

64308-8

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No. 64308-8-I

Court of Appeals, Division I  
of the State of Washington

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In Re:

HELEN FEIGER, Respondent

and

TONY AND ANNA PRATT, Appellants

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REPLY BRIEF OF APPELLANT

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### **A. Introduction to reply brief of appellant**

The Brief of Respondent is unusual in that it has twenty-four (24) pages of mostly irrelevant facts, and most of these facts are without reference to the trial court record. Some of these “facts” come from a motion and declaration by Respondent’s counsel in a motion before the Court of Appeals. Appellant’s counsel appropriately ignored the irrelevant portions of the appellate motion and declaration, and the requested relief was not granted. The Respondent now attempts to use the motion and declaration in an attempt to create a new record and stack the record against the Appellants.

This Court should not fall prey to these attempts to stack the record against the Appellants, and it should only consider the record before the trial court.

It is also sad that the Respondent chooses to attack the Appellant’s counsel, and a special section addresses *ad hominem* attacks. Counsel for both Appellant and Respondent are not the parties, and are not responsible for the actions of the parties.

### **B. Additional pertinent facts**

Feiger attempts to distract the Court away from the real issue in this matter, which is “what is the effect of the July 8, 2009, agreement obtained by visiting Skagit County Judge Rickert, and is that agreement

binding on the parties?” The most interesting distraction is that Feiger brought three separate motions to determine reasonable attorney’s fees. At all three hearings the court determined that two hundred thirty dollars (\$230.00) as an hourly attorney’s fee for Feiger’s counsel was reasonable, yet Feiger continued to bring the same motion.

**June 25, 2010, first order than Feiger’s \$2305.00 hourly fee rate was reasonable.**

On June 25, 2009, a Snohomish County Commissioner *pro tem* found that the two hundred thirty (\$230.00) hourly rate for Feiger’s counsel was reasonable. Brief of Respondent (hereinafter “BR”) page 15. A motion for revision of the Commissioner’s decision was not sought by the Pratts under Article IV, section 23 of the Washington Constitution, RCW 2.24.050 which specifies the general procedures governing revision; or, SCLR 7(b)(1)(M)<sup>1</sup>.

**July 8, 2010, second order than Feiger’s \$230.00 hourly fee rate was reasonable.**

Despite this Court Commissioner’s order that Feiger’s counsel’s two hundred thirty dollar (\$230.00) hourly rate was reasonable, Feiger

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<sup>1</sup> Our Constitution allows Court Commissioners to be appointed by Superior Court judges, but makes Commissioner decisions subject to review by a Superior Court judge; RCW 2.24.050 and SCLR 7(b)(1)(M) merely detail the mechanics of “revision” and state that any court commissioner order becomes an order of the Superior Court if revision not sought within ten (10) days.

again sought “a hearing regarding the reasonableness of the hourly rates of counsel for Feiger,” before a judge. BR page 15, 18. However, this time the motion for a determination of a reasonable hourly attorney fee rate was supported by two declarations that were signed on July 8, 2010, the same date as the hearing. BR 18, CP 357-59, 365. At the hearing of July 8, 2010, “[t]he court further ruled that the hourly rates were reasonable based on the Courts experience . . . .” BR 18.

**August 5, 2010, third hearing for order than Feiger’s \$230.00 hourly fee rate was reasonable, and order entered on August 24, 2010.**

On July 27, 2010, Feiger brought a third motion “to find the reasonableness of the hourly rates of counsel for Feiger,” and to strike one of the declaration supporting the second order concerning reasonableness of fees. BR 20. After a hearing on August 5, 2010 (BR 21), Judge Appel entered an order determining for the third time that an hourly rate of two hundred thirty dollars (\$230.00) per hour was reasonable for Feiger’s counsel. BR 21, CP 86.

### **C. Standard of Review**

Feiger wrongly asserts that when Court Commissioner Susan Gaer stated that “Feiger was entitled to one day mailing” that this is a

“finding of fact,” not a “conclusion of law,” and that factual matters should be reviewed for clear error.

“A conclusion of law erroneously described as a finding of fact is reviewed as a conclusion of law.” *Willener v. Sweeting*, 107 Wn. 2d 388, 394, 730 P.2d 45 (1986). “The conclusion that defendants properly rescinded the contract is subject to our review, despite its incorrect denomination as a finding of fact.” *Woodruff v. McLellan*, 95 Wn.2d394, 396, 622 P.2d 1268 (1980).

Here, the Court Commissioner entered the finding that the Snohomish County Clerk mailed Judge Appel’s August 24, 2009 letter on August 25, 2009. CP 4. But, the commissioner wrongly concluded without any citation to a statute or rule, that there is at least a one day mailing rule for court orders. CP 4.

In conclusion, if the trial court wrongly calls a “conclusion of law” a “finding of fact,” this Court should still analyze this de novo as a conclusion of law.

#### **D. Arguments**

##### **1. Feiger never brought a motion under CR 6(b)(2).**

Feiger argues that “the expansion of time under CR 6(2)(b) is discretionary for the court.” This appears to be a reference to CR 6(b), which states that:

Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.”

CR 6(b). Thus, we must apply the facts to the rule. Three separate times the court ruled that two hundred thirty dollars (\$230.00) was a reasonable hourly rate for Feiger’s counsel: (1) June 25, 2009; (2) July 8, 2009; and, (3) August 24, 2009. So, when the Offer of Judgment was entered by this Court on August 5, 2009, there were already two rulings by the Court that two hundred thirty dollars (\$230.00) was a reasonable attorney’s fee. Feiger claims that “[I]t is axiomatic that fees cannot be determined until the issue of contested hourly rates is resolved.” BR 26. But, that issue of reasonable hourly attorney’s fees was resolved twice previously on June 25, 2009 and July 8, 2009. Further, there is no authority for best out of three (e.g. soccer playoffs); best out of five (early rounds of NBA and major league baseball playoffs); or, best out of

seven (NBA, baseball playoffs and World Series).<sup>2</sup>

So, on August 5, 2009, when judgment was entered in this matter, there were previously two rulings that stated that reasonable attorney's fees were \$230.00. Thus, there was nothing to stop the 10 day time period for Feiger to bring a motion for attorney's fees, that was to "be filed no later than 10 days after entry of judgment," under CR 54(d)(2).

Now, we must determine whether CR 6(b), entitled "Enlargement" applies. To analyze CR 6(b), one must first determine if the civil rules require an act within a certain time. The applicable civil rule here is CR 54(d)(1) and (2). CR 54(d) does not require an act, it merely states that if an attorney does not bring a motion for attorney's fees and expenses within 10 days, that the clerk of the court shall tax costs and disbursements. These costs and disbursements would include a statutory attorney's fee under RCW 4.84.010. That was the basis of the Pratts' motion (CP 67-79) of September 8, 2010, which was denied by

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<sup>2</sup> This raises the interesting question, "if the World Series is 7 games, if one team wins the first 4 games, why don't the teams play all 7 games?" The answer is simple, because a winner has been determined. Likewise, in two rulings the trial court held that \$230.00 per hour was a reasonable attorney's fee. It was unnecessary for Feiger to bring three motions to obtain a ruling that \$230.00 was reasonable – unless Feiger intended to run up the attorney's fee bill. Of course, Commissioner Gaer awarded attorney's fees for all these motions.

Commissioner Gaer: require the clerk of the court to tax costs and disbursements which she was required to do if Feiger did not file a cost bill within ten days after the entry of judgment. Now, Feiger objects after she elected to forego reasonable attorney's fees and accepted costs and statutory attorney's fees under CR 54(d)(1) and RCW 4.84.010.

Assuming, *arguendo*, that this Court believes that CR 54(d) requires Feiger to act within a certain time, then the next step in the analysis is whether the requested extension was before or after the deadline imposed by CR 54(d). Assuming, *arguendo*, that the ten days started on either August 5, 2009 (date of entry of the offer of judgment) or August 24, 2009 (date of entry of the third order on reasonable attorney's fees), the deadline for Feiger to bring an attorney's fees motion was either August 15, 2009<sup>3</sup> or September 4, 2009<sup>4</sup>.

In either circumstance, Feiger did not bring any motion between the August 5, 2009 entry of judgment and either August 15, 2009 or September 4, 2009. Thus, CR 6(b)(1) does not apply because it only allows for the court to extend a deadline "with or without motion or

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<sup>3</sup> August 15, 2009 was a Saturday, thus under CR 6(a), the following Monday, or August 17, 2009, would have been the final day to bring a motion.

<sup>4</sup> September 4, 2009, was a Friday. CR 6(a) does not extend the time limit.

notice . . . [may] order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order.”

So, we must then analyze if CR 6(b)(2) applies. Under CR 6(b)(2), “upon motion made after the expiration of the specified period, [the court may] permit the act to be done where the failure to act was the result of excusable neglect.” Here, there was no motion under CR 6(b)(2) requesting that the trial court permit “the act” to be done upon a showing of excusable neglect. The statute specifically says a deadline can be extended without notice or a motion prior to the expiration of the deadline, but after the deadline expires, it can only be done “upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.” CR 6(b)(2). CR 6(b)(1) or (2) were never mentioned by Feiger in her September 8, 2008 motion or declaration before the trial court. CP 72-85. This argument is being raised for the first time on appeal. Further, the Commissioner Gaer never ruled on extending time under CR 6(d), whether or not allowed under that rule. Instead, Commissioner Gaer ruled that “[t]he court finds the plaintiff is entitled to at least one day for mailing of an order and that Judge Apples [sic] order was mailed on 25 Aug 09 making this motion timely.”

Commissioner Gaer ruled that the motion was timely, which is entirely different to ruling that the motion for attorney's fees was untimely, but that a motion under CR 6(b)(2) was brought and granted which allowed Feiger to bring an attorney's fees motion after a deadline.

Finally, there is no provision in the Rules on Appeal that allows this court to *sua sponte* allow Feiger additional time under CR 6(b) to bring that motion before the Court of Appeals.

In conclusion, whether to grant additional time under CR 6(b)(1) or (2) was not before the trial court or this Court. This Court should not consider that argument.

## **2. The Pratts never sought revision or appealed any attorney's fees hourly rate decision**

It is interesting that Feiger insists that the Pratts contested the various rulings on attorney's fees. In fact, it was Feiger that brought three separate motions to determine the reasonableness of the two hundred thirty dollar (\$230.00) hourly rate for Feiger's counsel. The Pratts never sought revision of the Court Commissioner ruling that \$230.00 was a reasonable hourly attorney's fees rate, appellate review of Judge Rickert's ruling that \$230.00 was a reasonable hourly attorney's fees rate, or appellate review of Judge Appel's ruling that \$230.00 was a reasonable hourly rate.

In fact, the only concerns as to the declarations were raised by Feiger submitting two declarations at the last minute in support of the \$230.00 hourly rate: both signed and filed on the day of the hearing before Judge Richter, that is, July 8, 2009. CP 357-59 and 365 and BR 18. The two declarations were from attorneys Mike Walsh and Robert Getz. CP 357-59, and BR 18.

This is discussed further in section 9.

**3. This Court can also find the July 8, 2009, hearing to be a stipulation under CR 2A.**

If this Court determines that the June 25, 2009, CR 68 offer of judgment expired, and was not reoffered at the hearing, it can consider this to be an agreement under CR 2A, “[n]o agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.”

Here, Feiger attempts to deny that there was an agreement because “[t]he reading of an offer into the record is not a written acceptance and it is not an order despite the Appellants attempt in their brief to stretch it into one.” BR 36. Feiger also asserts that the CR 68

offer expired, and that expiration was intentional on the part of Feiger.  
BR 33.

Finally, Feiger asserts that Judge Richert disagreed with the Pratts' assertion that a plaintiff cannot refuse to accept a CR 68 offer of judgment for the full amount requested. BR 34. In fact, Judge Richert later acknowledged the Pratts position by stating, "[o]h, I see what you're saying." CP 158, line 17. It was this understanding that the Pratts wanted to give Feigers everything that she was requesting, that led Judge Richter to acknowledge that the CR 68 offer of judgment included a mechanical method (per diem rental paid through date vacated as noted on the return of the writ of restitution) to determine rent owed. This led Judge Richter to believe both parties wanted to settle, and it led him to get on the record the terms of the settlement and the agreement of the parties.

Thus, this Court can certainly hold that under CR2A, because Judge Rickert phrased the terms of the offer and solicited an agreement, that the offer and acceptance were on the record, as acknowledged by Judge Rickert.

Further, at that hearing, Judge Rickert got both parties to agree that there was an offer to settle, an acceptance of that settlement offer, and that the terms included a monetary judgment for rent; with the

remaining issues of reasonable attorney's fees, costs, and sanctions to be brought by motion of Feiger. CP 167, line 22 to CP 169, line 7.

**4. Feiger wrongly asserts that a counteroffer denies an offer of judgment.**

Feiger now contends for the first time that the exchange at the July 7, 2009, hearing before Judge Richter was a counter offer by Feiger. BR 35. Feiger also claims that “[t]his court has determined that a counter offer serves to deny an offer of judgment.” BR 35, citing *Dussault v. Seattle Public Schools*, 69 Wn. App. 728, 850 P.2d 581 (1993). But, *Dussault* actually states that “an offer of judgment under CR 68 remains open during the entire 10-day period, regardless of whether the plaintiff makes a counter off or purports to reject it.” *Dussault* at 734.

**5. The Pratts' counsel's acceptance may have been inaudible, but the context of the hearing indicates that the judge considered counsel's response to be acceptance.**

Feiger attempts to completely twist the dialogue between Feiger, the Pratts, and the Court, by claiming there was not unequivocal acceptance, and that Feiger's response “is not certain.” BR 36.

In fact, after Judge Rickert said “[w]ell, let's put that on the record then so we have what – what – what you've got so every – so it's very clear since there's been some confusion,” (CP 1688, lines 3-5), the following exchange took place:

MR. TRICKLER: I would accept that offer on behalf of my client, Your Honor.

THE COURT: Okay. Mr. Peterson?

MR. PETERSON: (No audible answer).

THE COURT: It's been accepted. So that's the amount – the judgement [sic] amount is just a matter of computation and this can be set for further hearing on reasonable attorney's fees, costs and sanctions . . . .

CP 168, line 25, page 169, line 7. It is also interesting that while the court reporter reported the Pratts' counsel's response as being "(No audible answer)," Judge Rickert promptly responded to the Pratts' counsel by stating, "It's been accepted." Equally important, were Judge Rickert to have improperly characterized the Pratts' counsel's response, Feiger did not object to the characterization of "[i]t's been accepted."

This court can certainly infer that while the court reporter could not hear an audible response of the Pratts' counsel, Judge Rickert certainly heard enough to conclude that there was an offer (the terms of which were described by Judge Rickert at CP 168, lines 3-24), and acceptance.

## **6. This Court should not consider *ad hominem* attacks against the Pratts' counsel**

It is sad that Feiger is engaging in personal attacks that are not before this Court (not in the clerk's papers, but instead in a declaration submitted as part of a motion to this court), and which were not considered by the trial court. For example, that the Pratts' counsel "bragged", that the Pratts' counsel "never lost in the Court of Appeals,"<sup>5</sup> and that his clients were judgment proof. BR 23.

Other examples of *ad hominem* attacks include:

- an allegation of extortion by the Pratts' counsel (BR 19)
- improper subpoena of counsel for the Pratts (BR 20)

This Court should follow the wisdom of Supreme Court Justice Gerry Alexander, author of *Discipline of Dann*, 136 Wn. 2d 67, fn 4, 960 P.2d 416 (1998), by ignoring that declaration and proclaiming that "[i]f these *ad hominem* attacks were meant to persuade this court they have failed."

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<sup>5</sup> It is not pertinent to this matter, but the Pratts' counsel were both involved in *Canterwood v. Thande*, 106 Wash. App. 844, 25 P.3d 495 (2001); and *Negash v. Sawyer*, 131 Wash. App. 822, 129 P.3d 824 (2007); both appeals where Pratts' counsel represented the non-prevailing party. There are others.

**7. CR6(c) is not applicable to this matter.**

Feiger asserts that CR 6(c) “makes it clear that no part of a proceeding should fail for want and waiting on a court’s decision.” BR 27. That is wrong.

CR 6(c) merely states that no proceeding shall fail for lack of a judge or failure of a court session. It says nothing about “waiting on a court’s decision.”

**8. CR 6(e) is not applicable to orders**

Feiger argues that CR 6(e) “arguably includes orders that are mailed and when the papers start some clock ticking.” BR 28. Feiger further argues that “[n]othing in CR 54(d)(2) precludes the application of CR 6 and CR 6 does not preclude its application to orders that are mailed.” BR 28.

But CR 6 is a general rule, CR 58(b) is a rule specifically for judgments, and it states that “[j]udgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing . . .” Then, CR 54(d) and (e) then state that the time limit to file a cost bill or bring a motion for attorney’s fees is “no later than 10 days after entry of judgment.”

In conclusion, when read together, CR 58 and CR 54 clearly show that in the specific situation of attorney’s fees and costs requests

after judgment, that the “clock starts” ticking at the time of entry of the judgment.

**9. The Pratts did not reopen litigation by seeking documents supporting an attorney’s fee declaration.**

Feiger states that the Pratts “reopened litigation by contesting hourly rates that had been ruled reasonable on 3 separate occasions, violating the intent of CR 68.” BR 32. This is wrong.

Feiger also asserts that the Pratts are attempting to “circumvent the intent of CR 68 and CR 54(d) by allowing them to bring unchecked litigation, contesting an issue already ruled on, cannot be reconciled.” BR 42. This is also wrong because the Pratts merely wanted to verify information contained in two declarations because the declarants had a history of false statements in litigation and “bad acts” according to the WSBA.

Here, Judge Rickert considered two declarations submitted by Feiger, both of which were signed and submitted for the first time on the hearing date.<sup>6</sup>

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<sup>6</sup> SCLR 7 does not allow declarations to be submitted for the first time at the hearing. This gives the opposing party no time to review those documents, and constitutes “trial by ambush,” especially when it consists of two declarations that are from an attorney that

Upon review and research, the Pratts learned that one declaration (CP 365) was submitted by an attorney that had previously submitted a false declaration to a trial court.<sup>7</sup> The other declaration (CP 357-59) was from an attorney who declared that “I am an attorney at law and have been admitted in Washington since September, 1988 . . . [a]t all relevant times herein I have been a member in good standing of the Washington State Bar Association and the Snohomish County Bar Association,” and this may have been misleading because he was suspended for six months.<sup>8</sup> CP 357.

The Pratts’ counsel owes a duty to investigate all factual assertions in pleadings, and merely seeking more information concerning declarations related to reasonable attorney’s fees does not “reopen litigation.” An attorney would be wise to refuse to seek declarations

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<sup>7</sup> In CP 261-298, it shows that Mike Walsh made false statements to the court in Snohomish County cause number 08-2-03625-0 (CP 274, paragraph 10) in order to obtain a default judgment. Based upon the false statement that related to a jurisdictional issue, the matter was appealed to this Court in case number 61653-6-I, and Mr. Walsh’s law firm conceded the appeal. CP 274. Please note this unpublished case is cited for its factual basis, not for precedential value.

<sup>8</sup> In CP 300-306, the records custodian for the WSBA show that the declarant Robert N. Getz was suspended for 6 months, beginning May 1, 2002. The basis of this suspension was being an arbitrator and engaging in ex parte contact with a party and talking about matters of a sexual nature and rubbing or massaging the party’s shoulders. CP 309.

from attorneys with a history of making false declarations and of being suspended for misconduct: it is not the Pratts' fault that Feiger chose to seek declarations from these attorneys when there are so many attorneys available without similar histories.

**10. The Pratts acknowledge that the lease amendment was attached as an appendix in error.**

The Pratts attached a lease amendment to the appendix in error because this Court had not allowed that document to be made a part of the record. Reference to this attorney's fee lease amendment, with a verbatim excerpt of the allowed attorney's fees and costs, was included in Feiger's trial memorandum; however, Feiger wrongfully never filed that trial memorandum with that court as required under the court rules. Thus, the Pratts could not designate as a clerk paper the document that was served on the parties, but not filed. The Pratts will seek to supplement the record, even though this is an improper procedure requested by the trial court. While Feiger admitted to serving, but not filing, the trial memorandum, a Court of Appeals Commissioner will be requested to supplement the record.

The Pratts sought to require either the filing of that trial memorandum with the trial court, or alternatively to have the case dismissed under CR 5(d)(2); however, the trial court denied the motion,

stating that it is up to “the Court of Appeals to decide whether or not to supplement the record.”

It is requested that this Court award the Pratts legal costs and other allowable attorney’s fees under that amendment if the Court Commissioner allows the record to be supplemented with Feiger’s trial memorandum.

***11. Housing Authority of City of Everett v. Carroll Kirby, is not applicable in this matter.***

Feiger argues that “[u]sing this Courts [sic] rational [sic] in the recently published decision in *Housing Authority of City of Everett v. Carroll Kirby* . . . docket number 62052-5 (8 March 2010), the Pratts are not entitled to fees for this appeal but Feiger is.” This Court should not consider that argument.

First, *Kirby* was not published, so it is improperly cited by Feiger. “A party may not cite as an authority an unpublished opinion of the Court of Appeals.” GR 14.1(a). “Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports.” GR 14.1(a).

Second, *Kirby* dealt with unlawful detainer matters where the trial court failed to acquire subject matter jurisdiction, and that was the

basis for denying an attorney's fee award. Here, there is no issue regarding subject matter jurisdiction.

***12. Failure to seek a motion to revise is not grounds for this Court to deny reversing the trial court decision.***

This Court should consider this decision on its factual merits, not emotion or some uncited rule requiring exhaustion of remedies before the trial court, as in administrative hearings.

This issue has been brought up in prior appeals, and fortunately Judges on the Court of Appeals who have practiced in Snohomish County understand the quirk in Snohomish County Superior Court that makes direct appeal of a Court Commissioner decision a practical remedy for a low income tenant – in Snohomish County the court commissioner courtrooms are always recorded, but the civil motions calendar is not recorded, necessitating hiring a court reporter.

Thus, requiring a tenant who cannot afford to pay rent or retain counsel (the Pratts' counsel frequently represents tenants for only fees awarded by this Court) to pay for a court recorder would deny the tenants access to justice.

Further, while our Constitution guarantees review of Court Commissioner decisions by a Superior Court judge, after ten days a court commissioner decision is considered an order of the Superior Court.<sup>9</sup>

This Court should not set a legal precedent, without any citation to similar precedent in any jurisdiction, that requires a party to seek revision by a Superior Court judge before a matter can be appealed as of right.

### **E. Conclusion**

In a case of first impression, this Court should hold a plaintiff is bound by an oral acceptance of a CR 68 offer of judgment made in open court, and to the conditions agreed to in that offer of judgment. This in court agreement can also be upheld under CR 2A. Specifically, Feiger should be held to the agreement that attorney's fees be limited to those incurred as of June 25, 2009.

In another case of first impression, this Court should hold that a plaintiff should be required by the court to accept a CR 68 offer of judgment if that offer of judgment includes all relief sought by the plaintiff.

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<sup>9</sup> See footnote 1.

This Court should not allow a ruling made by a Skagit County Superior Court Judge to be overruled by a Snohomish County Commissioner. Not only is there no statutory or constitutional authority for such a ruling by a Court Commissioner, but it violates the Snohomish County local rules. Visiting Judge Rickert of Skagit County correctly ruled that attorney's fees should be limited to those incurred through June 25, 2009, and this ruling should be upheld by this Court. Alternatively, this Court can uphold the CR 2A agreement imposed by Judge Rickert, and on the record, at the July 8, 2009 hearing.

This Court should not impose a "mailing rule" upon orders or judgments filed or entered by judges. The civil rules are clear that a judgment is effective upon entry, through filing, for all procedural matters.

This Court should also not impose a requirement that revision before a judge be sought prior to appeal of a Court Commissioner decision. This imposes a great financial burden on an already low income tenant. Further, each appellate case help far more than the individual wronged tenant. Each published case helps hundreds, perhaps thousands, of tenants throughout the State. Clarifying the civil rules and how they related to RCW 59.18 helps both landlords and tenants.

This Court should reverse the decision of Court Commissioner Susan C. Gaer to award attorney's fees and costs through the date of acceptance of the offer of judgment (August 5, 2009) and remand this matter with directions for the trial court to direct the clerk of the court to tax costs and disbursements only for the filing fee, statutory attorney's fees, clerks fees, and the sheriff's fee.

Finally, this Court should award the Pratt's attorney's fees under the attorney's fees addendum to the lease, if the trial memorandum of Feiger is allowed to supplement the record. The Pratt's incurred "other legal or court costs" to ensure that the previously agreed upon conditions of the accepted offer of judgment be enforced. Feiger sought to incur attorney's fees beyond what was agreed upon, and that wrongful demand caused the Pratts to incur "other legal or court costs," including this appeal.

Finally, the Pratts request that this Court publish its opinion due to its precedential value. Publication will assist tenants throughout the state, especially if this opinion is written in an easy to understand manner so that a *pro se* litigant can understand and explain this opinion to the court.

Respectfully submitted May 6, 2010

A handwritten signature in cursive script that reads "Scott Peterson". The signature is written in black ink and is positioned above a horizontal line.

Scott Peterson, WSBA #22923  
Attorney for Appellant

/s Gerald F. Robison

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