the complaint.

20 MR. BROWNE: Okay, it is not in the complaint.

21 THE COURT: No, I understand your position.

22 MR. JOHNSON: As I said, 3.24 of the complaint,
23 your honor.

24 THE COURT: All right.

25 Okay, I will you a written decision out in the next

1 week.

2 I am -- well I will get you a decision out in the next
3 week.

4 I am not very convinced that the CPA would apply in a
5 situation such as this, but I don't know, as I have
6 indicated some skepticism on a 12C motion as to what I am
7 going to do on the -- the allegations on defamation. I need
8 to look at that again.

9 Would you do me a favor and tell me where the Grant
10 County case stands in terms of procedure? Somebody attached
11 the docket, but I am not really sure where you have --

12 MR. BROWNE: I can tell.

13 MR. JOHNSON: Yes, your honor.

14 MR. BROWNE: The -- I am just kind of a gopher in
15 that case for Mr. Siderius from Wenatchee.

16 THE COURT: Okay.

17 MR. BROWNE: And I know -- I talked to him
18 yesterday. There is a -- I am learning a lot. There is a
19 summary judgment set for November 21, I think -- 21st?
20 27th? 27th, by both -- by both --

21 MR. JOHNSON: May I ask Mr. Ackley, who can
22 respond?

23 MR. BROWNE: Not until I'm finished -- by both
24 parties -- cross summary judgments.

25 THE COURT: Okay, and is Grant County the kind

1 of -- that doesn't matter. It is around the end of the
2 month of November? Is that correct?

3 MR. ACKLEY: There is an important clarification.

4 The issues in that summary cross motion or counter
5 motion involve undue influence and are expressly not about
6 murder allegations -- and the contents of the defamation.

7 So I --

8 THE COURT: So undue influence is in fact an
9 allegation in that case?

10 MR. ACKLEY: Correct.

11 THE COURT: Yeah. Okay. All right.

12 MR. ACKLEY: So.

13 THE COURT: And let me ask this question: Is
14 Grant County the kind of county that assigns a trial date
15 when you ask for it, or do you already have a trial date?

16 MR. ACKLEY: They assign a trial date when you ask
17 for it, and usually that means something one or two years
18 after you ask for it.

19 THE COURT: Okay. So you don't have a trial date
20 yet?

21 MR. ACKLEY: No, we do not.

22 THE COURT: Okay.

23 All right, thank you.

24 MR. BROWNE: Thank you, your honor.

25 MR. JOHNSON: Thank you, your honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right.

(End of proceedings for 10/21/2016)

(End of transcript)

C E R T I F I C A T E

1
2 I, Brian Killgore, do hereby certify:

3 That ACE Reporting Services, Inc., is a court-approved
4 transcription company for the state of Washington, counties
of King and Cowlitz, and for the United States District
Court for the Western District of Washington;

5 That the annexed and foregoing transcript of
6 electronically recorded proceedings was transcribed by me to
the best of my ability;

7 I further certify that I am not a relative or employee
8 or attorney or counsel of any of the parties to said action,
or a relative or employee of any such attorney or counsel,
9 and that I am not financially interested in the said action
or outcome thereof;

10 I further certify that the transcript is a true and
11 correct record of all audible portions of the taped
testimony, including questions and answers, and all
12 objections, motions and exceptions of counsel made at the
time of the foregoing proceedings. Areas of the tape(s) or
13 CD(s) that were not decipherable for any reason are noted as
[UNINTELLIGIBLE].

14 Dated February 27, 2017.

15
16
17 _____
Brian J. Killgore
18 AAERT Certified Transcriber
License CERT*D-498

19 ACE Transcripts, Inc.
20 1900 West Nickerson Street
Suite 209
21 Seattle, WA 98119-1650
(206) 467-6188
22
23
24
25

EXHIBIT C

FILED
KING COUNTY, WASHINGTON

JUL 26 2018

SUPERIOR COURT CLERK
BY Dawn Tubbs
DEPUTY

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

Commissioner Eric Watness, as Personal
Representative of the Estate of Charleena
Lyles; Karen Clark, as Guardian Ad Litem on
behalf of the four minor children of decedent,

Plaintiff,

v.

The City of Seattle, a Municipality; Jason M.
Anderson and Steven A. McNew, individually,

Defendants.

NO. 17-2-23731-1 SEA

ORDER GRANTING DEFENDANTS'
MOTIONS FOR CIVIL RULE 11
SANCTIONS AND TO STRIKE
INADMISSIBLE MATERIALS DENYING
PLAINTIFFS' IMPROPER MOTION

THIS MATTER having come before the undersigned Judge of the above-entitled Court pursuant to Defendants Jason Anderson and Steven McNew, and the City of Seattle's Joint Opposition to Plaintiffs' Improper Motion Regarding Unsupported Allegations of Perjury and Joint Motions for Civil Rule 11 Sanctions and to Strike Inadmissible Materials in the above-entitled cause, and the Court having read and considered the records and files herein, including:

1. Plaintiffs' Motion for Finding that Officer Jason Anderson has Probably Committed Perjury and for Transmittal to the Prosecuting Attorney Pursuant to RCW 9.72.090;
2. Declaration of Karen Koehler in Support of Plaintiffs' Motion for Finding that Officer Jason Anderson has Probably Committed Perjury and for Transmittal to the Prosecuting Attorney Pursuant to RCW 9.72.090, with Exhibits;

ORDER GRANTING DEFENDANTS' MOTIONS FOR
CIVIL RULE 11 SANCTIONS AND TO STRIKE
INADMISSIBLE MATERIALS AND DENYING
PLAINTIFFS' IMPROPER MOTION - 1

JUDGE JULIE SPECTOR
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE, WA 98104
206-477-1342

ORIGINAL

- 1 3. Praecipe Attaching Exhibit 8 to the Declaration of Karen Koehler in Support of
2 Plaintiffs' Motion Filed June 18, 2018, with Exhibit;
- 3 4. Defendants' Joint Opposition to Plaintiffs' Improper Motion Regarding Unsupported
4 Allegations of Perjury and Joint Motions for Civil Rule 11 Sanctions and to Strike
5 Inadmissible Materials;
- 6 5. Declaration of Megan M. Coluccio, with Exhibits;
- 7 6. Declaration of Jonathan Fong;
- 8 7. Declaration of Travis Smith;
- 9 8. Defendants' Joint Motion Regarding Clarification of Word Count;
- 10 9. Plaintiffs' Reply in Support of Plaintiffs' Motion for Finding that Officer Jason
11 Anderson has Probably Committed Perjury and for Transmittal to the Prosecuting
12 Attorney Pursuant to RCW 9.72.090;
- 13 10. Declaration of Karen Koehler, with Exhibits;
- 14 11. Declaration of Wilson C. "Toby" Hayes, PH.D. [sic];
- 15 12. Defendants' Joint Reply in Support of their Motion for Sanctions and Sur-Reply in
16 Support of their Opposition to Plaintiffs' Improper Motion for Perjury;
- 17 13. Declaration of Ghazal Sharifi, with Exhibits;
- 18 14. Declaration of James Lobsenz;
- 19 15. Declaration of Peter Jarvis;
- 20 16. Jeremy J. Bauer, PH.D. [sic];
- 21 17. Paralegal Elodie Daquila,

and the Court being fully advised in the premises, now, therefore,

The Court finds and concludes as follows:

1. Plaintiffs' counsel, Ms. Koehler and Mr. Moore, intentionally filed a baseless motion, lacking
any support from the factual record or existing law, attacking the character and credibility of

1 Defendant Officer Jason Anderson, at the cost of his right to a fair trial, on the anniversary of
2 Ms. Lyles' death as a means of garnering media attention;

3 2. Ms. Koehler and Mr. Moore filed the subject motion at 1:26 p.m. on June 18, 2018;

4 3. At 1:55 p.m. on June 18, 2018, a media outlet published screen captures of the subject motion;

5 4. Ms. Koehler and Mr. Moore intentionally did not serve Defendants with the subject motion
6 until 2:06 p.m. on June 18, 2018;

7 5. Ms. Koehler and Mr. Moore's motion inappropriately asked the Court to invade the province
8 of the fact finder, the jury, and to exceed the bounds of its jurisdiction, requesting a criminal
9 determination on the credibility of a witness and party to this litigation prior to the
10 adjudication;

11 6. Ms. Koehler and Mr. Moore accuse Seattle Police Officer Jason Anderson, a party, of the
12 crime of perjury;

13 7. Ms. Koehler and Mr. Moore filed previously undisclosed discoverable expert materials;

14 8. Ms. Koehler and Mr. Moore represent to this Court that the Seattle Police Department has
15 released a video synchronizing the audio of Officers Anderson's and McNew's In Car Video
16 (ICV) systems to surveillance footage obtained from Solid Ground;

17 9. Ms. Koehler and Mr. Moore filed and disseminated to the public portions of Officer
18 Anderson's video deposition before the time period for confidential designations had passed
19 under this Court's Agreed Protective Order;

20 10. Ms. Koehler and Mr. Moore's motion repeatedly references the Seattle Police Department's
21 Body Worn Video Policy. However, this policy did not go into effect until September 2017,

1 months after the subject incident; Counsels' claims are misleading;

2 11. Ms. Koehler and Mr. Moore's motion also comments on the Force Investigation Team (FIT),
3 Crime Scene Investigation (CSI), and Force Review Board (FRB)'s handling of the subject
4 incident;

5 12. Ms. Koehler and Mr. Moore's motion lacks good faith arguments;

6 13. Ms. Koehler and Mr. Moore's motion was filed, and the media was alerted of the filing before
7 Ms. Koehler and Mr. Moore served Defendants;

8 14. Ms. Koehler tweeted/retweeted multiple news articles with bylines referencing perjury and
9 Officer Anderson;

10 15. Ms. Koehler and Mr. Moore had the opportunity to retain an expert capable of analyzing the
11 video and audio produced in discovery in advance of taking any depositions in this case. For
12 reasons unknown, Ms. Koehler and Mr. Moore did not elect to do so before deposing
13 Defendant Officers Anderson and McNew;

14 16. Ms. Koehler and Mr. Moore had the opportunity to thoroughly cross-examine Officer
15 Anderson over the course of fourteen hours. The court has learned that at no point did Ms.
16 Koehler utilize a synchronized video such as the video offered to this court as Exhibit 10 to
17 her declaration, in cross-examining Officer Anderson;

18 17. In his deposition Officer Anderson consistently stated in his FIT interviews that the door to
19 Ms. Lyles's apartment was closed at the time lethal force was used. Officer Anderson was
20 consistent in his recollection to FIT with respect to the confined space, short distance, and
21 lack of shielding at the time lethal force was used;

1 18. Officer Anderson testified consistently with his FIT interviews at his deposition with respect
2 to the door being closed at the time he fired his weapon. Officer Anderson testified that he
3 completed firing his weapon before opening the door and stepping into the hallway to create
4 space between him and Ms. Lyles;

5 19. The Protective Order entered by this Court provides a party with 30 days from the receipt of
6 a deposition video to designate confidential portions. Officer Anderson's counsel received
7 the video from his April 26, 2018 deposition on May 29, 2018. Under the Protective Order,
8 Officer Anderson's counsel had until June 28, 2018 to make confidential designations to the
9 video. The motion was filed June 18, 2018, ten days prior to the expiration of the 30-day
10 period. This violated Officer Anderson's right to designate portions as confidential;

11 20. The City of Seattle propounded discovery on Plaintiffs on May 11, 2018. Plaintiffs' responded
12 to the City's discovery on June 12, 2018. Plaintiffs' produced no documents with respect to
13 proffered expert Wilson Hayes;

14 21. Proffered expert Wilson Hayes was not identified before the filing of Plaintiffs' motion.
15 Defendants had no opportunity to meet and confer with Plaintiffs regarding this discovery
16 deficiency before the motion was filed;

17 22. Experts must meet the requirements under the Evidence Rules and *Frye*;

18 23. Mr. Hayes is not a video analyst. The synchronization authored by Mr. Hayes and offered to
19 this Court did not utilize original audio or video files. Instead, Mr. Hayes used redacted video
20 and audio files from the publicly released video created by SPD. At this stage in the
21 proceedings, the court does not find Mr. Hayes' methods to be reasonable or reliable;

1 24. The court finds the Seattle Police Department has not created or released a “synchronized”
2 video;

3 25. Mr. Hayes’ synchronization video, Ex. 10 to Ms. Koehler’s declaration, is not reliable or
4 credible expert evidence meeting the requirements of *Frye* or ER 702;

5 26. Defendants notified Ms. Koehler and Mr. Moore of their motion for sanctions under CR 11
6 via written letter;

7 27. Under existing law, there is no civil claim for perjury;

8 28. At this stage in the proceedings, it is not the Court’s role to be the fact finder or to comment
9 on the credibility of a witness or party;

10 29. All counsel, including Ms. Koehler and Mr. Moore, are bound by the Rules of Professional
11 Conduct, Civil Rules, and the decorum of this Court;

12 30. Ms. Koehler and Mr. Moore filed a motion in violation of CR 11. Ms. Koehler and Mr.
13 Moore’s motion has no basis in existing law or the facts of this case;

14 31. The motion lacks good faith arguments and serves no purpose other than to harass Defendants,
15 generate media attention, inflame the public, and materially prejudice these proceedings and
16 defendant’s right to a fair trial;

17 32. Ms. Koehler and Mr. Moore purposely filed this motion on the anniversary of the subject
18 incident and disseminated it to the media;

19 33. Ms. Koehler and Mr. Moore, or someone acting on their behalf, intentionally provided or
20 alerted the media to the subject motion before serving Defendants;

21 34. Ms. Koehler’s subsequent tweets/retweets of various news articles stand as extrajudicial

1 statements of a party's credibility, character, and reputation in violation of RPC 3.6. Such
2 comments are materially prejudicial in light of the ongoing litigation;

3 35. Ms. Koehler and Mr. Moore's failure to produce the materials of Wilson Hayes in response
4 to the City's discovery requests is a discovery violation;

5 36. Ms. Koehler and Mr. Moore's dissemination of Officer Anderson's video deposition to the
6 public before the 30-day time period for confidential designations is a violation of the Court's
7 Protective Order;

8 37. Defendants have been materially prejudiced;

9 38. A combination of monetary and other remedies is warranted;

10 39. The Court has considered lesser sanctions and concludes that lesser sanctions would not cure
11 the severe prejudice to Defendants, *See Jones v. City of Seattle, 179 Wn.2d 322 (2014) and*
12 *Burnet v. Spokane Ambulance 131 Wn.2d 484 (1997)*;

13 40. Defendants' motion is justified, and there are no other circumstances that make a monetary
14 award unjust;

15 41. The reasonable fees and expenses incurred in responding to Ms. Koehler and Mr. Moore's
16 motion are to be determined after submission and review of a fee petition by Defendants'
17 counsel;

18 42. Ms. Koehler and Mr. Moore are directed to review the Court's Civil Rules;

19 43. Ms. Koehler and Mr. Moore are directed to review the Rules of Professional Conduct;

20 44. There will be a hearing to discuss how counsel will conduct themselves with the media as it
21 relates to RPC 3.6;

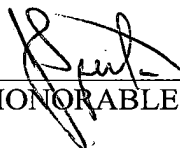
1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2 Plaintiffs' Motion for Finding that Officer Jason Anderson has Probably Committed
3 Perjury and for Transmittal to the Prosecuting Attorney Pursuant to RCW 9.72.090 is **DENIED**;

4
5 Defendants Motion for Civil Rule 11 Sanctions is **GRANTED**, Ms. Koehler and Mr. Moore
6 are ORDERED to pay Defendants reasonable fees and costs to be determined after the submission
7 and review of Defendants' fee petition, which shall be paid to The City of Seattle within 20 days of
8 this Order. Ms. Koehler and Mr. Moore are further ORDERED to comply with the Washington Civil
9 Rules and Rules of Professional Conduct and to maintain the decorum afforded to Defendants and
10 this venue;

11 Defendants Motion to Strike is **GRANTED**, Exhibits 9 and 10 to the Declaration of Karen
12 Koehler (Dkt. 147) and references to the Seattle Police Department's Body Worn Video policy are
13 hereby **STRICKEN**.

14
15
16 DONE IN OPEN COURT/CHAMBERS this 26th day of ^{July}~~June~~, 2018.

17
18 
19 _____
20 HONORABLE JULIE SPECTOR
21

ORDER GRANTING DEFENDANTS' MOTIONS FOR
CIVIL RULE 11 SANCTIONS AND TO STRIKE
INADMISSIBLE MATERIALS AND DENYING
PLAINTIFFS' IMPROPER MOTION - 8

JUDGE JULIE SPECTOR
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
SEATTLE, WA 98104
206-477-1342

FILED
KING COUNTY WASHINGTON
JUL 26 2018
SUPERIOR COURT CLERK
BY Dawn Tubbs
DEPUTY

HONORABLE JULIE SPECTOR
Department 3
Noted for Consideration: July 26, 2018
(w/o oral argument)

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

Commissioner Eric Watness, as Personal
Representative of the Estate of Charleena
Lyles; Karen Clark, as Guardian Ad Litem on
behalf of the four minor children of decedent,

Plaintiff,

v.

The City of Seattle, a Municipality; Jason M.
Anderson and Steven A. McNew, individually,

Defendants.

NO. 17-2-23731-1 SEA

~~PROPOSED~~

ORDER ON DEFENDANTS' JOINT
PETITION FOR AWARD OF FEES AND
EXPENSES

THIS MATTER having come before the undersigned Judge of the above-entitled Court pursuant to Defendants' Joint Petition for Award of Fees and Expenses in the above-entitled cause, and the Court having read and considered the records and files herein, including:

1. Defendants' Joint Petition for Award of Fees and Expenses;
2. Declaration of Robert L. Christie in Support of Defendants' Joint Petition for Award

~~PROPOSED~~ ORDER ON DEFENDANTS' JOINT
PETITION FOR AWARD OF FEES AND
EXPENSES - 1

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

Peter S. Holmes
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

of Fees and Expenses;

3. Declaration of Ghazal Sharifi in Support of Defendants' Joint Petition for Award of Fees and Expenses;

4. Plaintiffs' Response to Defendants' Joint
Petition for Award of Fees and Expenses; and
6. _____;

and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Ms. Koehler and Mr. Moore are ORDERED to pay Defendants reasonable fees and expenses in the amount of \$24,469.68, which shall be paid to The City of Seattle within 20 days of the entry of this Order.

DONE IN OPEN COURT/CHAMBERS this 26th day of July, 2018.



HONORABLE JULIE SPECTOR

Presented by:

CHRISTIE LAW GROUP, PLLC

By /s/ Megan M. Coluccio
ROBERT L. CHRISTIE, WSBA #10895
MEGAN M. COLUCCIO, WSBA #44178
Attorneys for Defendants Jason M. Anderson and Steven A. McNew

///

///

~~PROPOSED~~ ORDER ON DEFENDANTS' JOINT
PETITION FOR AWARD OF FEES AND
EXPENSES - 2

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

Peter S. Holmes
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

1 SEATTLE CITY ATTORNEY'S OFFICE

2

By /s/ Ghazal Sharifi

3

Ghazal Sharifi, WSBA #47750

4

Jeff Wolf, WSBA #20107

Attorneys for Defendant City of Seattle

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

~~PROPOSED~~ ORDER ON DEFENDANTS' JOINT
PETITION FOR AWARD OF FEES AND
EXPENSES - 3

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

Peter S. Holmes
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2018, I caused a true and correct copy of the foregoing document to be served upon the following in the manner indicated below:

Karen K. Koehler, WSBA #15325
A. Melanie Nguyen, WSBA #51724
STRITMATTER KESSLER WHELAN
KOEHLER MOORE
3600 15th Avenue W., #300
Seattle, WA 98119

Email: Karenk@stritmatter.com, melanie@stritmatter.com
Attorneys for Plaintiff
Via King County E-Service and Email

Edward H. Moore, WSBA #41584
LAW OFFICES OF EDWARD H. MOORE, PC
3600 15th Avenue West, Suite 300
Seattle, WA 98119

Email: emoore@ehmpc.com
Attorney for Plaintiff
Via King County E-Service and Email

Ghazal Sharifi, WSBA #47750
Jeff Wolf, WSBA #20107
SEATTLE CITY ATTORNEY'S OFFICE
701 5th Avenue, Suite 2050
Seattle, WA 98104

Email: Ghazal.Sharifi@seattle.gov; Jeff.Wolf@seattle.gov
Attorneys for Defendant City of Seattle
Via King County E-Service and Email

STEFANIE PALMER

~~PROPOSED~~ ORDER ON DEFENDANTS' JOINT
PETITION FOR AWARD OF FEES AND
EXPENSES - 4

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

Peter S. Holmes
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

LAW OFFICES OF JOHN HENRY BROWNE, P.S.

November 15, 2018 - 4:36 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 77157-4
Appellate Court Case Title: Tracy S. McNamara, Appellant v. Karen Koehler, Respondent
Superior Court Case Number: 16-2-16400-5

The following documents have been uploaded:

- 771574_Petition_for_Review_20181115162037D1394833_2576.pdf
This File Contains:
Petition for Review
The Original File Name was 11152018 Petition for Review Combined Final.pdf

A copy of the uploaded files will be sent to:

- brucejohnson@dwt.com
- michellekritsonis@dwt.com

Comments:

Sender Name: Lorie Hutt - Email: lorie@jhblawyer.com

Filing on Behalf of: John Henry Browne - Email: johnhenry@jhblawyer.com (Alternate Email: lorie@jhblawyer.com)

Address:
801 2nd Avenue, Suite 800
Seattle, WA, 98104
Phone: (206) 388-0777

Note: The Filing Id is 20181115162037D1394833