RECEIVED
SEP 08 2020
Washington State
Supreme Court

SUPREME COURT
STATE OF WASHINGTON

Roy De Asis Cheesman, Plaintiff-Petitioner, v. John Graf, Tia Ross, Nancy Willbanks, Ben Mount, And Ellensburg School Dist. Defendants-Respondents.	No. 984646 Petitioner Reply to Respondents' Objection to Petitioner's Motion to Modify Petition for Discretionary Review

I. Washington Courts Superior Court Civil Rules CR. 56

SUMMARY JUDGMENT

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be

obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Here the petitioner Mr. Roy Cheesman level of education is six grader elementary school with no food and no money while in the slum from a very poor squatter area in Pateros metro manila Philippines with physically infected colon colostomy disability since 2002 and with additional severe reaction from hypertension medicine side effects until now present year 2020 of being dizzy and other health issue complications like eye's become blurry and shaking while driving, nails cracking and painfully severe feeling of panic inside the body when being question by anyone and muting the mind of the petitioner to speak freely and explain responsibly , a Pro Se, residing since 1989 in Washington state working as a janitor in hospital and nursing home and other low level job skill working in building business around Washington State without a high school diploma or GED certificate, the visiting judge and the division III and the respondents are against to the petitioner civil complaint to be proceed to the motion for continuance or for discovery to be had and unconstitutionally denied the petitioner, the petitioner was charge to commit to a criminal trail hearings proceedings because of the respondents statements of an assault of a child, that will put the petitioner to a five years imprisonment over a hear say statements of the respondents to the criminal proceedings that lasted for almost eleven months and ended up petitioner suing the

prosecuting attorney for concealing medical evidence and criminally conspiring with the dependency prosecuting special assistant attorney general to imposed a no contact order between the child and the petitioner and ignoring facts from the police reports that the child has said 'no", all this are because of the malicious prosecution RCW 9.62.010 action of the respondents toward the petitioner being an "odd man" as a pretext for racial discriminations, While the child denied making a statements to the mandated reporter, accordingly to the police written report of Ellensburg Police Detective Jennifer Margheim the child was question of if being hit by the petitioner in the eye that gave black eye to the child and the child said "no." (civil rules CR.56 (f))

II. RCW 9.62.010, Malicious prosecution.

Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years;

"Whether treated as an element of the prima facie case or as a matter of defense, it must also appear that the defendants' conduct was unprivileged." (Fletcher v.

Western National Life Insurance Co. (1970) 10 Cal.App.3d 376, 394 [89 Cal.Rptr. 78].)

"In determining whether the conduct is sufficiently outrageous or unreasonable to become actionable, it is not enough that the creditor's behavior is rude or insolent. However, such conduct may rise to the level of outrageous conduct where the creditor knows the debtor is susceptible to emotional distress because of her physical or mental condition." (Symonds v. Mercury Savings & Loan Assn. (1990) 225 Cal.App.3d 1458, 1469 [275 Cal.Rptr. 871].

"Nevertheless, the exercise of the privilege to assert one's legal rights must be done in a permissible way and with a good faith belief in the existence of the rights asserted. It is well established that one who, in exercising the privilege of asserting his own economic interests, acts in an outrageous manner may be held liable for intentional infliction of emotional distress." (Fletcher, supra, 10 Cal.App.3d at p. 395, internal citations omitted.)

III. FEDERAL RULES OF CIVIL PROCEDURE

Title VII. Judgment

Pursuant to Federal Rules of Civil Procedure, Rule 56. Summary Judgment

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

The ANALYSIS of the Division III of the court of appeals Case No. 36347-3-III Pg. 3-4 ., A trial court's decision on a motion to continue a summary judgment hearing is review for an abuse of discretion. Barkley v. GreenPoint Morig. Funding Inc., 190 Wn. App. 58, 71, 358 P.3d 1204 (2015) discretion is abused when a decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reason. " State ex rel. Carroll v. Junker, 79 Wn.2d 12,26,482 P.2d 775 (1971).

A Summary judgment continuance is not permissible if

" (1) the requesting party does not have a good reason for the delay in obtaining the evidence,

(2) the requesting party does not indicate what evidence would be establish by further discovery,

Or (3) the new evidence would not raise a genuine issue of fact.

" Barkley, 190 Wn. App 71 (quoting Qwest Corp v. City of Bellevue, 161 Wn.2d 353, 369,166 P.3d 667 (2007), abrogated on other grounds by Cost Mgmt, Servs., Inc. v. City of Lakewood, 178 Wn.2d 635, 310 P.3d 804 (2013)

The Division III judges said. " No abuse of discretion happened here. Mr. Cheesman's case has been pending (**Mr. Cheesman's case was not been pending or has a statute of limitations? It was just reprimanded back to the Kittitas County Superior Court by the Easter District Court Judge and so the petitioner respectfully file a Motion for Continuance, then the respondents file a motion for summary judgment, the division III and the visiting judge are rushing the civil case decisions violating statue of limitations and other law.**) for a significant period of time prior to the defendants' summary judgment motion. During the court hearing, Mr. Cheesman could not articulate sufficient reason for his delay in obtaining evidence and, perhaps more importantly, he did not identify what relevant evidence could be obtained should the court grant his request, (**read the verbatim report**, the **judge changes the topics** of on whether the petitioner should articulate sufficient reason (**rule 56.(f)**) and the visiting judge and the respondent both was focus on the missing information's on the RCW's mandated reporter detailed information's and about the police on whether the CPS should be systematically or numerically be number one in RCW's on a

mandated reporter policy like how it is written and the school policy and the legislative policy of writing the RCW's on mandated reporting to call the law enforcement as the first And not in a number as a second or As an option Or to call the CPS as the law enforcement, it does not read to call the CPS or the law enforcement, it reads to call the law enforcement, and the Or is a second the motion only and not the preferred number 1 to an or, Or is an second options not accordingly to the respondents "number one priority" to call the respondent/CPS at an assault of a child because rather to call the law enforcement by school policy and by RCW's number one systematically to call the law enforcement not or or second before calling the proper law enforcement, CPS are by law has to follow the also the RCW's to call the police because its systematically and numerically to call law enforcement before calling the CPS.) although Mr. Cheesman was proceeding pro se, the trial court properly held him to the same standard as attorney. Keiser v. Kelsey, 179 Wn. App 360, 368 317 P.3d 1096 (2014). Here the petitioner file a motion f or continuance but denied by the Kittitas County Superior Court visiting judge and affirmed the dismissal and denial of the visiting judge by the court of appeals division III and held the petitioner to the same standard as attorney whether the petitioner has lack of understandings to the proceedings, has lack of educations or illiterate by mind will be no justice to ignorant and misfortune because they are held the same as lawyers in the court of

law, Keiser v. Kelsey is unconstitutional and a disputable case's. and a Pro Se. firm's businesses should be allowed to practice law and license against the standard lawyers and bias judge's and bias court of appeals judges who would not support a pro bono cases offices and a Pro. Se establishment offices for the ignorant like the petitioner who has a civil complaint against the respondent school policy and the Washington RCW's on malicious prosecution reprimanded back to the original court)

The defendants' summary judgment submissions supported the trial court's ruling. The undisputed statements by Mr. Cheesman's daughter provided school employees a sufficient basis for making a referral to the CPS. (division III ignored the facts that the petitioner submit police reports to the court as an evidence for them judges of division III to study of what the child had said to the police on whether the petitioner hit the child and the child said to the police "no". these solid police statements of evidence are neglected by the division III judges' panels rather the division III continued to make allegations against the petitioner by making a bias analysis. For instance, bias or prejudice either inherent in the structure of the trial system or as imposed by external events will deny one's right to a fair trial. Thus, in *Tumey v. Ohio*, it was held to violate due process for a judge to receive

compensation or by means of court of appeals affirming dismissal for favor of being an honorable title of the judge making the order and supporting the order.

The respondents admission of putting ice to the child's eye ,without informing the Petitioner or the mother, that severe the child's eye conditions and appearance of an accident happened to the child while watching tv accordingly to the child statements and Nancy Willbanks gave false and malicious information to the CPS of the involvement of the mother and then refused to provide a police written and recorded testimony upon present of the law enforcement and the CPS.

The child statements are material of facts because of the present of the police reports interview of the police detective of that on whether the child has said to any one or told to the three mandated reporter teachers, principal, nurse and counselors accusers of that the child had said she was hit by the petitioner and the child said "no". The Petitioners children had no past or present child abuse, maltreatment, or neglect reports to conclude for probable cause to call the CPS or the police or make allegations against the Petitioner, Nancy Wilbanks maliciously made a false report to the CPS of the involvement of the mother of the children saying accordingly to the statements of the child Nancy Willbanks statement to the intake of the CPS and Tia Ross and John Graf conspiring and meeting in the mind of what has not been

told to them by the child upon seeing the child, sharing information's about the child and at the same time the petitioner just call for the safety of the child of might be being abuse inside the school because someone took picture and told the child not to tell to anyone, Nancy Willbanks and respondents start giving statements of allegations and accusations, telling remarks against the petitioner of being an "odd man", rather than a simple words to the CPS and police to "asked the child" and investigate the parents.

IV. SUPLEMENTAL APPENDIX

PETITIONER SUPLEMENTAL APPENDIX .... A – J

V. Intentional Infliction of Emotional Distress

"Severe Emotional Distress" Defined

Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame. "Severe emotional distress" is not mild or brief; it must be so substantial or long lasting that no reasonable person in a civilized society should be expected to bear it. Petitioner, Roy Cheesman, is not required to prove physical injury to recover damages for severe emotional

distress. " 'It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed.' " (Fletcher v. Western National Life Insurance Co. (1970) 10 Cal.App.3d 376, 397 [89 Cal.Rptr. 78], internal citation omitted.) "Emotional distress" includes any "highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, or worry." (Fletcher, supra, 10 Cal.App.3d at p. 397.)

"With respect to the requirement that the plaintiff show severe emotional distress, this court has set a high bar. 'Severe emotional distress means "emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it." ' " (Hughes v. Pair (2009) 46 Cal.4th 1035, 1051 [95 Cal.Rptr.3d 636, 209 P.3d 963].)

" 'One who has wrongfully and intentionally [suffered severe emotional distress] may recover compensatory damages even though he or she has suffered no physical injury,' and 'the right to compensation exists even though no monetary loss has been sustained.' " (Grimes v. Carter (1966) 241 Cal.App.2d 694, 699 [50 Cal.Rptr. 808].)

VI. PETITIONER ARGUMENT'S TO OBJECTION OF RESPONDENT

The visiting judge of Kittitas County Superior Court who summary judgment and dismissed the civil complaint of the petitioner is also the Judges who would not allow for the continuance of the civil complaint of the petitioner is the same judge who has a conflict of interest to the criminal complaint against the petitioner by the prosecuting attorney of Kittitas County Superior Court and the police and CPS.

The Judge has a conflict of interest denied the continuance of the civil complaint of the petitioner that was reprimanded by the honorable eastern district court judge but upon the petitioner file for a continuance of the civil complaint that was reprimanded, the visiting judge who has a conflict of interest from the prior criminal complaint against the defendants by the police and prosecutors intentionally denied the order of the honorable judge of eastern district court judge for the reprimanded of the civil case complaint and the petitioner file a motion for the continuance of the civil complaint that was reprimanded that a high educated license lawyers will have three options to file a motion for continuance or file a motion for discovery or file a motion for jury trial.

The petitioner a pro se file a motion for continuance and submit a motion for a joint conference discovery in the Kittitas County Superior Court before the visiting judge, send copy to the defendants and file a motion for jury trial and submit 350 pgs. of evidence ready for a jury. The visiting judge ignored all the facts and evidence of the petitioner and continued to dismissed the civil complaint of the plaintiff/petitioner. (superior court rule 56 (f))

The court of Appeal in Division III was provided by the petitioner of facts and evidence and the RCW's of Washington state and counter the testimony of the defendants accordingly by the RCW's that the Petitioners' child did not say she was hit in the eye and told it was an accident solidify by the RCW's that the child did not tell to the defendants that the child was hit by the petitioner and no evidence provided or represented by the defendants that showing that the child was hit by the petitioner except a hearsay statements, allegations and a false report and misleading reports, because the medical reports and the police report, facts and evidence instating and counter disputing the statements of the defendants to the CPS and Police.

The division III neither would not honor the legislative systematically and numerically law and order mandated to call the police first and who will be call first in an event of an "assault" and affirmed the visiting judge summary judgment to dismissed the continuance of the petitioner civil complaint because the petitioner civil complaint are being terminated because of being pending while the case was just introduce to a motion to continuance to the court and the petitioner was hold to the same as a real lawyers who also plead for medical medication problem and asking the visiting judge to look at the motion for joint conference discovery presented and file by the petitioner while in the court of the visiting judge and why it should be allow for continuance and upon providing the existent evidence to the visiting judge who has a conflict of interest to the criminal and civil complaint and providing evidence to the division III court of appeals the Judges of Division III are unjustly denied again the petitioner appeals for the continuance of the civil complaint of the petitioner reprimanded by the honorable judge of eastern district court affirming the bias summary judgment of the visiting judge who has a conflict of interest to the criminal complaint against the petitioner and civil complain filed by the petitioner against the defendants/respondents, both the Visiting Judge and the Judge's of Court of Appeals in Division III violating, ignoring and neglecting the Washington Courts Superior Court Civil Rules CR. 56, SUMMARY

JUDGMENT (f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion
that for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition,
the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained
or depositions to be taken or discovery to be had or may make such other order as is just.

VI. PERORATION/CONCLUSION

Respondents has lack of trainings from Ellensburg School District on how to give legal statements to say to cps or police and on how to legally give oral statements to the CPS and Police without discriminating individuals because they are tag as an "odd" person by Tia ross statements instead to "investigate" the person and when to say it precisely before giving statements of the child and making a report of an abused child as a mandated reporter accordingly to the RCW's and not to give conflict statements that will lead to a malicious prosecution of anyone and not to retrieve itself from testifying upon prosecutions of the person being complain that are will financially damage individual or the petitioner.

Respondents awareness of the existent of the RCW 9.62.010 on malicious prosecution and the respondents are intentionally, unconstitutionally using the mandated reporter requirement from the RCW's to retaliate against the petitioner to make a reports of a misleading false child abused for prosecutions, respondent defense of calling the CPS instead of the Police at the first encounter of an assault of a child inside a school premises are not accordingly to the policy of the school district procedure manual and are contradicted to the RCW's and to the school policy procedures to contact the police systematically and numerically on an assault of a child and to further the argument, the child and the police detective written reports contradicted the mandated reporter respondent's statements that the child was not hit by the petitioner and the mention of an accidents to the police that violated the constitutional rights of the plaintiff and plaintiff children to be secured and free from the malicious prosecutions of false and misleading action of the mandated reporter respondents claiming immunity from criminal attitudes and action of accusing the petitioner while using the RCW's on mandated reporting of child abused.

The Ellensburg police department Detail Incident report, Police Detective Jennifer Margheim Police written report, Petitioner Children Medical Doctor Written Evaluations along with other tangible evidence are with the Petitioner

Supplemental Appendix, A - J and petitioner plead to the supreme court to accept the Petitioner Supplemental Appendix, A – J along with the Petitioner's Brief dated July 22, 2020.

Petitioner has submitted a Tort claim forms to the Community Heath of Central Washington because of the division III would not acknowledge the medical plead of the petitioner filing a motion for continuance having a valid medical reason. Tort claim forms has been mailed to the Community Health Of Central Washington Clinic August of 2020 for the pain and suffering and illness from the side effect of medicine 'atenolol" to control high blood prescribe by Community Health of Central Washington doctor from 1998 -2018 who are not acknowledging the side effect complain of the petitioner ever since being dizzy, Petitioner eye's also has been blurry vision and has white ring around eye and has a disability because of an infected colon because of wrong medicine prescribed by the Community Health doctor, shaking while driving and nails cracking. Mr. Cheesman also has a limited education below high school (6-7 grade) from the Philippines contributing severely to the wrong failed representations of the Petition for review.

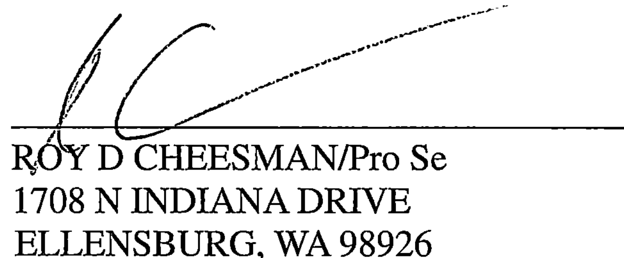
The petitioner plead and pray for the findings of the Supreme Court for the petitioner's brief dated July 22, 2020 as petitioner's replay to the answer of respondents, to be combined with the supplemental appendix A – J to review the petitioner's brief and the Supreme Court, justice uphold the Superior Court Rules, that are accordance to the **Washington Courts Superior Court Civil Rules CR. 56 (f)** and if the laws of jurisdiction permits accordance to and Pursuant to Federal Rules of Civil Procedure, Rule 56. Summary Judgment 1. (b) to allow petitioner for the continuance as stated in the Superior Court Civil Rules 56, (f) and Federal Rules of Civil Procedure without the respondents and the visiting judge's and division III using any disputable old versus cases excuses to held petitioner to the same standards like a lawyer who a regular lawyer will have a high educations comparation to a none educated person of law like the petitioner for the implementation of the rules cr. 56 not to be proceed to the discovery proceedings disqualifying the petitioner for lack of articulation and dismissed and denied the continuance of a civil complaint of the petitioner are unconstitutional accordingly to the CR. 56 (f)

Fair Trial

As noted, the provisions of the Bill of Rights now applicable to the states contain basic guarantees of a fair trial— right to counsel, right to speedy and public trial, right to be free from use of unlawfully seized evidence and unlawfully obtained confessions, and the like. But this does not exhaust the requirements of fairness. "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept. . . . What is fair in one set of circumstances may be an act of tyranny in others. Snyder v. Massachusetts, 291 U.S. 97, 116, 117 (1934). *See also* Buchalter v. New York, 319 U.S. 427, 429 (1943). Conversely, "as applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it . . . [the Court] must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial." Lisenba v. California, 314 U.S. 219, 236 (1941)

Petitioner pray for including of the case no. 984646 "Petitioner Supplemental Appendix", A – J, Pages 1 through 47, and "Petitioner's Brief dated July 22, 2020", to the Petition for Review filed by the petitioner in the Supreme Court State of Washington Case.

Dated September 4, 2020



ROY D CHEESMAN/Pro Se
1708 N INDIANA DRIVE
ELLENSBURG, WA 98926

RECEIVED
SEP 08 2020
Washington State
Supreme Court

SUPREME COURT OF STATE OF WASHINGTON

Roy D Cheesman, Plaintiff,	)	No. 984646
vs	)	CERTIFICATE OF SERVICE
Ellensburg School District, John Graf, Tia Ross, Nancy Wilbanks, Ben Mount Defendant.	)	

CERTIFICATE OF SERVICE

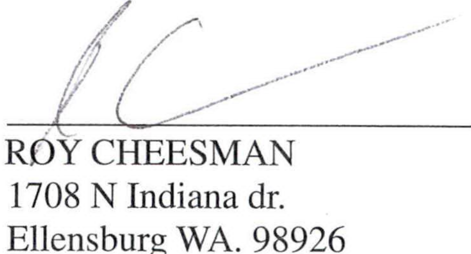
I hereby certify that I served the foregoing Petitioner Reply to Respondents' Objection to Petitioner's Motion to Modify Petition for Discretionary Review on the following named person on the date indicated below in the manner indicated:

Mailing with postage prepaid

THE SUPREME COURT STATE OF WASHINGTON
P.O. BOX 40929
OLYMPIA, WA. 98504-0929

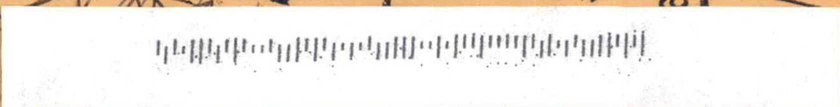
BRIAN A. CHRISTENSEN, JERRY MOBERG & ASSOCIATES, P.S.
124 3RD Ave S.W.
PO Box 130
Ephrata, Washington 98823

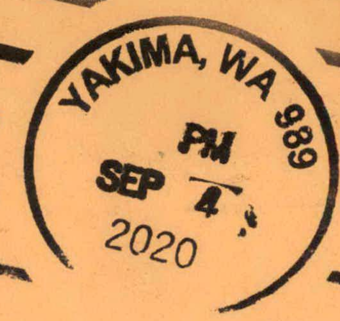
DATED: September 4, 2020



ROY CHEESMAN
1708 N Indiana dr.
Ellensburg WA. 98926

R. CHE[illegible]
1708 N[illegible]
ELLENSBURG, WA. 98926





THE SUPREME COURT
STATE OF WASHINGTON
P.O. BOX 40929
OLYMPIA, WA. 98504