

NO. 65212-5-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

DR. WILLIAM S. COTTRINGER for
Puget Sound Security Patrol, Inc.,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF EMPLOYMENT
SECURITY,

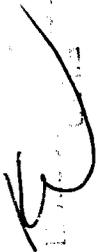
Respondent

RESPONSE BRIEF

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I. INTRODUCTION

The general rule in Washington is that corporations, which are artificial entities that can only act through their agents, must be represented by an attorney in court proceedings. After unsuccessfully challenging the unemployment benefits claims of two employees it discharged, Puget Sound Security Patrol, Inc. (PSSP), a Washington corporation, sought judicial review of the final decisions of the Employment Security Department. The petitions were signed by William Cottringer, the President of PSSP, and subsequent pleadings were signed by either Cottringer alone or both Cottringer and Jeff Kirby, the chairman of PSSP. Neither Cottringer nor Kirby is a lawyer.

After considering briefing and argument from the parties on the propriety of PSSP proceeding “pro se”—that is, represented by Cottringer and Kirby—the superior court ordered PSSP to retain counsel within 30 days or suffer dismissal with prejudice. PSSP failed to retain counsel, and the superior court dismissed its appeal. Because the law in Washington requires corporations to be represented by counsel before the courts, the superior court did not abuse its discretion in dismissing PSSP’s appeal for failure to retain counsel. Accordingly, the Department respectfully requests that this Court affirm the superior court’s order.

II. COUNTERSTATEMENT OF THE ISSUE

Whether the superior court abused its discretion in dismissing the Petition for Judicial Review of Puget Sound Security, Inc., a Washington corporation, for failure to retain counsel within 30 days of the court's order to do so.

III. STATEMENT OF THE CASE

Puget Sound Security Patrol, Inc. (PSSP), is a private security firm incorporated under the laws of Washington.^{1, 2} CP 524-25. William Cottringer is the president of PSSP, and Jeff Kirby is the chairman.³ Neither Cottringer nor Kirby is a lawyer.

PSSP discharged two employees, one in August 2008 and the other in January 2009, who then sought unemployment compensation.⁴

¹ PSSP's website describes itself thus:

Puget Sound Security (PSS) was founded in 1981 by Jeff Kirby. The company started with one client - Newport Shores - as a residential patrol. (This client is still with us today; now that is real client satisfaction!) The early "inventory" was one vehicle and one owner/driver. Today we are a multimillion dollar divested corporation, owning divisions which have been operating since 1969 and serving customers throughout the state of Washington and accessible to you in strategic branch office locations with over 25 patrol units and 250 security officers.

<http://www.pugetsoundsecurity.com/aboutus/aboutus.html> (last visited November 8, 2010). *See also* Appellant's Opening Br. at 2.

² PSSP apparently was involved in over 125 unemployment benefits claims in the span of one year. RP 4: 6-8.

³ <http://www.pugetsoundsecurity.com/staff/staff.html> (last visited November 8, 2010). The company's website further lists George Schaeffer as its CEO. *Id.*; *see also* CP 524-25, *available at* http://www.sos.wa.gov/corps/search_detail.aspx?ubi=600445275

⁴ The Appellant's Opening Brief discusses the nature of the private security business, the purpose it serves, and some of the challenges they face. Appellant's

CP 202.⁵ Administrative Law Judges (ALJs) convened separate administrative hearings for each of the claims, at which, Cottringer represented PSSP. CP 24, 69. In both cases, the administrative law judges found that the claimants were eligible for unemployment benefits because PSSP had not satisfied its burden of proving by a preponderance that it discharged the employees for statutory misconduct. CP 201-06. PSSP petitioned the Commissioner of the Department for review of the ALJ's decisions, and, in both cases, the Commissioner affirmed the ALJ's orders. CP 193-94, 223-25.

After unsuccessfully seeking reconsideration of the Commissioner's decisions, CP 228, 232-33, PSSP sought judicial review of the Commissioner's decisions in the superior court pursuant to the Administrative Procedure Act, Title 34.05 RCW, and RCW 50.32.120.⁶ CP 1-4. The Petitions for Judicial Review were captioned, "Dr. William S. Cottringer for Puget Sound Security, Petitioner, v. State of Washington

Opening Br. at 2-3. While this might be appropriate for the merits of the particular unemployment compensation claim, this appeal is solely about whether PSSP is required to be represented by a licensed attorney in court.

⁵ Although the Appellants designated all documents filed under both cause numbers, CP 556, it appears that only those clerk's papers filed under the appeal related to the January 2009 employee discharge were transmitted to the Court of Appeals. Therefore, although two job separations are at issue and were consolidated under one cause number in the superior court, this brief only cites to those documents and pleadings related to the January 2009 job separation.

⁶ The two appeals were eventually consolidated. CP 378-79.

Department of Employment Security, Respondent.”⁷ CP 1. Cottringer signed both petitions on behalf of PSSP. CP 4. Subsequent pleadings were signed either by Cottringer alone or by Cottringer and Kirby. *See, e.g.*, CP 260, 285-86, 287-303, 345-349 (for filings signed by Cottringer), and CP 381-92, 510-12, 526-29 (for filings signed by Cottringer and Kirby).

The Department moved the superior court to determine the propriety of PSSP proceeding without counsel. CP 327-331. In its related brief, PSSP asked the court to allow it to “continue to be represented in this matter by Dr. William S. Cottringer” CP 345.

At the motion hearing, both Cottringer and Kirby presented argument on PSSP’s behalf. RP 1-2, 3, 10-12, 18. The superior court found that as an incorporated entity, PSSP was required to be represented by a licensed attorney in Washington courts, and it ordered PSSP to retain counsel within 30 days or suffer dismissal with prejudice. CP 531-32.

⁷ Under RAP 3.4, the title of a case in the appellate court is supposed to be the same as the title of the case in the trial court (except that the party seeking review is the “appellant,” and the adverse party is the respondent”). While the title of this case in the superior court was “Dr. William S. Cottringer for Puget Sound Security, Petitioner, v. State of Washington Department of Employment Security, Respondent,” *see* CP 1, the Appellants identified themselves in the court of appeals case as “Dr. William S. Cottringer And Jeff Kirby, Pro Se as aggrieved parties For Puget Sound Security Patrol, Inc.” *See* CP 533, 548. In their opening brief, the Appellants titled the case “Puget Sound Security Patrol, Inc., Appellant v. State of Washington, Respondent.” *See* Appellant’s Opening Br. at title page. This brief uses the title of the case from the superior court, as directed by RAP 3.4.

PSSP did not retain counsel, and the superior court dismissed its Petitions for Judicial Review. CP 546-47.

Cottringer, Kirby, and PSSP now appeal from the superior court's dismissal of their administrative appeal for failure to retain counsel within 30 days of the court's order to do so.⁸ CP 548-51. Although the Appellant's Opening Brief suggests that only Kirby is seeking to represent PSSP pro se, both Cottringer and Kirby appeared on behalf of and sought to represent the company in the superior court. *See, e.g.*, RP. Both also have signed pleadings filed in this Court. *See, e.g.*, CP 556 (Designation of Clerk's Papers), 558 (Statement of Arrangements), Mot. for Continuance.

IV. ARGUMENT

In general, a lay person may not represent another person or entity in Washington courts. As such, PSSP—a Washington corporation and artificial entity—must be represented by counsel in court. Although there are narrow exceptions to this general rule, Cottringer and Kirby failed to establish in the superior court that any of those narrow exceptions apply to PSSP. Therefore, the superior court properly exercised its discretion in dismissing PSSP's Petition for Judicial Review after giving it 30 days to

⁸ On the eve of the due date for the Appellant's Opening Brief, PSSP retained counsel to represent it in this Court for the limited purpose of arguing its right to proceed pro se in the courts.

retain counsel. Accordingly, this court should affirm the order of dismissal.

This Court reviews orders of dismissal for abuse of discretion. *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 684-85, 41 P.3d 1175 (2002); *Biomed Comm., Inc. v. Dep't of Health Bd. of Pharmacy*, 146 Wn. App. 929, 933, 193 P.3d 1093 (2008). However, any legal conclusion underlying the decision and interpretation of court rules are reviewed de novo. *Gildon v. Simon Property Group, Inc.*, 158 Wn.2d 483, 493, 145 P.3d 1196 (2006); *Biomed Comm., Inc.*, 146 Wn. App. at 934.

A court has the discretion to dismiss an action based on a party's willful noncompliance with a reasonable court order. *Woodhead v. Discount Waterbeds, Inc.*, 78 Wn. App. 125, 129, 896 P.2d 66 (1995). A court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

A. A corporation must be represented by a licensed attorney in court.

With few exceptions, individuals appearing before Washington courts must be licensed to practice law. *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd*, 155 Wn. App. 479, 483, 230 P.3d

608 (2010) [hereinafter *ARD*]. That general rule is based on, *inter alia*, CR 11 (which states in relevant part: “Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record A party who is not represented by an attorney shall sign and date the party’s pleading, motion, or legal memorandum”), RCW 2.48.170 (providing that only active members of the state bar may practice law), Admission to Practice Rule 1(b) (requiring persons appearing in Washington courts as an attorney to have passed the state bar examination and be an active member of the state bar), and GR 24 (defining the practice of law as, among other things, “[r]epresentation of another entity or person(s) in a court” GR 24(a)(3)).⁹

This general rule applies to individuals appearing on behalf of another party. *ARD*, 155 Wn. App. at 483; *Lloyd Enters. v. Longview Plumbing & Heating Co.*, 91 Wn. App. 697, 701, 958 P.2d 1035 (1998). Because corporations are artificial entities that can act only through their agents, the common law recognizes that corporations appearing in court proceedings must be represented by an attorney. *Lloyd Enters.*, 91 Wn.

⁹ Although the Appellants argue that CR 11 should not be used to discourage self representation, Appellant’s Opening Br. at 9, as discussed, the general rule prohibiting lay representation is based only in part on CR 11. The rule is more firmly grounded in RCW 2.48.170, GR 24, and APR 1(b). Moreover, these rules do not discourage *self* representation; they discourage the lay representation of *another*. CR 11 is simply the method by which a party can raise this particular objection.

App. at 697. “The “pro se” exceptions are quite limited and apply only if the layperson is acting solely *on his own behalf.*” *ARD*, 155 Wn. App. at 483 (quoting *Wash. State Bar Ass’n v. Great W. Union Fed. Sav. & Loan Ass’n*, 91 Wn.2d 48, 57, 586 P.2d 870 (1978)).

In the present case, PSSP, a Washington corporation, is an artificial entity. Therefore, the general rule requiring it to be represented by an attorney in court applies.

B. The limited pro se exception does not apply to PSSP.

In its brief, PSSP asserts that because Kirby is the sole shareholder of the company, he should be allowed to represent PSSP in court because he would be representing his own interests only.¹⁰ Appellant’s Opening Br. at 6-9. To support this assertion, PSSP argues that this Court has recognized an exception to the general rule that corporations must be represented by an attorney in court, citing *Willapa Trading Co., Inc. v.*

¹⁰ Appellants also suggest that the court should consider the financial costs of retaining counsel and cite a 2008 report on Washington’s Courthouse Facilitator Programs for Self-Represented Litigants in Family Law Cases for the proposition that when parties are self represented, the litigants use less of the court’s time. Appellant’s Opening Br. at 6 n.8. First, these policy arguments would be more appropriately addressed to the legislature. Second, the finding from the report cited in the Appellant’s Opening Brief concerns self-represented parties in *marriage dissolutions*, and, in the paragraph immediately preceding the one cited by the Appellants, the report states that the impact of self-represented litigants on court management and the administration of justice is *detrimental* to both litigants and the courts. Wash.’s Courthouse Facilitator Programs for Self-Rep’d Litigants in Family Law Cases at 12-13 (2008), *available at* <http://www.courts.wa.gov/wsccl/docs/Courthouse%20Facilitator%20Program.pdf#xml=http://206.194.185.202/tehis/search/pdfhi.txt?query=%22fewer+hearings+occurred%2C+fewer+continuances+were+granted%22&pr=www&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&cq=&id=4c75992811>.

Muscanto, Inc., 45 Wn. App. 779, 727 P.2d 687 (1986). Appellant's Opening Br. at 6-7.

In *Willapa Trading*, the superior court granted permission to Neil Wheeldon, the president, director, and sole shareholder of Willapa, to represent the corporation after its counsel withdrew. *Willapa Trading Co., Inc.*, 45 Wn. App. at 781, 785. On appeal, Wheeldon argued that the superior court abused its discretion in allowing him to appear on Willapa's behalf. *Id.* at 786. Acknowledging that its decision was "somewhat unusual," the court of appeals disagreed, noting that because Wheeldon was the president, director, and sole stockholder of Willapa, he was, in fact, acting on his own behalf. *Id.* at 787. The court further noted that any error in allowing Wheeldon to represent Willapa was invited error, which the owner could not then use to gain relief on appeal. *Id.*

In the present case, there is nothing in the record, beyond PSSP's bare assertions, to establish that Kirby is the sole shareholder of PSSP. Even assuming that Kirby is the sole stockholder, if he were allowed to represent PSSP in court, he would not be acting solely on his own behalf. Unlike the appellant in *Willapa Trading*, Kirby is not the sole shareholder, president, *and* director. As has already been noted, Kirby is described as the chairman of PSSP on the company's website, and he is of record with the Secretary of State's office as secretary. CP 524-25, *supra* note 3. Cottringer

is listed as president, and George Schaeffer is described as the CEO on the company's website and is of record with the Secretary of State's office as director. *Id.* Moreover, PSSP sought to "continue to be represented . . . by *Dr. William S. Cottringer*" in superior court. CP 345 (emphasis added). As the company itself states, PSSP is a "multimillion dollar divested corporation . . . with over 25 patrol units and 250 security officers." PSSP website, *supra* note 2. Thus, Kirby would not be acting solely on his own behalf, and the limited exception to the prohibition against non-attorney's representing other parties does not apply here.

Additionally, the exception in *Willapa Trading* should not apply here because in that case, the appellant-owner argued that the superior court abused its discretion in *permitting* him to represent his corporation; hence the invited error. *Willapa Trading Co., Inc.*, 45 Wn. App. at 786-87. Here, Kirby and Cottringer have asserted their "right" to represent PSSP throughout these proceedings; it was their very refusal to obtain counsel that resulted in the dismissal of their appeals. They argue that the superior court abused its discretion in *not* permitting them to represent PSSP. Therefore, any limited exception to the rule against corporate pro se representation recognized under the unusual procedural circumstances of *Willapa Trading* should not be extended here.

When an entity chooses to incorporate and get the resulting benefits of limited liability of its officers and shareholders, it cannot then ask the court to ignore its corporate status and extend to it the advantages to which only individual persons are ordinarily entitled. It was the Appellants' burden to establish in superior court that they meet any of the limited exceptions to the general rule that corporations must be represented by counsel in courts. *See State v. Tibbles*, 169 Wn.2d 364, 372, 236 P.3d 885 (2010) (it is the State's burden to establish that one of the exceptions to the general warrant requirement applies); *In re Recall of Lakewood City Council Members*, 144 Wn.2d 583, 593, 30 P.3d 474 (2001) (burden to establish exception to open meeting requirement rests squarely on its proponent); *Stroh Brewery Company v. State Dep't of Revenue*, 104 Wn. App. 235, 240, 15 P.3d 692 (2001) (where taxation is the rule and exemption is the exception, taxpayer has burden of establishing eligibility for an exemption). Because the Appellants seek exceptional treatment by the courts and have failed to meet their burden, this Court should decline Kirby's invitation to treat him as indistinguishable from PSSP.

C. *Advocates for Responsible Development* reaffirms the rule against pro se representation of corporations.

PSSP asserts that the court's March 2010 decision in *ARD* "reaffirmed" the exception the court provided for in *Willapa Trading*.

Appellant's Opening Br. at 7. This is not the case. *ARD* involved an unincorporated non-profit association, whose president sought to represent it in court on appeal of a decision by the Western Washington Growth Management Hearings Board. *ARD*, 155 Wn. App. at 482. In dismissing *ARD*'s appeal because it could not be represented by its president in court, the court distinguished *Willapa Trading*, simply noting that because Wheeldon was the president, director, and sole stockholder, he "was, in fact, acting on his own behalf." *Id.* at 484 (quoting *Willapa Trading Co.*, 45 Wn. App. at 787).

The court then reaffirmed that non-attorneys may not represent other litigants and that corporations and unincorporated associations must appear in court through an attorney. *Id.* at 484-85. It went on to sanction *ARD* and its president for frivolously arguing that *ARD* could be represented by its president, ordering them to pay the attorney fees of the other party. *Id.* at 489. Thus, contrary to Appellants' argument that *ARD* was "reaffirming" a limited exception (Appellant's Opening Br. at 7), *ARD* demonstrates that the prohibition against a non-attorney representing another entity in court is well settled in Washington. To argue otherwise is frivolous. *Id.*

D. PSSP's ability to be represented by a non-lawyer at the administrative level cannot be extended to the courts.

The court of appeals has expressly rejected PSSP's argument that "[t]he court may permit the representation [in court] on the narrow ground that it is an appeal from an administrative action." Appellant's Opening Br. at 13. It is true, as PSSP notes in its brief, that the company was permitted to appear through a non-lawyer during the administrative proceedings. *Id.* at 11. The APA provides that "[a] party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative." RCW 34.05.428(1); *see also* WAC 192-04-110.¹¹ Similarly, General Rule 24, which defines the practice of law, permits "[a]cting as a lay representative *authorized by administrative agencies or tribunals.*" GR 24(b)(3) (emphasis added).¹²

However, administrative review bodies, including the Office of Administrative Hearings (which conducts the Employment Security Department's administrative hearings, *see* WAC 192-04-020(1)), are

¹¹ Appellants cite WAC 263-12-020(3), which applies to appeals before the Board of Industrial Insurance.

¹² Appellants also cite *Div. of Alcoholic Beverage Control in the Dep't of Law and Pub. Safety v. Bruce Zane, Inc.*, 99 N.J. Super. Ct. App. Div. 196, 239 A.2d 28 (1968), to suggest that other jurisdictions have found exceptions for non-lawyers representing corporations in administrative contexts. Appellant's Opening Br. at 12. The court in that case explicitly stated that the rule that prohibits a corporation from appearing in court except through an attorney "is applicable to the courts of this State. The hearing involved was conducted by an administrative agency and not by a court." *Id.* at 201-02. The case, therefore, is inapposite.

quasi-judicial bodies whose powers are restricted to a review of those matters specifically designated by statute. *ARD*, 155 Wn. App. at 485. Administrative agencies cannot authorize non-lawyers to practice law in Washington courts. *Id.* Indeed, the Idaho case PSSP cites to in order to urge the court to “recognize the circumstance when *pro se* representation is appropriate,” Appellant’s Opening Br. at 9, involved allowing the lay representation of another before an administrative agency (the Idaho Public Utilities Commission), not a state court. *Idaho State Bar Ass’n v. Idaho Pub. Utilities Comm’n*, 102 Idaho 672, 676, 637 P.2d 1168 (1981). The Idaho Supreme Court stated that some relaxation of the traditional rule against the practice of law by lay persons would be appropriate, but only because proceedings before the Commission are quasi-judicial. *Id.* The court’s ruling was thus limited to the administrative context.

In the superior and appellate courts, GR 24(b)(3) and other administrative rules permitting *pro se* representation do not apply to corporations. *Id.*; *Finn Hill Masonry, Inc. v. Dep’t of Labor and Indus.*, 128 Wn. App. 543, 545, 116 P.3d 1033 (2005). The court should reject PSSP’s argument to the contrary.

E. The superior court followed the proper procedures and did not abuse its discretion.

The superior court followed the proper procedures in granting PSSP 30 days to secure counsel before dismissing its appeals.

If pleadings are not signed by an attorney, the defect is not jurisdictional, and thus the court should allow a corporate party who has had pleadings filed by a non-attorney representative to cure the defect. However, should the party fail to cure the defect, the appropriate remedy is dismissal under CR 55. *See Lloyd Enters., Inc.*, 91 Wn. App. at 701–02.

In *Biomed Comm., Inc.*, the superior court dismissed Biomed’s petition for judicial review because an attorney did not sign the petition. *Biomed Comm. Inc.*, 146 Wn. App. at 934. The court of appeals held that while the dismissal of the petition for lack of an attorney’s signature was not an abuse of the discretion, the superior court did abuse its discretion in failing to provide a reasonable amount of time to cure the CR 11 defect. *Id.* at 935, 939. In *Lloyd Enters.*, 20 days was a reasonable amount of time to cure the defects. *Lloyd Enters., Inc.*, 91 Wn. App. at 700, 702.

In this case, before dismissing PSSP’s petition, the superior court gave PSSP 30 days to retain counsel and cure any and all CR 11 defects. CP 531-32 (dated March 11, 2010). It was only when more than 30 days had passed that the court dismissed the petition. CP 546-57 (dated April 30, 2010). Therefore, the superior court followed the proper procedure in giving PSSP sufficient opportunity to obtain counsel and cure CR 11

defects. Thus, the court did not abuse its discretion in dismissing the Petitions for Judicial Review when the corporation did not comply with the order.¹³

F. Other jurisdictions.

The Appellants cite several cases to demonstrate that other jurisdictions permit corporate pro se representation. Appellant's Opening Br. at 10-11. Three of those cases are federal cases. *U.S. v. Reeves*, 431 F.2d 1187 (9th Cir. 1970); *In the Matter of Holliday's Tax Services, Inc.*, 417 F. Supp. 182 (E.D.N.Y. 1976); *Willheim v. Murchison*, 206 F. Supp. 733 (S.D.N.Y. 1962). Of those three cases, two—*Reeves* and *In the Matter of Holliday's Tax Services*—were expressly disapproved of by the United States Supreme Court. *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 n.5, 113 S. Ct. 716, 121 L. Ed. 656 (1993). The third involved a stockholder derivative suit, and the court in that case concluded that such an action is the action of the stockholder, even though it may be brought for the benefit of the corporation. *Willheim*, 206 F. Supp. at 736. Therefore, the court held that the cause of

¹³ Appellants further argue that because the superior court previously allowed Kirby to represent PSSP in a case against the State Department of Labor and Industries, the superior court should have considered this as persuasive authority. Appellant's Opening Br. at 10 n.9. First, Appellants cite no authority for the proposition that what one judge does in the superior court is persuasive authority for another judge. Second, it may well be that Kirby was allowed to represent PSSP because counsel for the Department did not raise any objections. The Employment Security Department cannot now be collaterally or equitably estopped from objecting to the lay representation of PSSP simply because another agency failed to do so in the past.

action should be regarded as the stockholder's own case and that he would be representing himself. *Id.*

Two jurisdictions cited by Appellants appear to have permitted corporations to be represented by non-lawyers in court. *Vt. Agency of Natural Res. v. Upper Valley Regional Landfill Corp.*, 159 Vt. 454, 458, 621 A.2d 225 (1992) (interpreting its own state constitution and holding that courts have discretion to allow organizations to appear through non-attorney representatives when, among other things, the organization cannot afford counsel and application of the general rule would preclude the organization's appearance); *Margaret Maunder Assocs. V. A-Copy, Inc.*, 40 Conn. Supp. 361, 499 A.2d 1172 (1985) (holding that a close corporation could appear through its president and sole stockholder in the superior court where the action was instituted by the president in the small claims court (where counsel was not required), but the adverse party removed the case to the superior court). However, these cases are outliers and not controlling law in Washington. *See Fletcher Cyclopedia of the Law of Corporations*, 9A Fletcher Cyc. Corp. § 4463 n.1 (2010); Jay M. Zitter, J.D., Annotation, *Propriety and Effect of Corporation's Appearance Pro Se Through Agent Who Is Not Attorney*, 8 A.L.R. 5th 653 (1992).

Moreover, as has already been discussed at length, Washington courts do not permit non-attorneys to represent other entities; Washington has not adopted the position of the few other jurisdictions that have recognized limited circumstances in which lay representatives may represent a corporation.

G. The legislature has lawfully curtailed the limitation on corporate liability for the purpose of collecting taxes.

In their brief, the Appellants argue that because “Kirby can be exposed to personal liability for taxes as the sole stockholder,” the court should allow him to represent PSSP pro se. Appellant’s Opening Br. at 13. They cite RCW 82.32.154(1) and RCW 50.24.230. *Id.* The legislature’s lawful curtailment of the limitation on corporate liability for the purpose of collecting taxes after corporate dissolution is inapposite to the argument for pro se corporate representation.

RCW 82.32.145 provides for personal liability of corporate officers for unpaid retail sales taxes due when a corporation terminates, dissolves, or is abandoned. RCW 82.32.145(1). Similarly, RCW 50.24.230 provides for personal liability for corporate officers for unpaid unemployment tax contributions upon termination, dissolution, or abandonment of a corporation when the officers have willfully evaded contributions, destroyed or falsified records, or failed to truthfully account for the financial condition of the

corporation. RCW 50.24.230(1). Thus, these statutes expose *all* corporate officers of PSSP, not just Kirby as sole shareholder, to personal liability for unpaid taxes upon dissolution of the corporation.

Moreover, corporations are creatures of statute, and the legislature has seen fit to curtail the limitation of liability with regard to tax liabilities, passing them through to corporate officers should the corporation fail. No reported case has found this statute, or the regulations interpreting it, to be unconstitutional or otherwise invalid. The Appellants ask this Court to infer a right to lay representation of a corporation from this statute. Such a right cannot be derived from this law relating to the collection of taxes after the dissolution of the corporation.

H. The Court should award attorney fees to the Department.

Under RAP 18.9, the appellate court may award a respondent attorney fees when a petitioner files a frivolous appeal. *Kearney v. Kearney*, 95 Wn. App. 405, 417, 974 P.2d 872, *review denied*, 138 Wn.2d 1022, 989 P.2d 1137 (1999). An appeal is frivolous when no debatable issues are presented upon which reasonable minds may differ. *ARD*, 155 Wn. App. at 489. In determining whether an appeal is frivolous, the court should consider the record as a whole and resolve any doubt in favor of the appellant and keep in mind a civil appellant's right to appeal. *Id.*

Here, Kirby, Cottringer, and PSSP have argued that Kirby can represent PSSP in court, a proposition that has routinely been rejected by the courts. The only exception the court of appeals has recognized was when the individual who sought to represent a corporation was its president, director, and sole shareholder, and the asserted error on appeal was *invited* by the appellant. *Willapa Trading Co., Inc.*, 45 Wn. App. at 78. Indeed, if there were any doubt about the rule against corporations proceeding pro se in the courts, the court of appeals laid that doubt to rest in its decision in *ARD* when, on its own motion, it sanctioned *ARD* and its president for making a similar, frivolous argument. *ARD*, 155 Wn. App. at 489.

Because the Appellants were aware of *ARD* (it was cited in their brief), and because many of the arguments in support of their assertion that PSSP should be allowed to proceed pro se have been expressly rejected by Washington courts or are otherwise without merit, the Department moves this Court to award it attorney fees under RAP 18.9(a).

V. CONCLUSION

PSSP, an artificial, corporate entity, must be represented by a licensed attorney in court. While there are limited pro se exceptions to the general rule that only an attorney may represent another in the courts, PSSP failed to demonstrate that it satisfies any of those limited exceptions.

Having accepted the benefits of the corporate form, PSSP also must accept the burdens, including the requirement that it hire counsel to represent it in court. Accordingly, the Department respectfully requests that this Court affirm the superior court's order dismissing PSSP's Petition for Judicial Review. The Department also respectfully requests that the Court award reasonable attorney fees.

RESPECTFULLY SUBMITTED this 12th day of November, 2010.

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NO. 65212-5-I

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

DR. WILLIAM S. COTTRINGER
for Puget Sound Security Patrol,
Inc.,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF
EMPLOYMENT
SECURITY,

Respondent.

DECLARATION OF
SERVICE

I, ROXANNE IMMEL, declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action.

2. That on the 12 day of November 2010, I caused to be served by electronic mail and U.S. Mail a true and correct copy of Response Brief, with proper postage affixed thereto to:

AARON ROCKE
1424 FOURTH AVE., SUITE 505
SEATTLE, WA 98101

2010 NOV 12 PM 5:02

COURT OF APPEALS
FILED
NOV 12 2010

I DECLARE UNDER PENALTY OF PERJURY
UNDER THE LAWS OF THE STATE OF WASHINGTON
that the foregoing is true and correct.

Dated this 12 day of November 2010 in Seattle,
Washington.



A handwritten signature in black ink, appearing to read "Robynne J. Hummel", is written over a horizontal line.