NO. 45435-1-II

COURT OF APPEALS STATE OF WASHINGTON
DIVISION II

WILLIAM SCHEIDLER,

Appellant.

v.

SCOTT ELLERBY,

Respondent.

DECLARATION OF JEFFREY P. DOWNER IN SUPPORT OF ANSWER TO MOTION FOR DISCRETIONARY REVIEW

Jeffrey P. Downer, WSBA No. 12625
Of Attorneys for Respondent

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
(206) 624-7990

Jeffrey P. Downer declares as follows:

1. I am attorney of record for Respondent in the above-captioned action, and I make this declaration based on personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of Scheidler's Motion to Modify Ruling RAP 17.7.

3. Attached as Exhibit 2 is a true and correct copy of Respondent Scott Ellerby's Opposition to Appellant's Motion to Modify Ruling.

4. Attached as Exhibit 3 is a true and correct copy of the Court of Appeals Division II's Order Denying Motion to Modify.

5. Attached as Exhibit 4 is a true and correct copy of Appellant's Opening Brief.

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

DATED this 25th day of June, 2014, at Seattle, Washington.

Jeffrey P. Downer, WSBA No. 12625

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the date shown below I sent a copy of the foregoing by overnight delivery to:

Mr. William Scheidler
1515 Lidstrom Place E.
Port Orchard, WA 98366

DATED this 25th day of June, 2014.

Vonnie Fredlund
Vonnie Fredlund, Legal Assistant

Exhibit 1

CASE # 454351

DIVISION II COURT OF APPEALS

THE STATE OF WASHINGTON

William Scheidler Plaintiff/Appellant vs. Mr. Scott Ellerby Defendant/Respondent	**MOTION TO MODIFY RULING** **RAP 17.7**

1. Identity of Moving Party

Appellant William Scheidler respectfully moves pursuant to RAP 17.7 for the relief designated in Part **2.**

2. Statement of the Relief Sought:

Scheidler seeks Modification of the ruling "Dismissing Appeal" by the Clerk, David Penzoha, filed March 19, 2014, and is included by reference. This Court should strike Penzoha's claims, findings of fact and ruling to dismiss Scheidler's Appeal because Penzoha's ruling violates law, his oath to the constitution and Scheidler's procedural and substantive due process.

3. Facts Relevant to the Motion:

A. January 28, 2014, Scheidler filed his "Opening Brief" with the Court.

B. Scheidler's Opening Brief was prepared in accordance with RAP 10.3 and 10.4. Whereas RAP 10.3 uses the word "should" with respect to content and format of the brief; and RAP 10.4 uses the word "shall" with respect to page length of the brief and number of copies to be provided.

C. Scheidler's opening brief was under the 50 page maximum mandated by RAP 10.4, but lacked a "copy".

D. Scheidler's brief complied substantially, if not completely, with RAP 10.3 despite the fact RAP 10.3 is only a "suggested" format.

E. January 28, 2014, David Penzoha letters Scheidler indicating Scheidler's opening brief will not be filed and demanded an "Amended Brief" by February 7, 2014. Penzoha cites the following:

   a. Brief does not include assignments of error together with issues pertaining to assignments of error. RAP 10.3(a)(4).

   b. Brief does not cite to the record. RAP 10.3(a)(5).

   c. Brief is overlength. RAP 10.4(b).

   d. Attachments to the brief are not part of the record on review and, therefore, this Court cannot consider them. RAP 9.1.

   e. An original and one copy must be filed with the court. RAP 10.4(a)(1).

F. January 29, 2014, Scheidler responds to the letter of January 28, from David Ponzoha and attaches a "copy" of his 'Opening Brief" to satisfy RAP 10.4(a)(1) an original "and one copy". The text of this email is as follows:

From: "BILL SCHEIDLER" <billscheidler@wavecable.com>
Subject: Re: D2 454351--Scheidler v. Ellerby--Letter
Date: Wed, 29 Jan 2014 16:38:12 -0800
To: Coa2Filings <coa2filings@courts.wa.gov>
Cc: "OFFICE RECEPTIONIST, CLERK"
<SUPREME@COURTS.WA.GOV>, "'jpd@leesmart.com'"
jpd@leesmart.com

Attached please find my "copy" of my "opening brief".

On Wed, 29 Jan 2014 14:56:10 -0800
"BILL SCHEIDLER" <billscheidler@wavecable.com> wrote:
Mr. Penzoha and Counsel,

To supplement the factual events to present a truer picture of what occurred during the phone call between me, Ms. Moreno and Pensoha referenced below, Mr. Penzoha rejected my brief for:

a. page length... this is a lie. The page length of my brief is well within RAP guidelines.
b. the brief doesn't refer to the record.... a lie, my brief cites to both the record, i.e., CP in appeal 425912 and to CP and RP in the present appeal.
c. includes an attachment not part of the record... another lie because constitutional issues can be raised for the first time on appeal, this 'attachment' must also be permitted as it relates to those constitutional issues.
d. an original and one copy .... this is no reason to refuse to file a brief. Rather the rules provide that costs be taxed for reproduction of copies to the party who filed less than the required number of briefs.

When Mr. Penzoha argued his supreme authority granted to him as a Clerk for Court for (x) years, I attempted to cite legal authority that trumped his belief that 'substantial rights are contingent upon a procedural rule." Penzoha then hung up the phone.

Because this case concerns over $132,000, unlawfully awarded to other officers of the court by the COA II, including Downer, Ellerby et., al, Mr. Ponzoha has a vested interest in hiding this matter. Penzoha, by refusing to file my brief under absurd and false excuses, is his cover for the over $1000 awarded to these officers of the court by Mr. Penzoha that is part of the over $132,000 total .. It is clear Mr. Ponzoha is deliberately obstructing justice by refusing to file the "brief" due to his conflict in the matter.

Bill Scheidler

G. February 11, 2014, David Penzoha filed an order of Sanctions and Motion to Dismiss for failure to file (an amended brief). Sets a motion for dismissal before a commissioner at a non-specific later date if an Amended Brief is not filed by March 3, 2014

H. March 7, 2014, David Penzoha enters a "Conditional ruling of Dismissal". No hearing was ever scheduled before a Commissioner.

I. March 19, 2014, David Penzoha enters a "Ruling Dismissing the Appeal"

4. Grounds for Relief and Argument:

GROUNDS:

FRAUD UPON THE COURT

A. The powers of the Clerk of the Court of Appeals is set by statute, RCW 2.32.050 and mandates under sub section (4) that the Clerk of the Court of Appeals shall,

> "file all papers delivered to him or her for that purpose in any action or proceeding in the court..."

David Ponzoha's unlawful act to NOT FILE, when the law mandates that David Ponzoha must file all papers delivered to him deprives Scheidler of his substantive due process as enshrined in Article 1, Section 4, "Right of Petition shall never be abridged."

B. Notwithstanding the fact that a Clerk must file Scheidler's "opening brief" as mandated by law, the reasons David Penzoha cites for "NOT FILING" are lies, except that Scheidler failed to include a "copy" with his "original".

a. Scheidler's brief was under the 50 page limit;

b. The content and format noted by RAP 10.3 are only "suggested" and not grounds to deny a person's Article 1, Section 4, "Right of Petition shall never be abridged;"

c. Scheidler perfected RAP 10.4(a)(1) by providing a copy with his letter of Feb 29, to Coa2Filings coa2filings@courts.wa.gov as noted in Section 3(E) above.

C. Notwithstanding the facts noted in A and B above, Penzoha lied in his letter of March 7, when he said the matter would be scheduled for hearing before a "commissioner". No such hearing was ever scheduled, no commissioner ever heard the matter, and Scheidler's procedural due process has been denied.

D. David Penzoha, before entering office, is required by RCW 2.32.050(9), "to conform to the direction of the court". The Court of Appeals mandates in the Washington State Court Rules : Court of Appeals Administrative Rule 16 that the "clerk shall file with the Secretary of State an oath of office." Exhibit A. copy of David Penzoha's oath of office.

ARGUMENT

Scheidler's procedural and substantive due process is denied.

Clerk David Penzoha, by refusing to 'file' Scheidler's Opening brief, violated RCW 2.32.050(4) and (9) and failed to maintain Scheidler's individual rights[1] and right of petition[2] as his oath to the Constitution mandates.

[1] SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

Clerk David Penzoha, by lying in official documents claiming that Scheidler's brief exceeded page length, when it does not; claiming it violates RAP 10.3, when it cannot; and by claiming a "Commissioner would decide" the clerks motion, when a Commissioner did not, are violations of the following laws:

RCW 9A.80.010 Official misconduct.
(1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:
(a) He or she intentionally commits an unauthorized act under color of law; or
(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.
(2) Official misconduct is a gross misdemeanor.

MISCONDUCT OF PUBLIC OFFICERS

RCW 42.20.040 False report. Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

RCW 42.20.100 Failure of duty by public officer a misdemeanor.
Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor.

It is doubtless true that fraud vitiates everything tainted by it, even to the most solemn determinations of courts of justice, but like every other subject of judicial inquiry, it must be investigated in the proper forum and by appropriate methods of procedure. .... There can be no question as to the vitiating effect of fraud of this latter description or of what has been termed fraud upon the court. It invalidates the judgment because it precludes the acquisition of that power or jurisdiction without which, we

[2] SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

shall see, a judicial determination is a mere nullity. **BATEY v. BATEY. 35 Wn.2d 791, 799, 800 (1950)**

For the reasons stated above the ruling of Clerk David Penzoha be vacated and Scheidler's appeal proceed as the law requires. Further, the facts noted herein must be "investigated" and if validated, Mr. Penzoha be removed from office.

Respectfully submitted, March 24, 2014

William Scheidler Appellant
1515 Lidstrom Place E.
Port Orchard, WA 98366
360-769-8531
billscheidler@wavecable.com

EXHIBIT A

David Penzoha's Oath filed with the Secretary of State.

FILED
FEB 05 1985
SECRETARY OF STATE
STATE OF WASHINGTON

STATE OF WASHINGTON)
) ss
County of Pierce)

OATH OF OFFICE

I, David C. Ponzoha, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully and impartially discharge the duties of Clerk of the Court of Appeals, Division II, State of Washington, to the best of my ability, SO HELP ME GOD.

David C. Ponzoha

Subscribed and sworn to before me this 4 day of February, 1985.

Chief Judge
Court of Appeals,
State of Washington,
Division II.

Exhibit 2

NO. 45435-1-II

COURT OF APPEALS STATE OF WASHINGTON
DIVISION II

WILLIAM SCHEIDLER,

Appellant.

v.

SCOTT ELLERBY,

Respondent.

RESPONDENT SCOTT ELLERBY'S OPPOSITION TO APPELLANT'S MOTION TO MODIFY RULING

Jeffrey P. Downer, WSBA No. 12625
Aaron P. Gilligan, WSBA No. 29614
Of Attorneys for Respondent

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
(206) 624-7990

5655575

I. IDENTITY OF RESPONDING PARTY

Respondent-defendant, Scott Ellerby (hereinafter "Ellerby"), opposes Appellant-plaintiff William Scheidler's (hereinafter "Scheidler") Motion to Modify Ruling RAP 17.7

II. STATEMENT OF RELIEF SOUGHT

On March 19, 2014, the Clerk of this court dismissed Scheidler's appeal, No. 45435-III, based on Scheidler's failure to file an Amended Appellant's Brief in accordance with the Rules of Appellate Procedure, and the Conditional Ruling of Dismissal.

Ellerby respectfully requests that Scheidler's Motion to Modify Ruling be denied, and the Ruling Dismissing the Appeal be affirmed.

III. STATEMENT OF THE FACTS RELEVANT TO THE MOTION TO MODIFY

On October 4, 2013, Scheidler filed a Notice of Appeal to Supreme Court or Court of Appeals. Declaration of Jeffrey Downer, Ex. 1.

On October 15, 2013, the Court of Appeals Division II issued a notice to Scheidler and Ellerby providing due dates for compliance with the Rules of Appellate Procedure. Declaration of Jeffrey Downer, Ex. 2.

The notice provided that Scheidler's opening brief should be filed 45 days after filing the report of proceedings with the trial court clerk.

The report of proceedings was filed on December 24, 2013. *Id.* Accordingly, Scheidler's opening brief was due February 7, 2014.

On January 28, 2014, Scheidler and Ellerby received a letter from the Court Clerk for the Court of Appeals Division II providing notice that Scheidler's opening brief did not conform to the content and form requirements set out in the Rules of Appellate Procedure. Declaration of Jeffrey Downer, Ex. 3. This was the first time Ellerby learned that Scheidler had filed an opening brief, as Scheidler did not timely serve Ellerby with a copy of the opening brief. Declaration of Jeffrey Downer.

The Court Clerk informed Scheidler that he must re-submit the opening brief in accordance with the Rules of Appellate Procedure by February 7, 2014, and attached a sample Appellant's Brief for Scheidler's consideration. *Id.*, Ex. 3.

On January 29, 2014, Scheidler responded to the Court Clerk via email as follows:

> Ms. Carlson, Mr. Penzoha and Ms. Moreno
>
> To EACH and EVERY ONE of you, provide your address at which you can personally receive 'service of process'.
>
> I will not beg for the rights I am entitled. Nor am I going to be forced into long and arduous "motions" due to the whims of Mr. Penzoha. Either my "Opening Brief" is filed and addressed in a civilize [sic] manner, or it is well past time that public servants such as you are forever banished from public service and lawyers and judges are finally

> made accountable to the people of this state as our constitution demands.
>
> The Supreme Court makes it clear that "The government's violation of a right protected by substantive due process is actionable at the moment the violation occurs." MISSION SPRINGS v. CITY OF SPOKANE 134 Wn.2d 947, 949 954 P.2d 250
>
> Bill Scheidler

Declaration of Jeffrey P. Downer in Opposition to Appellant's Motion to Modify Ruling at Ex. 4.

On the same day, the Court Clerk responded to Scheidler via email and reiterated that Scheidler's opening brief had been rejected for failure to comply with the Rules of Appellate Procedure, and that his appeal is subject to dismissal if he does not file a complying brief by February 7, 2014. *Id.*

Mr. Scheidler did not re-file a opening brief that complied with the RAPs by February 7, 2014, as the Clerk had instructed. Downer Dec. at Ex. 5.

On February 11, 2014, the Clerk extended the deadline for Scheidler to file an Amended Appellant's Brief to February 26, 2014. *Id.* at Ex. 6. The Clerk informed Scheidler that failure to file the Amended Appellant's brief by February 26, 2014 would result in a $200 sanction due on that date and that this court would not accept further filings from Scheidler until payment of the sanction is made in full. *Id.* The Clerk

further informed Scheidler that a commissioner will consider a motion for dismissal due to Scheidler's failure to timely file the Amended Brief, if Scheidler failed to file the Amended Appellant's Brief by March 3, 2014.

Again, Scheidler refused to file an Amended Appellant's Brief in compliance with the Court's instruction. Downer Dec. at Ex. 5.

On March 7, 2014, the Clerk issued a Conditional Ruling of Dismissal, which provided Scheidler yet another grace period of 10 days to file the Amended Appellant's Brief together with the $200 sanction for failure to file the Amended Appellant's Brief by February 26, 2014. Downer Dec. at Ex. 7.

Again, Scheidler refused to file an Amended Brief in compliance with the Clerk's instruction.

On March 19, 2014, the Clerk issued a Ruling Dismissing the Appeal based on Scheidler's failure to file an Amended Appellant's Brief as previously ordered in the Conditional Ruling of Dismissal. Downer Dec. at Ex. 8.

IV. GROUNDS FOR RELIEF AND ARGUMENT

A. Dismissal of Scheidler's appeal is warranted.

Pursuant to RAP 18.9, the appellate court is authorized to impose sanctions upon a party for failure to comply with the Rules of Appellate Procedure. Further, the appellate court is authorized to condition a party's

right to participate further in the review on compliance with the terms of an order awarding payment of sanctions. The commissioner or clerk, upon 10 days' notice to the parties, may dismiss a review proceeding based on failure to comply with an order awarding payment of sanctions. RAP 18.9(a); (b).

In this case, the Clerk's dismissal of Scheidler's appeal is in accordance with RAP 18.9(a) and (b), and is justified by Scheidler's repeated and willful violations of the Rules of Appellate Procedure and the direction of the Clerk. Scheidler failed to file an opening brief in compliance with the Rules of Appellate Procedure. The Clerk informed Scheidler of his failure to file a complying brief and provided an example of a complying Appellant's Brief for Scheidler's consideration. Scheidler responded to the Clerk with accusations, and he stated that he would not "beg" for rights. Scheidler has refused to comply with this court's repeated notices to him that a timely appellant's brief must be filed in compliance with the Rules of Appellate Procedure. He has repeatedly flouted the Clerk's notices that he would be subject to sanctions and his appeal would be subject to dismissal. He has refused to pay the sanctions imposed upon him for failure to file a complying opening brief. Pursuant to RAP 18.9, Ellerby requests that Scheidler's Motion to Modify be

denied and that the Court Clerk's dismissal of Scheidler's appeal be affirmed.

B. Scheidler's Motion to Modify is without merit.

As grounds for the motion to modify, Scheidler asserts that the Court Clerk committed "fraud" when rejecting Scheidler's opening brief for noncompliance with the Rules of Appellate Procedure. Scheidler's claims are nothing more than baseless accusations. He offers no substantiation for such wild allegations, and none exists.

Scheidler further asserts that his procedural and substantive due process rights were denied. The correspondence between the Clerk and the parties documents that the Clerk provided Scheidler multiple opportunities to submit an Amended Appellant's Brief in compliance with the Rules of Appellate Procedure, the Clerk properly acted under its authority when it imposed sanctions upon Scheidler for failure to comply with the Rules of Appellate Procedure, and the Clerk complied with the notice requirements provided in RAP 18.9 prior to dismissal of the appeal. There is no evidence that Scheidler's procedural and substantive due process rights were denied.

V. CONCLUSION

Despite multiple opportunities, Scheidler repeatedly refused to file his opening appeal brief to come into compliance with the Rules of

Appellate Procedure. The Clerk of this court sanctioned Scheilder as authorized, and only after repeated notice to Scheidler as provided under the Rules of Appellate Procedure. The Clerk properly dismissed the appeal. Scheidler's Motion to Modify is without merit and should be denied.

Respectfully submitted this 31st day of March, 2014.

LEE SMART, P.S., INC.

By: _____
Jeffrey P. Downer, WSBA No. 12625
Aaron P. Gilligan, WSBA No. 29614
Of Attorneys for Respondent

DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on March 31, 2014, I caused service of the foregoing pleading on:

VIA U.S. MAIL

Mr. William Scheidler
1515 Lidstrom Place E
Port Orchard, WA 98366

DATED this 31st day of March, 2014 at Seattle, Washington.

Linda Bender

Linda Bender, Legal Assistant

Exhibit 3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM SCHEIDLER,

Appellant,

v.

SCOTT ELLERBY,

Respondent.

No. 45435-1-II

ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Clerk's ruling dated March 19, 2014, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 1st day of May, 2014.

PANEL: Jj. Worswick, Lee, Melnick

FOR THE COURT:

Worswick CJ
CHIEF JUDGE

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

Exhibit 4

Case # 45435-1- II

In the Court of Appeals II
for the State of Washington

William Scheidler

Plaintiff/Appellant

v

Scott Ellerby

Defendant/Respondent

Appellant's Opening Brief

Case 09-2-00660-3

Successor Judge Kevin Hull

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Pro Per
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APPENDIX A

CASES

STATUTES

RULES

CONSTITUTIONAL PROVISIONS

I APPELLANT

Appellant, William Scheidler, the plaintiff pro per in the matter, Scheidler v Ellerby, rejects the Superior Court decisions described below.

Scheidler, in this appeal, does not waive any authority retained by the people, or any obligations imposed by law upon the courts, judicial or quasi-judicial officers, or 'officers of the court for the protection of individual rights'.

Scheidler, being the only non-lawyer involved in this matter, is entitled to the legal obligations lawyers have to Scheidler specifically, and to the judicial system generally. In other words, by law, lawyers have a duty to the truth regardless of the truth's consequence to Ellerby, who himself is a lawyer; and regardless of Scheidler's competency or expertise in pleading his case or in following procedural protocol. See RCW 2.48.210; see Rules of Professional Conduct, rule 1.1

II DECISIONS FROM WHICH APPELLANT APPEALS

Scheidler rejects, as void, the following rulings by successor judge Kevin Hull.

1) DOCKET 259 04-26-2013 COURT'S DECISION

2) DOCKET 265 07-08-2013 FINDINGS OF FACT & CONCLUSIONS OF LAW JUDGMENT ON ATTORNEY FEES & COSTS 13-9-01440-5

3) DOCKET 278 09-13-2013 COURT'S DECISION RECONSIDERATION/NEW TRIAL -DENIED

4) DOCKET 281 09-30-2013 ORDER ON EXCEPTION & MOTION FOR AMENDMENT OF FINDINGS PER CR 52(B)

III NATURE OF CASE.

This case concerns a matter that has at its vortex a fraud upon retired/disabled citizens of Kitsap County - the denial of WA Constitution **Article 7, Section 10** rights. This 'fraud' is orchestrated by the Kitsap County Assessor and his counsel Cassandra Noble of the Kitsap Prosecutors office. Defendant Ellerby was retained by Scheidler to remedy the fraud. Ellerby agreed with Scheidler that Kitsap County was violating the law. However Ellerby withdrew his representation of Scheidler on the very eve of a formal hearing before the Board of Tax Appeals. Ellerby claimed Kitsap County's attorney, Cassandra Noble, raised a conflict of interest issue only days before the hearing that required Ellerby to withdraw under the rules of professional conduct. Scheidler later learned, 10 years later, via an email from Larry Mills, a lawyer and president of Ellerby's law firm, that no such conflict required Ellerby's withdrawal -- Ellerby's claimed excuse, to abandon Scheidler the very last minute before a formal hearing to address Kitsap's violations of law, was a lie - a ruse. This lie that Ellerby told so as

to withdraw from Scheidler's case worked to "protect" Kitsap's fraud upon Scheidler and those retired/disabled citizens similarly situated. This fraud by Kitsap County upon Scheidler continues to this day due to Ellerby's last minute withdrawal. The reason Kitsap County continues to defraud its citizens is because Scheidler is the only non-lawyer involved in the fight The lawyers involved, whether in a judicial or quasi-judicial capacity, are using 'court rules' or other claims as Cassandra Noble allegedly used, to prevent a jury from hearing the evidence and therefore save the fraud.

Scheidler upon learning of Ellerby's lie - his ruse to withdraw, via the email from Larry Mills 10-years later, demanded a refund of fees paid to Ellerby. However, Ellerby and Mills are now blaming Scheidler for Ellerby's last minute withdrawal and are keeping the fees paid based in this lie.

Scheidler filed a WA State Bar [WSBA] grievance against Ellerby. Both Ellerby and Mills are members of the WSBA and provide services for the WSBA -- the grievance was dismissed under curious reasons.

Scheidler was forced to sue Ellerby under various legal theories including fraud, breach, intentional and negligent harms... because Ellerby lied to Scheidler to justify his abrupt withdrawal as Scheidler's counsel and now Ellerby is lying about that lie in order to keep fees Ellerby was paid under false pretenses.

Scheidler's lawsuit is justified because the WSBA delegated 'a finding of impropriety' to a judicial action. Furthermore, Scheidler only learned Ellerby lied to Scheidler about Ellerby's 'conflict scheme' via Mills' email of 2008. The facts, the law and case law is clear on these points.

In the course of the lawsuit Ellerby's counsels David Martin demanded a 12-person jury and Jeffrey Downer subpoenaed Scheidler's medical records, answered the complaint, answered admissions and engaged in other discovery actions. In response to Downer's subpoenas Scheidler provided the medical records Downer sought that dealt with medical treatment as required under RCW 5.60.060(4). Downer, beyond the medical records he is entitled to under law, was harassing Scheidler's mental health providers with depositions and subpoenas for mental health records, which are protected from discovery under RCW 5.60.060(9). Scheidler objected to and eventually needed to seek a protective order. Despite the statutory prohibition in obtaining mental health records under law, RCW 5.56.060(9), Superior Court Judge Russell Hartman denied the protective order and imposed sanctions on Scheidler for resisting producing the statutorily protected mental health records. As a CR 11 punishment for Scheidler's claimed discovery violation, Judge Hartman imposed sanctions of $132,427.23, and dismissed Scheidler's case against a fellow lawyer, Scott Ellerby. This 'sanction and dismissal,' in similar fashion to Ellerby's

last minute withdrawal, occurred within days of the scheduled trial before a jury and after more than 2-years in litigation. Hartman's judgment was based upon the claims of Ellerby's counsel, Jeffrey Downer, that Scheidler violated discovery rules, which is a lie, and that Scheidler's claims against Ellerby were frivolous, another lie - attorney misconduct is not a frivolous matter, nor does 2-years of litigation suggest a "frivolous" claim.

Scheidler appealed the dismissal of his case and the sanctions directly to the WA Supreme Court (SC), but that court, after all the pleadings were filed, transferred the matter to Division II, Court of Appeals (COA II NO. 42591-2-II).

Justices Joel Penoyar, Alexander and Johanson of Division II Court of Appeals presented their version of the matter and reversed in total the $132,427.23 attorney fee award imposed against Scheidler for the claimed CR 11 violations as "manifestly unreasonable," but upheld the CR 56 summary judgment dismissal on the claim Scheidler's case was frivolous under CR 11. At no point did any of the lawyers/judges note the findings of fact required by a CR 56 ruling and how when viewed in a light most favorable to Scheidler's case justified summary dismissal or supported defendant's claim that Scheidler's case was 'frivolous'. Rather the courts, re appeal #857164, kept quiet about all the facts, accepted as verities as noted in Section 5, part 1, below and ignored all laws favorable to Scheidler's

arguments such as **RCW 4.16.080,** the tolling statute being a question for a jury, not a judge, which would defeat a summary motion, also discussed herein.

The sole reason the Justices of the COA II remanded the case was for 'reasonable attorney fees' due to another violation by Ellerby's defense counsels deliberate, and successful, ***fraud upon the lower court*** (Judge Russell Hartman presiding). What happened is lawyer and counsel for Ellerby, Jeffrey Downer, refused to provide the documentation required by common law precedent to support the $132,427.23 attorney fee request awarded by Judge Hartman. Further, the Justices determined the discovery tactics of Mr. Downer were 'unnecessary' and constituted the 'bulk of the cost'. In other words, opposing counsel's 'fraud upon the court' in hiding facts and in conducting years of unnecessary discovery requiring Scheidler undertake a long and arduous appeal to find these tactics were "manifestly unreasonable" by the COA II. For defendant's unlawful tactics the COA II justices, via an "unpublished opinion," remanded, ordering Defendant Ellerby provide the facts to justify his attorney fee request and to back-out the bulk of fees spent on unnecessary litigation. The COA II justices also ordered Judge Hartman determine fees consistent with law and with defendant's claim that Scheidler's case against Ellerby was frivolous and should never have been filed. Judge Hartman even stated in the ex-parte

hearing in which he awarded fees that an "experienced attorney" would have moved for summary judgement upon the first assessment that the complaint was 'frivolous'. Scheidler didn't attend this "summary judgement hearing" due to medical reasons and was only represented by his pleadings.

Lawyers Ellerby, Downer, Ferguson, and Locker's 'fraud upon the court' in refusing to abide by the law and justify their fees and to engage in years of unnecessary discovery tactics had no adverse consequences upon Ellerby, a lawyer, or his counsels for their fraud. Said another way, all the lawyers' illegal "tactics" to delay, mislead, and make false statements of law and fact that required a long an arduous appeal to reverse the unlawful $132,427.23 sanction simply provided these lawyers a second chance to abide by the law in seeking reasonable fees against Scheidler.

On the other hand, Scheidler's claims against his past attorney, Ellerby, for all the lies Ellerby told to Scheidler, and others, was judged "frivolous" without explanation.

On appeal, Ellerby again sought attorney fees. The Court of Appeals ruled against Ellerby's fee request in the "unpublished opinion" stating at §V,

"Ellerby requests fees and costs under RAP 18.9(a) ... We deny Ellerby's request."

Despite this clear statement by the COA II justices, the Clerk of the COA II, David Penzoha, determined that Ellerby was the prevailing party in

the Court's reversal and remand and awarded Ellerby his costs of $1,026.63 in having to respond to Scheidler's appeal. Scheidler objected to the clerk awarding Ellerby his fees based upon the appellate justices already ruling on fees. But Ponzoha said that fees were denied by the justices under RAP 18.9(a), he, Ponzoha, on the other hand can award fees as he wishes under RAP 14. And he determined under his own determination of power that Ellerby was the prevailing party in the appeal.

Scheidler sought reconsideration by the COA II justices, citing factual misstatements, material omissions, absurd and arbitrary reasoning, and in citing the wrong laws --- reconsideration was denied --- these factual issues went un-addressed by the COA II justices.

Scheidler then sought discretionary review by the WA State Supreme Court (SC) of the COA II 'unpublished opinion'. Scheidler paid the requisite $250 filing fee, noted all of the facts showing all the injustices, errors of fact and law, issues of public importance and absurd and arbitrary reasoning and false statements committed by the COA II justices and the attorneys involved in deciding the appeal.

Scheidler's petition for discretionary review to the SC was rejected by the Clerk of the SC. The Clerk claimed Scheidler's pleading exceeded the Court's rule on "page length". Scheidler motioned for waiver of page length requirements under his constitutional right to have all factual

grievances addressed and not be forced to truncate any fact or argument in order to meet a procedural rule based in a clerical issue of 'page length'. The SC, unanimously, upheld the clerk's refusal to file Scheidler's case and Scheidler's petition for discretionary review and a redress of grievances against the COA II was rejected for 'page length' reasons and no decision on the merits was performed. Scheidler requested and was denied the return of the $250 filing fee.

Defendant Scott Ellerby, a lawyer, provides services to the SC.

Scheidler incorporates CP and RP filed in #857164 by reference.

All Scheidler's attempts to have his grievances against the COA II justices were denied either by the COA II denial of reconsideration, or the SC refusal to accept the case due to 'page length'. The case was remanded under the conditions laid down by the COA II's 'unpublished opinion."

Upon remand to Superior Court, which is the only "fact finding tribunal,"[1] Scheidler filed motions for the return of the $170,000 held by the clerk to satisfy the $132,427.23 judgement, no longer applicable as the

[1] "It is the trial court, sitting as the finder of fact, that must determine disputed facts by weighing the credibility of witnesses' testimony." Johnson v. Dep't of Licensing, 71 Wn. App. 326, 332, 858 P.2d 1112 (1993). "As an appellate tribunal, we are not entitled to weigh either the evidence or the credibility of witnesses even though we may disagree with the trial court in either regard." In re Welfare of Sego, 82 Wn.2d 736, 739-40, 513 P.2d 831 (1973). **Bartel v. Zucktriegel 112 Wn. App. 55, 62 (2002); "most important, questions of fact are here involved which only the superior court is equipped to determine, and for which it can supply an adequate remedy." STATE EX REL. MALMO v. CASE. 25 Wn. (2d) 118, 124 (1943)**

COA II reversed in full that judgment. And Scheidler filed motions under CR 59 and 60 for relief from judgment and new trial by citing all the misconduct of Justice Joel Penoyar, Judge Hartman and lawyers Ellerby, Downer, Locker that rendered all orders void for 'fraud upon the court'. CP 1-60, 80-120, 121-123, 175-179; RP April 12, 2013, pgs 1-7.

Upon remand a successor judge, Kevin Hull, presided over the remanded case because the sitting judge, Russell Hartman, retired while the case went to appeal. Successor Judge Kevin Hull never attended or sat as a judicial officer in Scheidler's case and by law, RCW 2.28.030 prohibits every lawyer from...

"act[ing] as a judge in a court of justice.... (2) ***When he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.***"

Additionally Judge Kevin Hull is a members of a state agency - the WA State Bar (See RCW 2.48.010) -- the same agency as Ellerby, Downer, Penoyar, Mills, et., al. Hull shares the same statutory obligations to Scheidler under RCW 2.48.210 -- the oath attorneys take to abide by the highest obligations to truth and honor. It is an indisputable fact that successor judge Kevin Hull ***has a direct interest in Scheidler's case*** by virtue of his common agency affiliation under RCW 2.48.010 with those other lawyers; and the ***statutory obligation*** to 'truth and honor' mandated by RCW 2.48.210 shared by all the lawyers involved. Scheidler's case is

fundamentally based in a lawyer's duty to "truth and honor" and these common elements of the case constitutes disqualification of lawyers deciding this case under RCW 2.28.030(1), which mandates disqualification "(1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is **directly interested**."

Scheidler demanded judge Hull disqualify himself under law and court rules and grant a trial,by jury, due to the 'fraud upon the court' by the COA II justices. CP 175-179, 182-192; RP Aug 9, 2013, pgs 1-8. But Hull refused to disqualify himself upon the urging of lawyer Jeffrey Downer, who claimed that Hull could safely ignore Scheidler's disqualification argument.

Successor Judge Hull granted himself the authority to issue all the judgments, opinions and orders that make up this appeal. And those orders were to deny the return to Scheidler the $170,000 Scheidler provided in place of an appeal bond despite the COA II complete reversal of fees and sanctions those funds were to cover. And Hull denied all other of Scheidler's motions for a fair trial by jury. Hull went on to re-award Ellerby the bulk of the $132,427.23 attorney fees, reversed by COA II, by awarding Ellerby $88,409.40, despite the common law to the contrary; despite the mandate of the COA II that the 'bulk of fees' were "manifestly unreasonable" due to unnecessary litigation by Downer.

Scheidler, in conjunction with his motions filed in superior court, filed with the Commission on Judicial Conduct [CJC] a complaint against Justice Penoyar who engaged in criminal conduct when he issued a "false report" - i.e., his opinion. Filing a false report is a violation of law, which is more fully explained in Scheidler's complaint, #7410, filed against Justice Joel Penoyar. [Scheidler incorporates CJC complaint #7410, **Exhibit 1** of **Appendix A**]

Subsequent to Judge Hull's orders, judgements and opinions, Scheidler filed a CJC complaint against Hull, #7467; included as **Exhibit 2** of **Appendix A**, which will speak for itself.

Both grievances, #7410 and #7467, filed with the CJC, were dismissed sua sponte by J. Rieko Callner, executive director of the CJC, who is also a Bar member #16546 as are all the other players in this case. An action against J. Reiko Callner is attached as **Appendix A**.

IV ISSUES RAISED

Remand of this case to Kitsap Superior Court for trial by jury, as demanded (See docket entry 21: Demand of jury of 12), is mandated by any one of the "arguments" presented below.

The statutory and case law noted below is clear that 'governments just powers' **(1)**, 'challenges to judgements' **(2)**, determining the ***'condition of society in this state'*** **(3)**, and the assertion judgments are clearly a result

of prejudice or bias **(4)**, are issues of fact and in the hands of the people of this state -- in the form of a jury. A jury applies the law to facts not a judge **(5)**. There may be additional supporting authority mandating remand for jury trial, if so lawyers by law to the 'truth in both fact and law' must apprise the court of such additional authority **(6)**.

(1) ARTICLE 1, section 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

"To permit branches to measure their own authority would quickly subvert the principle that state governments, while governments of general powers, must govern by the consent of the people as expressed by the constitution." **Wash. State Labor Council v. Reed 149 Wn.2d 48, 64 Apr. 2003"**

"The citizens of the state expect all state officials and employees to perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest." **HUBBARD V. SPOKANE COUNTY 146 WN.2D 699, 712 JULY 2002**

(2) RCW 4.36.070 Pleading judgments. In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such ***judgment or determination*** may be stated to have been duly given or made. **If such allegation be controverted, the party pleading shall be bound to establish on the trial** the facts conferring jurisdiction.

(3) RCW 4.04.010 mandates: Extent to which common law prevails. "The common law, ***so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state,*** shall be the rule of decision in all the courts of this state."[1891 c 17 § 1; Code 1881 § 1; 1877 p 3 § 1; 1862 p 83 § 1; RRS § 143. Formerly RCW 1.12.030.]

(4) Article 4, section 28 OATH OF JUDGES. Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the

Constitution of the United States and the Constitution of the State of Washington, and will faithfully ***and impartially*** discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.
RCW 4.76.030 ...Re: New Trial when the "court of appeals or the supreme court shall find from the record that the damages awarded in such verdict by the jury were so excessive or so inadequate as unmistakably to indicate that the amount of the verdict must have been the result of passion or prejudice."

(5) "it is the role of the jury to apply the law to facts ***presented at a trial.*** See Champagne v. Dep't of Labor & Indus., 22 Wn.2d 412, 419, 156 P.2d 422 (1945)." STATE V. FRY 168 Wn.2d 1 (2010). "The right to jury trial in civil proceedings is protected solely by the Washington Constitution in article 1, section 21. ... Because of the constitutional nature of the right to jury trial, litigants have a continued interest in it - As long as the cause of action continues to exist and the litigants have access to a jury, that right of access remains as long as the cause of action does. Otherwise, article 1, section 21 means nothing." **SOFIE v. FIBREBOARD CORP. 112 Wn.2d 636, 771 P.2d 711, 780 P.2d 260 (1989);**

(6) RCW 2.48.210 ... a lawyer "will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;"

It is a fact, a jury trial is not available in the Court of Appeals and none of the Justices have sat as a trial judge at any time in this case, and therefore this proceeding (appeal) is not a 'due process' proceeding.

The issues mandating remand for jury trial are any one of:

- Indisputable Facts common to each argument presented
- Scheidler never waived his right to a jury trial.
- Scheidler's case involves monetary damages, a jury was demanded. A judge has no authority to decide matters of fact.
- Judges are disqualified in deciding matters of fact.
- Inherent Prejudice, Orders are VOID

- Actual prejudice, Orders are Void
- Fraud by the COA II, Its Orders are VOID.
- Judge Russell Hartman engaged in a fraud upon the court. His orders are VOID.
- Judge Kevin Hull engaged in a fraud upon the court. His orders are VOID.
- Hull's opinions, memoranda and orders violate the COA II conditions imposed upon Superior Court.
- Jeffrey Downer, an officer of the court, comitted a fraud upon the Court. Justice has been perverted, delayed and denied. These proceedings are void.
- Scheidler has Absolute Immunity from Ellerby's counterclaims.
- Lack of Jurisdiction/Authority to render decisions, Orders are void.
- conflicts among court rules, common law, statutes, constitutinal rights and protections.

V ARGUMENT

1) INDISPUTABLE FACTS COMMON TO EACH ARGUMENT PRESENTED

It is a fact all decision makers (judges/justices), defendant, counsels, and witnesses are members of the WA State Bar, a state agency. (Hereafter, Bar, lawyers, judicial officers, quasi-judicial officers, counsel, judge, justices). ***Any action*** taken by these public officials that is in violation of Scheidler's individual protections are void. "Individual protections" are governments' sole purpose, See **Article 1, sec 1**, supra.

"All constitutional provisions are self-executing to the extent that they void all action taken in violation of them and preclude enforcement of any statute violating them. 1 T. Cooley, CONSTITUTIONAL LIMITATIONS 171 (8th ed. 1927); 16 Am. Jur. 2d CONSTITUTIONAL LAW 140, at 512 (1979)." **PEDERSON v. MOSER 99 Wn.2d 456, 662 P.2d 866 (1983)**

It is a fact Scheidler is suing his past attorney, Scott Ellerby, who is a member of a state agency and officer of the court. Scheidler's case against Ellerby is based in the harm inflicted upon Scheidler by the lies Ellerby tells, as argued in the previous appeal. Every lie alleged in that appeal and noted below must be accepted as verities. [2]

It is a fact that defendant, lawyer and Bar member, Scott Ellerby lied and perjured himself before the WA State Board of Tax Appeals in filing his Notice of Withdrawal when he claimed,

"the undersigned attorney Scott M. Ellerby hereby withdraws as counsel for appellants at the request of the Kitsap County Prosecuting Attorney's Office based on the allegation of a conflict of interest..." [CP 19]

In truth, according to witness, Bar member and lawyer, Larry Mills, President of Ellerby's firm, Mills Meyers Swartling,

"Mr. Ellerby never declined to represent you and was never disqualified from representing you because of Kitsap County's suggestion that Mr. Ellerby or our firm may have a conflict of interest..." [CP 16]

It is a fact that defendant, lawyer and Bar member, Scott Ellerby, lied to the WA State Bar in answer to a complaint filed by Scheidler against Ellerby, when he stated: *"not only was this request for a refund ten years after the fact unjustified..."(CP 73)* In truth, the rules of professional conduct and case law regarding 'conflicts of interest' disprove Ellerby's claim that Scheidler's request was "unjustified." In fact the case law

[2] Unchallenged findings of fact are accepted as verities on appeal. **NORDSTROM CREDIT v. DEP'T OF REVENUE 120 Wn.2d 935, P.2d 1331 (1993)**

mandates a refund and suspension.[3] Furthermore fraud tolls the statute of limitations until all the elements of the fraud are discovered - a question of fact.[4] Nor is there a time limit regarding "ethical violations." A refund request or a lawyer's duty to provide a refund as the rules and law governing his profession require, justifies Scheidler's position on the issue.

It is a fact that defendant, lawyer and Bar member, Scott Ellerby, lied to the WA State Bar in answer to a complaint filed by Scheidler, when Ellerby stated: *"he and his wife decided it was not economically feasible for me to attend the tax appeal hearing in Olympia..." (CP 76).* Scott Ellerby lied to the WA State Bar when Ellerby stated: *"The Scheidler's did not wish to pay over $1000 for my appearance in Olympia."* (CP 74). In truth, the cost in having Ellerby travel to Olympia was never an issue as Ellerby withdrew from the case on the eve of the hearing to be held in Olympia because of a claimed "conflict of interest. (CP 17-18, 19, 86)" Ellerby claimed Kitsap County needed to *'waive any arguable conflict'* for his continued representation (CP 17-18, 19, 86). Ellerby withdrawing from

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[3] Suspension is generally appropriate "when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes actual injury or potential injury to a client." ABA Standards Std. 4.32, at 30. A reprimand is generally appropriate "when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests . . . and causes injury or potential injury to a client." ABA Standards Std. 4.33, at 31. **DISCIPLINE OF GILLINGHAM 126 Wn.2d 454, (1995)**

[4] Id., RCW 4.16.080; Id., WINBUN v. MOORE 143 Wn.2d 206 (2001); Question of fact are for a jury, see RCW 4.44.090

the case the night before the Olympia hearing deprives Scheidler of any decision to pay or not pay for Ellerby's Olympia appearance.

It is a fact that defendant, lawyer and Bar member, Scott Ellerby, lied to Scheidler in a purported letter sent to witness, lawyer and Bar member, Cassandra Noble, in which he claimed,

"we ask that Kitsap County waive any arguable conflicts of interest to allow our continued representation of the Scheidlers." [CP 17-18]

In truth, according to witness, Bar member and lawyer, Larry Mills, President of Ellerby's firm, Mills Meyers Swartling,

"Mr. Ellerby never declined to represent you and was never disqualified from representing you because of Kitsap County's suggestion that Mr. Ellerby or our firm may have a conflict of interest..." [CP 16]

It is a fact that defendant, lawyer and Bar member, Scott Ellerby lied in his e-communication sent to Scheidler when he claimed, *"if the County does not respond to my letter or waive the conflict, I will be forced to withdraw." [CP 86].* In truth, according to witness lawyer and Bar member, Larry Mills, President of Ellerby firm, Mills Meyers Swartling,

"Mr. Ellerby never declined to represent you and was never disqualified from representing you because of Kitsap County's suggestion that Mr. Ellerby or our firm may have a conflict of interest..." [CP 16]

It is a fact that defendant, lawyer and Bar member, Scott Ellerby lied to Larry Mills, a lawyer and Bar member who is president of Ellerby's firm, when he stated to Larry Mills who then concluded,

"As Mr. Ellerby previously advised you by reply e-mail two weeks ago, after he had assisted you in preparing your presentation for your appeal, you and your wife decided not to have Mr. Ellerby represent you at the hearing before the Board of Tax Appeals because you did not want to incur additional attorneys' fees." [CP 16]

In truth, Ellerby withdrew from the case one day before the hearing and this fact explains why Ellerby didn't attend the hearing in Olympia --- he quit under the guise of a "conflict of interest."

It is a fact that defendant, lawyer and Bar member, Scott Ellerby lied (committed perjury) when Ellerby answered Scheidler's complaint 09-2-00660-3, stating, *"Ellerby voluntarily withdrew his representation of plaintiff at the request of plaintiff".(CP 60).* The proof of this lie is the signed "notice of withdrawal" filed with the BOTA that states Ellerby withdrew due to a conflict of interest raised by Cassandra Noble.

It is a fact the COA II reversed Judge Hartman's $132,427.23, judgment as 'manifestly unreasonable." Clearly Hartman's judgment is a result of "prejudice" - a violation of WA Constitution **Article 4, section 28,** supra, and is void. See **PEDERSON v. MOSER 99 Wn.2d 456, 662 P.2d 866 (1983).** A new trial is mandated by **RCW 4.76.030 supra.**

It is a fact all members of this state agency, the Bar, share a common constitutional and statutory obligation to the ***truth*** as mandated by **RCW 2.48.210.**

DEFINITION: False statements and misrepresentations in addition to their ordinary meaning are further defined by the common law as "Fraudulent

misrepresentations may be effected by half-truths calculated to deceive; and a representation literally true is actionable if used to create an impression substantially false. 37 C. J. S. 251, Fraud, § 17 b" **IKEDA v. CURTIS. 43 Wn. (2d) 449, 450 (1953)**; "The failure to make a duty-required disclosure in effect is a representation of the nonexistence of the matter which is not disclosed. Restatement of Torts §§ 550, 551 (1938). Boonstra v. Stevens-Norton, Inc., 64 Wn.2d 621, 393 P.2d 287 (1964); Ikeda v. Curtis, 43 Wn.2d 449, 261 P.2d 684 ." HOROWITZ, J. (concurring) **JOHNSTON v. BENEFICIAL MANAGEMENT 85 Wn.2d 637, 538 P.2d 510 (1975)**

It is a fact all members of the Bar, involved here, have violated their Oath, **RCW 2.48.210 and Art 1, sec 1,** in the lies they tell or in the perjury they commit and subom.

It is a fact all lawyers share a common statutory obligation to abide by their 'Professional Code of Conduct' as mandated by **RCW 18.130.180(7)**. The 'unprofessional conduct statute' **RCW 18.130.180** is applied to lawyers as the legislature states in **RCW 2.48.180(6)**.

It is a fact all members of the Bar involved here have violated **RCW 18.130.180(7)** in the lies they tell and in the perjury or subornation of perjury they commit.

It is a fact of the common law that lawyers serving before the court are officers of the court, "quasi judicial officers"[5], and owe a special duty to

[5] As an officer of the court, his duties are both private and public. Where the duties to his client to afford zealous representation conflict with his duties as an officer of the court to further the administration of justice, the private duty must yield to the public duty. He therefore occupies what might be termed a "quasi-judicial office." **DEMOPOLIS v. PEOPLES NAT'L BANK 59 Wn. App. 105, 118, 796 P.2d 426 Sept. 1990**; "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system." AMERICAN BAR ASS'N, STANDARDS FOR IMPOSING LAWYER SANCTIONS std.7.2, at 14 (1991) DISCIPLINE OF DANN 136

the purpose of the court, which is a "truth-finding" process.[6] And lawyers have statutory obligations to abide by the ethical standards in public service as mandated by **RCW 42.52**.

It is a fact all members of the Bar involved have violated **their common law duty and ethical duty mandated bv RCW 42.52** in the lies they tell and the perjury and subornation of perjury they commit.

2) **SCHEIDLER NEVER WAIVED HIS RIGHT TO A JURY TRIAL.**

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

The law is clear on its face, no other argument is necessary as constitutional provisions are self-executing.[7] A jury trial was demanded. The judicial officers noted herein prevented a jury trial without having a waiver from Scheidler. See trial docket entry 21, 7/30/2009 'Jury of 12 demanded.'

ARTICLE 1, SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

Wn.2d 67, 80 (Aug. 1998); " The Code of Professional Responsibility and the Rules of Professional Conduct are intended to ensure the integrity of the legal system as a whole; they involve a relationship between lawyers and the court, not between lawyers and their clients. **119 Wn.2d 251, P.2d 646, HIZEY v. CARPENTER (June 1992)**

[6] "litigation as a truth-finding process. 69 Wn.2d at 886, 421 P.2d at 356." PHIPPS v. SASSER 74 Wn.2d 439, 452 (1968)

[7] All constitutional provisions are self-executing to the extent that they void all action taken in violation of them and preclude enforcement of any statute violating them. Id., **PEDERSON v. MOSER 99 Wn.2d 456, 662 P.2d 866 (1983)**

RULE CR 38(d) JURY TRIAL OF RIGHT Waiver of Jury. A demand for trial by jury made as herein provided **may not be withdrawn without the consent of the parties.**

A Scheidler's case involves monetary damages, a jury was demanded. A judge has no authority to prevent a jury trial.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

Once a jury is demanded under WA Constitution Article 1, Section 21, the law is clear on its face, only by waiver can a jury be denied, and the jury shall decide issues of fact and the evidence presented, no other argument is necessary.

RCW 4.40.060 Trial of certain issues of fact — Jury. ***An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived,*** as provided by law, or a reference ordered, as provided by statute relating to referees.

RCW 4.44.090 Questions of fact for jury. All questions of fact other than those mentioned in RCW 4.44.080, ***shall be decided by the jury, and all evidence thereon addressed to them.***

B Judges are enjoined from commenting on matters of fact.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

Despite a jury request, the facts were all edited by and commented on, unlawfully, by judicial officers and thus prevented a jury from doing its duty. The constitutional provision noted below is clear, judges ***shall not comment on matters of fact*** or prevent a jury from hearing the facts.

ARTICLE 4, SECTION 16 CHARGING JURIES. Judges shall not charge juries with respect to matters of fact, **nor comment thereon**, but shall declare the law.[8]

C A Jury was demanded and a jury has the authority to modify common law with respect to individual rights as a condition of society .

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

The law is clear on its face, a jury determines the "conditions of society" in the application of common law. A judge is prohibited from preventing a jury from performing its lawful duty.

RCW 4.04.010 "The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington ***nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state.***"

3) INHERENT PREJUDICE, ORDERS ARE VOID

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

It is a fact, defendant, Scott Ellerby, WSBA# 16277, is a lawyer;

It is a fact, witness, Cassandra Noble, WSBA# 12390, is a lawyer;

It is a fact, witness, Larry Mills, WSBA# 6129, is a lawyer;

It is a fact, defendant's counsel, Jeffrey P. Downer, WSBA# 12625, is a lawyer;

It is a fact, defendant's counsel, Gauri S. Locker, WSBA# 39022, is a lawyer;

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[8] Id., **PEDERSON v. MOSER 99 Wn.2d 456, 662 P.2d 866 (1983)**

It is a fact, defendant's counsel, Allyson J. Ferguson, WSBA #31246, is a lawyer;

It is a fact, defendant's counsel, David L. Martin, WSBA # 1241, is a lawyer

It is a fact, judicial officer Russell Hartman (ret.) WSBA# 7104, is a lawyer;

It is a fact, judicial officer, Joel Penoyar, WSBA# 6407, is a lawyer;

It is a fact, judicial officer, J. Alexander, WSBA(unknown), is a lawyer;

It is a fact, judicial officer Jill Johanson WSBA# 15649, is a lawyer;

It is a fact, judicial officer Kevin Hull WSBA# 23994, is a lawyer;

It is a fact, J. Reiko Callner, WSBA# 16546, is a lawyer and Executive Director of the Commission on Judicial Conduct.

It is a fact all lawyers belong to the WA State Bar, a state agency, as mandated by RCW 2.48;

It is a fact all lawyers share common statutory obligation to the constitutions and to conduct themselves with "truth and honor" as mandated by RCW 2.48.210;

It is a fact that Ellerby provides services for the WA State Bar;

It is a fact lawyers in Ellerby's law firm, including Larry Mills, provides services for the WA State Bar;

It is a fact all lawyers are regulated by the WA State Bar;

It is a fact that the WA State Bar has the power to discipline and disbar any of the lawyers noted above and others who are members;

It is a fact all lawyers are "directly interested" in their legal obligations to Scheidler and how they must fulfill their constitutional, statutory, and ethical obligations.

All lawyers and all government officials are inherently prejudiced/biased in their obligations imposed upon them by citizens and the law.

Under RCW 2.28.030 lawyers are 'disqualified' in sitting as judge in this matter due to these inherent prejudices and conflicts.

4) ACTUAL PREJUDICE, ORDERS ARE VOID

Scheidler incorporates all the preceding and forgoing as if set fourth in full that shows these facts:

It is a fact Scott Ellerby, Esq., is a liar and perjurer;

It is a fact Jeffrey Downer, Esq., is a liar and perjurer;

It is a fact Russell Hartman, Esq., is a liar and perjurer;

It is a fact Joel Penoyar, Esq., is a liar and perjurer;

It is a fact Jill Johanson, Esq., is a liar and perjurer;

It is a fact J. Alexander, Esq., is a liar and perjurer;

It is a fact lawyers are to report other lawyers who violate their oath by telling lies; See RPC RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT (a) A lawyer who knows that another lawyer has ccommitted a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, should inform the appropriate professional authority. (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judges fitness for office should inform the appropriate authority.

It is a fact none of the lawyers reported any of the other lawyers for the lies they tell. This clearly shows the lawyers' contempt for Scheidler and is evidence of prejudice which violates **Article 4, section 28 OATH OF JUDGES. Orders are void.** See **PEDERSON v. MOSER 99 Wn.2d 456,**

662 P.2d 866 (1983) All action taken in violation of constitutional provisions are void";

It is a fact all the "evidence" presented by Scheidler was sequestered from a jury and commented on, solely, by inherently biased members of the WA State Bar, serving as judge/justice. On that point the law is clear.

RCW 4.44.180 Implied bias of juror -- "master and servant," "having an interest on the part of the juror in the event of the action, or the principal question involved therein".

It is a fact Scheidler, the only lay-citizen involved, is trying to remedy the unlawful denial of constitutional rights, Article. 7, Sec 10, suffered at the hands of the Kitsap County Assessor as validated by Scott Ellerby taking Scheidler's case.

It is a fact all others involved are judicial officers, quasi-judicial officers or public officials and they are all using their self-endowed power to thwart Scheidler's effort to remedy Kitsap's fraud. In addition these public officials have punished Scheidler for his effort, despite these officials' oath to uphold the constitution. This shows how corrupt, biased, and politically motivated our judicial officials have become. All actions taken to hide, thwart, delay... the remedy of Kitsap's fraud and those that aid in this fraud are void re ***PEDERSON v MOSER,*** supra.

It is a fact Judge Hartman's judgment for Ellerby in the amount of $132,427.23, reversed in total by the COA II as "manifestly unreasonable," is clear indication of prejudice, incompetence or corruption on the part of Hartman either alone or in concert with others. The law is clear that a new

trial is warranted due to prejudice as unambiguously stated in **RCW 4.76.030, supra.**

It is a fact that this case is being "litigated", unlawfully, by motions and court rules; not a jury as Art 1, sec 21 provides. This directly contravenes the legislature's mandate that court rules are "to promote the speedy determination of litigation on the merits" not displace it. Court rules are to be the "most conducive to the due administration of justice," with respect to 'individual rights.' See RCW 2.04.190, RCW 2.04.180, and Art 1, sec 1, respectively.

It is a fact that lawyers of the WA State Bar view themselves as "guardians of the law"[9] and believe it is the lawyer who "must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society."[10] This is a clear declaration by lawyers that lawyers reign superior over lay citizens, and even superior to the legislature who represents citizens by the laws they pass. In truth, The People, per the WA State Constitution, Art 1, sec 1, have authority over governments, which includes authority over members of a state agency - i.e., the lawyers of the WA State Bar.

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[9] **Fundamental Principles of Professional Conduct**
[10] **Ibid**

It is a fact that lawyers of the WA State Bar cultivate a culture of secrecy[11] to hide their dirty laundry so as to guard against "the possible loss of the respect and confidence" in the profession.[12] This culture of secrecy is a telling symptom of a profession trying to promote a false sense of trust in its members. This secrecy to whitewash or hide misconduct is no different than a "lie" as defined by the common law holding in **IKEDA v. CURTIS. 43 Wn. (2d) 449, 450 (1953); JOHNSTON v. BENEFICIAL MANAGEMENT 85 Wn.2d 637, 538 P.2d 510 (1975),** supra.

It is a fact Ellerby, Larry Mills and other lawyers from Ellerby's law firm hold administrative/quasi-judicial positions with the WSBA and or provide services for the Bar and or the Supreme Court.

It is a fact Ellerby has or is responsible for helping the WSBA establish rules re ethical responsibilities of the profession.

It is a fact citizens file around 3000 complaints against lawyers every year with the WSBA.

It is a fact of the around 3000 complaints filed against lawyers every year the Bar dismisses almost 100% without an investigation.

[11] ELC 3.2 CONFIDENTIAL DISCIPLINARY INFORMATION
[12] Fundamental Principles Of Professional Conduct

It is a fact that Scheidler's WSBA complaints against Scott Ellerby, who provides services to the WSBA, and Jeffrey Downer, who provides services to Ellerby, were dismissed without a public hearing.

It is a fact, lawyers serving as judicial officers are instructed to "uphold and promote the ***independence*** ... of the judiciary.'[13] Any conduct by lawyers that detracts from this mandate is covered-up with secrecy[14] and in falsifying pleadings and facts or the use of absurd/arbitrary reasoning to deceive so as to promote an illusion of "integrity and impartiality." Such whitewashing by the legal community, notwithstanding Penoyar's fraud noted below, is implicit in Justice Sander's harsh comment about a press release issued by the Commission on Judicial Conduct in which ...

"an investigating attorney for the commission characterized ... rural courts of limited jurisdiction as " 'personal fiefdoms' " of rural judges acting with a " 'white heart and an empty head.' " Br. of Commission on Judicial Conduct at App. 2. "

Sanders reacts in writing, stating,

"And the commission purports to uphold the dignity of the judiciary? ***...While I question whether the commission is doing more harm than good to public perceptions of the judiciary through its negative press campaign...*** **" In re Disciplinary Proceeding Against Michels 150 Wn.2d 159, 179 (2003)**

There is also ample court cases where appellate judges chastise any lawyer who exposes judicial misconduct. For example:

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[13] Code of Judicial Conduct CANON 1

[14] Commission on Judicial Conduct Rules of Procedure Rule 11 "...all proceedings, including commission deliberations, investigative files, records, papers and matters

"An allegation made by a lawyer in a brief before an appellate court...that the trial judge was intentionally biased in ruling on a matter is improper, will be condemned, and may constitute a violation of RPC 8.2(a)" **Bartel v. Zucktriegel 112 Wn. App. 55 (2002); and**

"Although Schafer's flagrant betrayal of his client's confidences ultimately led to the ***public unveiling of judicial misconduct***, this fact does not make Schafer's conduct less reprehensible or less deserving of serious discipline. By suggesting that it does, we discard clear standards of professional conduct; instead, we adopt hindsight as a yardstick to measure the appropriate sanctions for the "knowing disregard for an attorney's code of conduct . . . ." Majority at 173." **In re Disciplinary Proceeding Against Schafer 149 Wn.2d 148, 174 Apr. 2003.**

For lawyers to publicly malign those other lawyers who report judicial misconduct are the "judicial system's" tools to discourage reporting judicial misconduct to foster an illusion of respectability. It is because there is no citizen oversight of the legal profession that allows them to function behind closed doors and behave in complete opposite to law.

It is a fact that Justice Joel Penoyar is or was a member of the Commission on Judicial Conduct [CJC] and performed duties for the WSBA in a similar capacity as does Ellerby.

It is a fact citizens file hundreds of complaints against judges every year with the CJC.

It is a fact of the hundreds of complaints filed against judges every year the CJC dismisses almost 100% without an investigation.

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submitted to the commission, shall be held confidential by the commission, disciplinary counsel, investigative officers, and staff.."

It is a fact Scheidler's CJC complaint, #7410, against Justice Joel Penoyar, was dismissed by the CJC, where Joel Penoyar is a member, without an investigation.

5) FRAUD BY THE COA II, ITS ORDERS ARE VOID.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

The common law holding by the Supreme Court for 'fraud upon the court' is clear...

"It is doubtless true that fraud vitiates everything tainted by it, even to the most solemn determinations of courts of justice, but like every other subject of judicial inquiry, it must be investigated in the proper forum and by appropriate methods of procedure." **BATEY v. BATEY. 35 Wn.2d 791, 799 Mar. 1950**; " In this jurisdiction protection is given to one who is injured by falsehood or deception; fraud vitiates everything which it touches, and destroys the very thing which it was devised to support; the law does not temporize with trickery or duplicity." **COSON v. ROEHL 63 Wn. (2d) 384, 388 (1963) citing Angerosa v. White Co., 248 App. Div. 425, 290 N. Y. S. 204 (1936)**

It is a fact that Justices Penoyar, Armstrong and Johanson, untruthfully claim in their 'unpublished opinion' that Scheidler based his "PRIVACY," with respect to defendant's discovery tactics, upon the "former" statute RCW 5.60.060(4). When in truth Scheidler argued his privacy upon the NEW statute RCW 5.60.060(9), which the legislature passed only weeks before the matter presented itself in court.[15] The LIE told

[15] See 2009 Session law 424, Bill 5931. See link http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5931&year=2009

by these COA II justices, as to the "true statute" noted by Scheidler has significant implication -- it switches who committed misconduct and/or committed a crime!

The exact quote from Penoyar's "Official document" is as follows,

"Scheidler contends that the sanction was erroneous because "the substantive issues centered upon privileged communication." Appellant's Br. at 16. Scheidler cites former RCW 5.60.060 (2009)." ... As discussed above, Scheidler's motion was meritless because when Scheidler filed an action for personal injuries, he waived the physician-patient privilege under former RCW 5.60.060(4)(b)."

In TRUTH, Scheidler's brief proves the lie by Justice Penoyar. Scheidler states, pages 44-48,

"Scheidler basis his argument on the plain reading of statute RCW 5.60.060(9). Ref: VRP, Transcript of August 21,2009, CP 461-625: Scheidler: "Mental health records are privileged. They are under RCW 5.60.060(9). He (Downer) wants to pretend they are under (4)(b)," [RP at 588].[16] BR at page 46.

Furthermore, because RCW 5.60.060(9) is a newly passed statute it presents an issue of first impression. This fact means Penoyar violated the holding of the WA State Supreme Court, in **State v. Mullin-Coston 152 Wn.2d 107, 114 July 2004,** stating,

".. an issue of first impression in this court and involves a question of law, (is) subject to de novo review. State v. Vasquez , 109 Wn. App. 310 , 314, 34 P.3d 1255 (2001), aff'd , 148 Wn.2d 303 , 59 P.3d 648 (2002)"

Justices Penoyar, Johanson and Armstrong have a legal duty, per ***Mullin-Coston***, as well as an "ethical" duty to the law and address these

issues – violations of Scheidler's privacy and de novo review triggered by the 'newly passed law - RCW 5.60.060(9)', i.e. Bill 5931 passed in 2009.

This dishonest "switching of a statute" by Joel Penoyar is not only a violation of law because it is a 'false report' [Filing a false report is a violation of RCW 42.20.040 and is a gross misdemeanor[17]] but it aids and abets criminal conduct perpetrated against Scheidler's privacy by the lawyers involved, whether in a judicial or quasi-judicial capacity. Justice Joel Penoyar, Johanson and Armstrong's fraud - switching statutes - is also to escape their duty to conduct a "de novo review" of new law - **RCW 5.60.060(9)** - is violation **RCW 4.04.010** which states, "***The common law shall be the rule of decision in all the courts of this state.***"

Additionally, the Justices ignored the law re Statute of Limitations for Fraud and then decided that matter in Ellerby's favor. Penoyar writes that the email from Larry Mills that reveled Ellerby lied about his "conflict excuse" was insufficient to toll the limitation. The law and case law is clear that a jury determines when plaintiff discovered the facts of the fraud.

RCW 4.16.080 Actions limited to three years. The following actions shall be commenced within three years: inter alia, **(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed**

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[16] Reference:
http://www.courts.wa.gov/content/Briefs/A02/425912%20Appellant's%20Brief.pdf#search=scheidler

[17] RCW 42.20.040 False report. Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

"Accrual of Cause - Discovery Rule - Time of Discovery - Question of Law or Fact. The determination of when a plaintiff discovered or, in the exercise of due diligence, should have discovered the basis for a cause of action is **a question of fact.," WINBUN v. MOORE 143 Wn.2d 206 (2001); Question of fact are for a jury, see RCW 4.44.090**

Justice Joel Penoyar, Johanson and Armstrong, again in violation of RCW 4.04.010, failed to apply another common law that is favorable to Scheidler. Scheidler noted a WA State Supreme Court case that holds lawyers fully responsible for the consequences of their conduct as noted in

DISCIPLINE OF DANN 136 Wn.2d 67, 69, Aug. 1998,

"[14] Attorney and Client - Discipline - Dishonesty, Fraud, Deceit, or Misrepresentation - Unintended Results. In order to maintain public confidence in legal institutions and to enhance respect for the law generally, RPC 8.4(c) - which defines professional misconduct by a lawyer as conduct involving dishonesty, fraud, deceit, or misrepresentation - is administered in a manner that holds attorneys accountable for the results of their conduct, even unintended results." [Reference: http://www.courts.wa.gov/content/Briefs/A02/425912%20Appellant's%20Brief.pdf#search=scheidler page 39]

Clearly, by perjuring Scheidler's pleadings and ignoring applicable law and common law, which by law, RCW 4.04.010, Penoyar is enjoined to obey, violates Scheidler's due process rights to a fair trial and are crimes unto themselves because it renders Penoyar opinion a "false report" based in perjury.

It is a fact the Justices of the COA II should have disqualified themselves from hearing Scheidler's appeal because presiding judge Russell

Hartman also serves as Judge Pro Tem in the COA II. See Rules of Judicial Conduct 2.11 .

Laws are NOT subject to Penoyar's discretion in who gets to violate them. Penoyar's 'unpublished opinion' is a complete fraud upon the court and is void under the holding in **BATEY v. BATEY. 35 Wn.2d 791, 799 Mar. 1950; COSON v. ROEHL 63 Wn. (2d) 384, 388 (1963)**

6) JUDGE RUSSELL HARTMAN ENGAGED IN A FRAUD UPON THE COURT. HIS ORDERS ARE VOID.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

It is fact Judge Hartman blatantly lied to Scheidler when he said ...

"Well Mr. Scheidler if your unsuccessful on the merits... after, say, a trial" ... "But all the way through a trial... they filed counterclaims, legal fees... I'm not ready to rule on that issue yet because we haven't had a trial" Ref RP Dec.18, 2009 at page 22.

These two statements by Hartman are both lies as evident in the fact that Hartman ruled under a court rule to dismiss the case and then award fees without ever going to a jury trial on the merits.

[Reference:
http://www.courts.wa.gov/content/Briefs/A02/425912%20Appellant's%20Brief.pdf#search=scheidler page 60]

It is fact Judge Hartman, in complicity with his Bar colleagues, blatantly lied about the law that pertains to mental health records. Judge Hartman claims there is a waiver of the mental health privilege, under RCW

5.60.060(4) when Scheidler files the type of lawsuit. [CP at 603- 604]. This is a blatantly false claim as Scheidler's mental health records are privileged under RCW 5.60.060(9). This statute is unambiguous in its language that Mental health records are privileged and not discoverable except by "written waiver". There is no written waiver! When the wrong law is applied the reasoning founded upon the wrong law is void.

"... a trial court abuses its discretion when it applies the wrong law. See, e.g., State v. Lord, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007) (a trial court abuses its discretion when it applies the wrong legal standard); Gillett v. Conner, 132 Wn. App. 818, 822, 133 P.3d 960 (2006). ... Moreover, whatever its stated reasons under the inapplicable standard, these reasons are no longer reasonable under the controlling legal standard. «14» Although the trial court did not rely on Golladay in its written order, it made clear that it based its reasoning on the case.» **ESTATE OF STALKUP V. VANCOUVER CLINIC, INC., PS 145 Wn. App. 572**

Judge Hartman's lies and by applying the wrong law are to use the prestige of his office to protect his fellow Bar members, Ellerby, Locker, Downer, from their unlawful intrusion into Scheidler's treatment and privacy..

RCW 9.73 Violating privacy; and violation under **RCW 9A.46.020 (1)** A person is guilty of harassment if: (a) Without lawful authority, the person knowingly threatens: ... or (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and violation under **RCW 9A.50.020** Interference with health care facility.

Judge Hartman's rulings are a fraud upon the court and void under the holdings in **BATEY v. BATEY. 35 Wn.2d 791, 799 Mar. 1950; COSON v. ROEHL 63 Wn. (2d) 384, 388 (1963); and ESTATE OF STALKUP V. VANCOUVER CLINIC, INC., PS 145 Wn. App. 572**

7). JUDGE KEVIN HULL ENGAGED IN A FRAUD UPON THE COURT. HIS ORDERS ARE VOID.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

It is a fact Judge Kevin Hull knows witness Cassandra Noble, who along with Ellerby concocted a scheme to deprive Scheidler of counsel, and should have disqualified himself under CJC 2.11 [RP May 3, 2013 pgs. 11-12]

It is a fact Judge Kevin Hull claims, untruthfully, that a jury trial was not requested. CP 196. In truth a jury trial was demanded on July 30, 2009 (CP 135).

It is a fact Hull claims, untruthfully, that there is no requirement to enter findings of fact for a CR 56 motion for summary judgment. CP 196. Hull cites CR 52(a)(5)(b). In truth, findings of fact are required under CR 52 (a)(2)(c) Other.

"In connection with any other decision where findings and conclusions are specifically required by statute, *by another rule*, or by a local rule of the superior court."

A CR 56 Summary Judgment order requires by RAP 9.12 that the trial court shall ...

" designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court but not designated

in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel."

It is a fact Hull claims, untruthfully, that the Court of Appeals determined that Mr. Ellerby did not obtain his judgement by fraud. CP 138. In truth, the COA is not a fact-finding tribunal and its justices are disqualified under RCW 2.28.030 in making such a finding. Furthermore, as noted above, the COA opinion is a 'fraud upon the court' and is void. Id., **BATEY v. BATEY. 35 Wn.2d 791, 799 Mar. 1950.** "Moreover, whatever its (Hull's) stated reasons under the inapplicable standard, these reasons are no longer reasonable under the controlling legal standard." **ESTATE OF STALKUP V. VANCOUVER CLINIC, INC., PS 145 Wn. App. 572 (2008).**

It is a fact Hull claims he is bound to the COA "unpublished opinion".[18] It is a fact Hull has no legal obligation or duty to the 'unpublished opinion' issued by the COA. Rather Judge Hull is bound by law, specifically RCW 4.04.010, which states in unambiguous terms, "The common law ***shall be the rule of decision in all courts***". An "unpublished opinion" does not comprise the common law. Furthermore the COA unpublished opinion never addressed Scheidler's arguments based upon the common law established by *DANN and WINBUN v. MOORE*, above, so there is no "law of the case" restriction. Therefore, Hull's only choice of

law, which are noted time and again -- is the common law cases *DANN* [RP May 3, 2013 pgs. 9-16] ***and WINBUN v. MOORE.***

It is a fact Hull claims, untruthfully, that his only duty is to award Ellerby attorney fees and not address Scheidler's CR 59 and 60 motions. As noted in **Bartel v. Zucktriegel 112 Wn. App. 55, 62 (2002)**, and **STATE EX REL. MALMO v. CASE. 25 Wn. (2d) 118, 124 (1943)**, supra, issues of fact are for the trial courts. Scheidler's CR 59 and CR 60 motions re the fraud by the COA II, Downer and Ellerby raise issues of fact and properly before the lower court.

These facts show, by Hull's disregard for the law, the CJC, and in the lies Hull tells, how much Hull wants to "hurt" Scheidler for bringing an action against a fellow lawyer, Scott Ellerby and to "protect" his fellow Bar associates from conduct that would otherwise be ***unlawful***!

Hull's conduct to hurt Scheidler violates Article 4, section 28 and his orders are void under **BATEY v. BATEY. 35 Wn.2d 791, 799 Mar. 1950**; **COSON v. ROEHL 63 Wn. (2d) 384, 388 (1963); and ESTATE OF STALKUP V. VANCOUVER CLINIC, INC., PS 145 Wn. App. 572**

[18] Reference Hull's Opinion and Order, Sept 13, 2013, page 2, line 19 - 25; page 3, line 24 - 27.

8) HULL'S OPINIONS, MEMORANDA AND ORDERS VIOLATE THE COA II CONDITIONS IMPOSED UPON SUPERIOR COURT.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

Judge Kevin Hull blatantly lied in his official report and omitted facts and law that he is enjoined, by law and by Canons, to address. The 'official reports', offered as proof, are noted in § II above.

It is a fact Hull claims he is bound to the COA "unpublished opinion".[19] In the "unpublished opinion" the COA "reversed" a $132,427.23 attorney fee award under RCW 4.56.185 as manifestly unreasonable. Judge Hull refused to follow the COA reversal and maintains control over the funds -- the $170,000, held by the clerk to satisfy a judgement that has been "reversed."

In the "unpublished opinion" the COA instructs the lower court to assess fees based upon the case being brought "promptly to summary judgment."[20] Hull ignores this mandate and assesses attorney fees under RCW 4.56.185 using the SAME timeframe as was overruled by the COA.

In the "unpublished opinion" the COA stated that the "bulk of the $132,427.23" fees were "manifestly unreasonable". Hull, despite the ruling that the bulk of the fees awarded and reversed because they were

[19] Reference Hull's Opinion and Order, Sept 13, 2013, page 2, line 19 - 25; page 3, line 24 - 27.

"manifestly unreasonable" still awarded $88,409.40, which in any rational sense of analysis is the "bulk" of what was ruled "manifestly unreasonable."

These acts by Hull shows how much Hull wants to "hurt" Scheidler for bringing an action against a fellow lawyer, Scott Ellerby.

9) JEFFREY DOWNER, AN OFFICER OF THE COURT, COMITTED A FRAUD UPON THE COURT. JUSTICE HAS BEEN PERVERTED, DELAYED AND DENIED. THESE PROCEEDINGS ARE VOID.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

Downer, either alone or with the aid of the other lawyers, lied about the medical records subpoenaed and by that lie he obtained privileged mental health records, sanctions of $132,427.23, and dismissal of Scheidler's case against lawyer Ellerby.

Downer, either alone or with the aid of the other lawyers, lied about the controlling law governing the medical records subpoenaed. By that lie he violated Scheidler's privacy and obtained sanctions and dismissal of Scheidler's case against lawyer Ellerby.

Downer, either alone or with the aid of the other lawyers, lied about Scheidler's violations of "discovery". Because mental health records are privileged by law, there can be no violation of CR 26 discovery.

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[20] Scheidler v Ellerby, 2012 WL 2899730 at *7.

It is a fact, Downer violated court rules 11 and 28 that prohibits legal tactics simply to harass when he engaged in protected discovery. The COA, in their 'unpublished opinion', said discovery wasn't necessary.

It is a fact, Downer broke the law, RCW 5.60.060(9) and RCW 9.73 when he engaged, harassingly, in discovery of Scheidler's protected records.

Downer, either alone or with the aid of the other lawyers, lied about the controlling law re "statute of limitations." By that lie he obtained 'sanctions and dismissal.'

Downer, either alone or with the aid of the other lawyers, lied about the "evidence" Scheidler based his 'tolling of the statute of limitations' upon; by that lie he obtained 'sanctions and dismissal.'

Downer, either alone or with the aid of the other lawyers, lied about what "common law" governs "tolling" of the statute of limitations; by that lie he obtained 'sanctions and dismissal.'

Downer suborned perjury when he submitted Ellerby's answer to Scheidler's complaint in which Ellerby claimed he withdrew "representation of Scheidler at the plaintiff's request."

Downer suborned perjury when he submitted Ellerby's four declarations to Scheidler's various motions in which Ellerby claimed he withdrew "representation of Scheidler at the plaintiff's request."

It is a fact that lawyer, Jeffrey Downer lied before Judge Russell Hartman when he claimed, "my client's side of the story is... they would go ahead and say well, because you guys are raising a conflict I'm bowing out." RP Aug 21, 2009, pg. 17-18.

10) ABSOLUTE IMMUNITY FROM ELLERBY'S COUNTERCLAIMS.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

Ellerby is a 'quasi-judicial official,' officer of the court, and a member of a state agency, the WA State Bar (See RCW 2.48). Ellerby has no cause of action against Scheidler for Scheidler's claims for a redress of grievance filed in a court of jurisdiction against Ellerby. Ellerby cannot claim power, under a guise of a counterclaim, over Scheidler. Scheidler has absolute immunity from Ellerby's counterclaims under all of the following authorities:

ARTICLE 1, section 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.[21]

ARTICLE 1, section 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.[22]

RCW 4.24.500 "Good faith communication to government agency — Legislative findings — Purpose. Information provided by citizens

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[21] Id., **PEDERSON v. MOSER 99 Wn.2d 456, 662 P.2d 866 (1983)**
[22] Id., **PEDERSON v. MOSER 99 Wn.2d 456, 662 P.2d 866 (1983)**

concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of **RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies."**

Scheidler has Common law immunity as the Supreme court has held in **DANN**, supra, which holds the lawyer responsible for the consequences of his conduct. Scheidler's lawsuit is a consequence of Ellerby's unlawful conduct.

Scheidler has common law immunity under the "invited error doctrine." Scheidler's lawsuit is an invited response to Ellerby's "perjured" and "false filing" with the Board of Tax Appeals when he submitted his "notice of withdrawal" and claimed his withdrawal was due to a "conflict of interest". Witness Mr. Mills, together with Ellerby, 10-years later, said no such "conflict" required Ellerby's withdrawal. Such a contradiction in excuses would invite a lawsuit to determine the truth and damages.

Scheidler has 'quasi-judicial immunity.' When the WA State Bar dismissed the grievance against Ellerby they delegated to Scheidler the Bar's authority when they indicated the 'dismissed grievance' would be reopened upon a "judicial ruling of impropriety."

11) LACK OF JURISDICTION/AUTHORITY TO RENDER DECISIONS, ORDERS ARE VOID.

Jurisdiction and Authority to render decisions must each conform to law.

A Judge is distinguished from a court, as the following authorities make clear **(1).** A judge cannot wrap himself in the "jurisdiction" of the "Court" when the law strips him of the authority to pronounce judgment. **(2).** All judgments, when challenged, must be proved at trial **(3).**

(1) See **RCW 2.28.050** Judge distinguished from court. See **RCW 2.28.080** Re: Judges power ***"(4) To exercise any other power and perform any other duty conferred or imposed upon them by statute"*** **RCW 2.08.010** "...said courts ***and their judges..."***

(2) RCW 2.28.030 Judicial officer defined — When disqualified. A judicial officer is a person authorized ***to act as a judge in a court of justice.*** Such officer shall not act as such in a court of which he or she is a member in any of the following cases:(1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is **directly interested**.(2) **When he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision**; and

"To permit branches to measure their own authority would quickly subvert the principle that state governments, while governments of general powers, must govern by the consent of the people as expressed by the constitution." **Wash. State Labor Council v. Reed 149 Wn.2d 48, 64 Apr. 2003**

RULE 2.11 Disqualification (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(3) RCW 4.36.070 .... ***the party pleading shall be bound to establish on the trial the facts conferring jurisdiction***" Jurisdiction can be challenged at any time." **Basso v. Utah Power & Light Co., 495 F 2nd 906 at 910.**

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." **Main v. Thiboutot, 100 S. Ct. 2502 (1980).**

"Where there is absence of proof of jurisdiction, all administrative and judicial proceedings are a nullity, and confer no right, offer no protection, and afford no justification, and may be rejected upon direct collateral attack." **Thompson v Tolmie, 2 Pet. 157, 7 L. Ed. 381; and Griffith v. Frazier, 8 Cr. 9, 3 L. Ed. 471.**

"the burden of proving jurisdiction rests upon the party asserting it." **Bindell v. City of Harvey, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991).**

See **RCW 2.28.030 supra**

The rule is well settled that a successor judge is without authority to enter findings of fact on the basis of testimony heard by a predecessor judge.? **State v. Bryant, 65 Wn. App. 547, 549, 829 P.2d 209 (1992)** (citing Tacoma Recycling, Inc. v. Capital Material Handling Co., 42 Wn. App. 439, 711 P.2d 388 (1985); In the Matter of the Welfare of Woods, 20 Wn. App. 515, 581 P.2d 587 (1978); Wold v. Wold, 7 Wn. App. 872, 503 P.2d 118 (1972)). ?Taken together, the case law and civil and criminal rules set forth the rule that a successor judge only has the authority to do acts which do not require finding facts. Only the judge who has heard evidence has the authority to find facts.? Bryant, 65 Wn. App. at 550 (citing CrR 6.11, CR 63). See Tacoma Recycling, Inc., 42 Wn. App. at 440; Woods, 20 Wn. App. at 517; Wold, 7 Wn. App. at 877-78); see also RCW 2.28.030(2) (A judicial officer ?shall not act as such in a court of which he is a member in any of the following cases: . . . (2) When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.?). ?The rule is applied even where the prior judge had entered an oral decision or a memorandum decision.? Bryant, 65 Wn. App. at 549 (citing Hawley v. Priest Rapids Ice & Cold Storage Co., 172 Wash. 71, 19 P.2d 400 (1933); State ex rel. Wilson v. Kay, 164 Wash. 685, 4 P.2d 498 (1931)). This is true because neither an oral ruling nor a memorandum decision is a final order. See Bryant, 65 Wn. App. at 549; see also Wilson, 164 Wash. at 690-91. Although a successor judge can make findings of fact based on the original record when the parties agree to allow the successor judge to rely on the record, see In the Matter of the Marriage of Crosetto, 101 Wn. App. 89, 97-98, 1 P.3d 1180 (2000), that is not what occurred here. Here, the parties agreed that the written findings and

conclusions represented Judge Fleming?s findings and conclusions and that Judge Worswick could, therefore, sign them; the parties at no time agreed that Judge Worswick could rely on the record to make her own findings of fact or conclusions of law; and nothing in the record shows that she adopted the written findings and conclusions as her own based on the original record. When, as here, there is no indication in the record that the second judge reviewed the evidence or the original record, the second judge is ?without authority to sign the findings and conclusions under any procedure.? Bryant, 65

"It is only necessary, under the statute, [RCW 2.28.030] that the particular matter disposed of by a judge shall have been submitted to him according to law; otherwise, no litigation pending before a judge could be concluded after his separation from office. The statute means no more than that a judge may not pass upon a matter that was never properly submitted to him." **IN RE JAIME v. RHAY. 59 Wn.2d 58, 61 (1961)**

12) CONFLICTS AMONG COURT RULES, COMMON LAW, STATUTES, CONSTITUTIONAL RIGHTS AND INDIVIDUAL PROTECTIONS.

Scheidler incorporates all the preceding and forgoing as if set fourth in full.

Given the factual issues raised herein, if for no other reason, a new trial by jury must be granted based upon the accumulation doctrine established by the Supreme Court in ***STATE v. MARKS 71 Wn.2d 295, 301 (1967)***.

"New Trial - Grounds - Accumulated Error. A new trial may be required for an accumulation of errors even though no one of them, standing alone, would be of sufficient gravity to constitute grounds for reversal."...

VI RELIEF DEMANDED:

Since all orders, judgements and opinions are void for fraud, prejudice, lack of authority and applying the wrong laws, the case must be remanded to Superior Court for a jury trial on the merits with any additional

grievances occurring during the litigation also tried upon an amended complaint. A cause of action accrues the moment harm occurs.

A cause of action for deprivation of property without due process is ripe immediately because the harm occurs at the time of the violation as does the cause of action. See Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d 100 (1990) ("[T]he constitutional violation actionable under § 1983 is complete when the wrongful action is taken."); Rutherford v. City of Berkeley, 780 P.2d 1444, 1447 (9th Cir. 1986) (substantive due process violated at moment harm occurs); Sintra, Inc. v. City of Seattle, 119 Wn.2d 1, 21 n. 11, 829 P.2d 765 ("[A]n action for a violation of substantive due process is ripe immediately . . . because the harm occurs at the time of the violation.") (citing Bateson, 857 P.2d at 1303), cert. denied, 506 U.S. 1028, 113 S. Ct. 676, 121 L. Ed. 2d 598 (1992); Cox v. City of Lynnwood, 72 Wn. App. 1, 8, 863 P.2d 578 (1993) (substantive due process is violated at the moment harm occurs). **MISSION SPRINGS v. CITY OF SPOKANE 134 Wn.2d 947, 965, 954 P.2d 250 (1998)**; See **CR 15(d)**

VII CONCLUSION

The people of WA State determine 'governments' just powers.' This matter is all about, solely about, government misconduct and must be remanded for jury trial so the 'people' can perform their duty.

"I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct": See GR 13.

By: _____
William Scheidler, Pro Per