

No. 66120-5-I
COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

ROGER L. SKINNER

Appellant,

v.

CIVIL SERVICE COMMISSION of the City of Medina,
THE CITY OF MEDINA, a municipal corporation,
MEDINA POLICE DEPARTMENT,

Respondents.

RESPONSE BRIEF BY RESPONDENTS CITY OF MEDINA
AND THE MEDINA POLICE DEPARTMENT

Greg A. Rubstello, WSBA #6271
Attorneys for Respondents
Ogden Murphy Wallace, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

ORIGINAL

TABLE OF CONTENTS

Page

A. ISSUE RAISED BY APPEAL1

B. STATEMENT OF THE CASE.....1

C. SUMMARY OF ARGUMENT2

D. ARGUMENT4

 1. A remand to the Commission for new proceedings is the appropriate remedy when the required administrative record is incomplete and deficient for judicial review.....4

 2. The Order of Remand is not inconsistent with the legislative enactment in RCW 41.12.090.7

 3. Skinner is not entitled to reversal of the Commission’s decision and reinstatement when the record is inadequate for judicial review.10

 4. The Superior Court did not perform a judicial review on the merits, thus the gap in the transcription as to whether witness Brianna Beckley was sworn before testifying is irrelevant to this appeal.11

 5. The Superior Court did not error in failing to address Skinner’s argument that the Commission based its decision on allegations different from those put forth by the City as the basis for Skinner’s termination in its order of remand.....12

 6. Skinner’s arguments that the record lacks sufficient evidence to support the termination of Skinner’s employment is moot in light of the remand.13

 7. Sanctions should be imposed under CR 11, including reimbursement of attorney fees.....14

E. CONCLUSION.....15

APPENDIX A

APPENDIX B

TABLE OF AUTHORITIES

Page

Cases

Barrie v. Kitsap Cy., 84 Wn.2d 579, 527 P.2d 1377 (1974)..... 4, 10
Breach v. Board of Adjustment of Snohomish County, 73 Wn.2d 343, 438 P.2d 617 (1968)..... 5
Griffith v. City of Bellevue, 130 Wn.2d 189, 197 (1996)..... 6
Lejeune v. Clallam Cy., 64 Wn. App. 257, 823 P.2d 1144, review denied, 119 Wn.2d 1005 (1992)..... 5
Loveless v. Yantis, 82 Wn.2d 754, 763, 513 P.2d 1023 (1973) 5
Pierce County Sheriff v. Civil Service Commission, 98 Wn.2d 690, 695, 658 P.2d 648 (1983)..... 5
Pool v. Omak, 36 Wn. App. 844, 678 P.2d 343 (1984)..... 6
Skinner v. Medina, 146 Wn. App. 171, 550, 188 P.3d 550 (2008)..... 1, 3, 9
Skinner v. Medina, 168 Wn.2d 845, 847, 232 P.3d 558 (2010)..... 1, 3, 8
St. Joseph Hospital and Health Care Center v. Department of Health, 125 Wn.2d 733, 887 P.2d 891 (1995)..... 5
Stastny v. Central Washington University, 32 Wn. App. 239, 647 P.2d 496 (1982)..... 9

Statutes

CR 11 6, 14
 RAP 2.4(b)..... 3, 14
 RCW 41.12.090 1, 2, 3, 7, 9, 14
 RCW 7.16.050 6

Other Authorities

2 Am Jur 2d § 575..... 6

A. ISSUE RAISED BY APPEAL

Whether or not a reversal and remand of the administrative appeal to the Civil Service Commission for new proceedings is the appropriate remedy when the record before the superior court is inadequate for the court to conduct a meaningful review of the proceedings below.

B. STATEMENT OF THE CASE

The appellant Roger Skinner (“Skinner”) petitioned the King County Superior Court for review of the decision of the Medina Civil Service Commission affirming the decision of the Medina City Manager to discharge Skinner from his employment in the Medina Police Department. *See Skinner v. Medina*, 168 Wn.2d 845, 847, 232 P.3d 558 (2010) and *Skinner v. Medina*, 146 Wn. App. 171, 550, 188 P.3d 550 (2008). In his briefing to the Superior Court, Skinner argued among other things that the verbatim transcript of the proceedings provided by the Commission was inadequate and failed to comply with the requirements of RCW 41.12.090. CP 5. A motion was filed by Skinner with the Superior Court seeking to strike the exhibits included in the record of proceedings provided by the Commission on the basis that the exhibits were not

admitted by the Commission.¹ The motion was denied by the Superior Court. See Appendix A hereto. The Superior Court, after reviewing the record of proceedings provided by the Commission, agreed with Skinner that the record was inadequate for judicial review and ordered a remand to the Commission for new proceedings as the appropriate remedy. CP 60-66. Skinner appeals this order. In its order of remand, the Superior Court included nine findings of fact in support of its decision that the record was inadequate for judicial review. CP 61-63.

C. SUMMARY OF ARGUMENT

Reversal and remand to the Commission for new proceedings is the appropriate remedy when the court determines it is unable to exercise informed judicial review of a decision of a local civil service commission. The court filing by the Commission of a complete transcription of its proceedings is a statutory prerequisite to judicial review under RCW 41.12.090. Since the statute neither authorizes or prohibits a remand if the required transcription is incomplete,² the Superior Court acted consistent with the statute and within its inherent authority by issuing an order of remand. Remand in such cases is also consistent with the common law

¹ The motion and order denying the motion are being added to the Clerk's papers at request of the City.

² RCW 41.12.090 does not address the appropriate remedy if the Commission fails to file a complete transcription.

{GAR838627.DOC;1\00093.130013\ }

and with the provisions of the Administrative Procedures Act. The APA gives a court reviewing an administrative decision covered by the act explicit authority to order a remand when the administrative record is inadequate. Although the APA does not directly apply to an appeal under RCW 41.12.090, it still needs to be considered. In *Skinner v. Medina*, 146 Wn. App. 171, *supra* at 175, this court stated that even if the Administrative Procedure Act does not directly apply, it is still instructive. Moreover, where RCW 41.12.090 is silent as to the appropriate remedy when the required transcription cannot be provided, it cannot fairly be said that an order of remand is inconsistent with the statute. *Skinner v. Medina*, 168 Wn.2d 845, *supra* at 851.

Additionally, all of Skinner's arguments not addressed by the Superior Court in order of remand would have required the court to review the hearing record in order to rule on the merits of the argument. The Superior Court had previously denied a motion by Skinner to strike or exclude certain exhibits from the hearing record. Skinner does not assign error to the earlier order or even reference the court's order denying his motion in his briefing. Since this order denying the motion to strike does not prejudicially affect the decision designated in the notice, the order does not fall within the scope of review on this appeal. RAP 2.4(b).

Sanctions, including reimbursement of attorney fees and costs of the City in opposing this appeal, should be imposed. Skinner and his counsel have acknowledged that the transcription is incomplete in their briefing. They cite to no authority in their briefing for the argument that the court is without authority to remand to the Commission for new proceedings, despite authority to the contrary. In their prior appeal Skinner and his counsel argued that the Administrative Procedures Act was to be considered even though an appeal under RCW 41.12.090 was not directly covered by the Act, but here they argue to the contrary even though the Supreme Court agreed with them in the prior appeal. Under these circumstances, this court should impose sanctions on Skinner and his counsel for initiating this appeal and making the arguments it has made in its opening brief. Sanctions should include reimbursement to the City of the attorney fees and costs it has incurred in this appeal.

D. ARGUMENT

1. A remand to the Commission for new proceedings is the appropriate remedy when the required administrative record is incomplete and deficient for judicial review.

In *Barrie v. Kitsap Cy.*, 84 Wn.2d 579, 527 P.2d 1377 (1974), our Supreme Court specifically held that any quasi-judicial decision for which a verbatim record of proceedings was not available must be reversed and

{GAR838627.DOC;1\00093.130013\ }

remanded for new proceedings. This holding was cited to and reaffirmed in *Pierce County Sheriff v. Civil Service Commission*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983), but distinguished because the missing portion of the record, unlike here, was not evidentiary in nature. Also cited to by the Supreme Court in the *Pierce County Sheriff* case at 698 is *Loveless v. Yantis*, 82 Wn.2d 754, 763, 513 P.2d 1023 (1973) (judicial review not possible “unless all the essential *evidentiary* material ... is in the record”). See also *St. Joseph Hospital and Health Care Center v. Department of Health*, 125 Wn.2d 733, 887 P.2d 891 (1995) where the court again reaffirmed that:

Once an agency has made a final decision, that decision normally can be changed only through the appellate process. To do otherwise would violate the principle of res judicata. See *Lejeune v. Clallam Cy.*, 64 Wn. App. 257, 823 P.2d 1144, review denied, 119 Wn.2d 1005 (1992). **When the appellate process results in a remand to an agency, the agency must begin again.** Whether the remand is the result of a settlement or a Supreme Court decision is immaterial. the agency must provide the same procedural safeguards required in the original action. (Emphasis added.)

See also, *Breach v. Board of Adjustment of Snohomish County*, 73 Wn.2d 343, 438 P.2d 617 (1968) and *Pool v. Omak*, 36 Wn. App. 844, 678

P.2d 343 (1984), where a remand for a new hearing was the remedy for an inadequate record for judicial review.

Our Washington case law is consistent with the general rule as stated in 2 Am Jur 2d § 575:

In the event that an appellate court finds itself unable to exercise informed judicial review of a decision of an administrative agency because of an inadequate administrative record, the appellate court may always remand the case to the agency for further consideration.

Skinner mistakenly cites to *Griffith v. City of Bellevue*, 130 Wn.2d 189, 197 (1996) as support for his position. The issue before the court in *Griffith* was whether a petition for a statutory writ of certiorari should be dismissed for lack of jurisdiction when the petition and affidavit are timely filed and served but the affidavit is not signed by the beneficially interested party as required by RCW 7.16.050. The Supreme Court decided that the appellant's offer to sign the verification promptly after the omission was called to his attention was sufficient to preserve the court's jurisdiction despite the language of RCW 7.16.050. The majority of the court determined that under CR 11 the purpose of the verification requirement is to assure the truthfulness of the pleadings and to discourage claims without merit and that purpose was accomplished by Griffith's

{GAR838627.DOC;1\00093.130013\}

willingness to sign the verification when the commission was called to his attention. The case has absolutely no relevance to the issue raised by this appeal, to wit: Whether the absence of explicit language in RCW 41.12.090 giving the Superior Court authority to remand a case back to a civil service commission for new proceedings prohibits a remand when the evidentiary record is inadequate for the court to perform judicial review of the evidentiary record.

Skinner can cite to no Washington precedent for his position.

Under the circumstances of this case, an order of remand was within the authority of the Superior Court and the appropriate remedy under Washington law.

2. The Order of Remand is not inconsistent with the legislative enactment in RCW 41.12.090.

The statute at issue, RCW 41.12.090, states in pertinent part as follows:

.... If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified

transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. **The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner:** PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. (emphasis added)

Under the statute, the filing of a complete record including a certified transcript is a prerequisite to judicial review. The specific language of the statute neither authorizes or prohibits a remand if the required transcription is incomplete. The statute is also silent as to the appropriate remedy when the required transcription cannot be provided, as here, due to failure of the recording system. Under such circumstances it cannot be fairly said that an order of remand is inconsistent with the statute. *See Skinner v. Medina*, 168 Wn.2d 845, *supra* at 851.

Skinner's arguments that the legislature did not intend for the Superior Court to have authority to order a remand and new proceedings
{GAR838627.DOC;1\00093.130013\}

before the Commission are inconsistent with Washington case law and inconsistent with the statutory interpretations given the statute by this court and by the Supreme Court on the earlier appeal.

Similarly inconsistent is Skinner's argument that the inclusion of specific language in the APA giving the reviewing court specific authority to remand the matter back to the administrative agency when the record is deficient demonstrates legislative intent not to allow a remand remedy in appeals under RCW 41.12.090³. His argument is inconsistent with his prior arguments in the earlier appeals and with the decisions of this court and the Supreme Court. Even though the APA does not directly apply to an appeal under RCW 41.12.090, its provisions are still instructive. *Skinner v. Medina*, 146 Wn. App. 171, *supra*, at 175.

A complete transcription was determined by the Superior Court to be essential to the performance of judicial review. This determination is entirely consistent with the statute and the role of a reviewing court. A court reviewing the decision of an administrative agency must apply the appropriate standard of review directly to the record of the administrative body. *Stastny v. Central Washington University*, 32 Wn. App. 239, 647

³ See SKINNER'S BRIEF ON APPEAL at pages 11-12.
{GAR838627.DOC;1\00093.130013\ }

P.2d 496 (1982). Without the complete record, a fair judicial review is not possible.

3. Skinner is not entitled to reversal of the Commission's decision and reinstatement when the record is inadequate for judicial review.

As noted by the Superior Court in the remand order, the court reporter's declaration makes clear that a complete transcription could not be provided the reviewing court due to gaps in the audio CD from which she was transcribing the proceedings. CP 90. The Superior Court's unchallenged nine findings of fact document the gaps in the recording. Thus, the Superior Court determined that a review on the merits was not possible and inappropriate (CP 94):

Where, as in the case before this court, one of the challenges is to the sufficiency of the evidence to support the Findings of Fact and Conclusions of Law of the Civil Service Commission and the decision to discharge Petitioner Skinner, it is important to have a complete and accurate record. It would be inappropriate for this court to speculate as to the importance of the missing testimony when such significant interests are at stake. The record before this court is inadequate for this court to conduct a meaningful review of the proceedings below.

Skinner argues without citation to any precedent for his position that his appeal must be sustained due to the inadequate record. This

{GAR838627.DOC;1\00093.130013\ }

position directly conflicts with *Barrie v. Kitsap Cy.*, *supra*, and the other authorities cited above providing that a remand for new proceedings from which an appealable record can be made, is the appropriate remedy.

Skinner's argument that "[M]unicipalities throughout the state will begin to not comply with the statute knowing that they will be allowed to impose an additional hearing on affected employees" makes no sense. There is no benefit to a municipality in having an incomplete hearing record preventing judicial review of a Commission decision affirming the discharge of an employee. A reversal and remand for a new proceeding that could produce a different outcome does not benefit the municipality.

There is no evidence of foul play or a deliberate effort to produce an inadequate record justifying an extraordinary remedy.

4. The Superior Court did not perform a judicial review on the merits, thus the gap in the transcription as to whether witness Brianna Beckley was sworn before testifying is irrelevant to this appeal.

Skinner spends several pages in his opening brief arguing that the testimony of Ms. Beckley should be excluded because there is no evidence that she was sworn in as were all the other witnesses.⁴ Since the Superior Court has ordered a remand for a new proceeding this argument is irrelevant. This issue was argued in the trial briefs filed with the Superior

⁴ See pages 17-18 of opening brief.
{GAR838627.DOC;1\00093.130013\}

Court. See CP 40-41 for City arguments supporting Ms. Beckley's sworn testimony and reference to a Declaration filed with the Superior Court attesting to fact that Ms. Beckley was sworn as a witness. Skinner does not dispute the accuracy of the declaration but objects to the declaration arguing that it inappropriately supplements the hearing record. The declaration does not add evidence going to the merits of the decision to discharge Skinner made by the City. The declaration only clarifies that a procedural due process requirement was met. However, since an incomplete record prevents judicial review of the record on the merits, the issue of whether or not the supplemental declaration should be considered by the Superior Court appears moot.

5. The Superior Court did not error in failing to address Skinner's argument that the Commission based its decision on allegations different from those put forth by the City as the basis for Skinner's termination in its order of remand.

Skinner argues in his opening brief that the Commission based its decision on allegation different from those put forth by the City in its decision to discharge Skinner. Opening Brief at 19-21. The City responded to these arguments in its Trial Brief to the Superior Court at CP 41-42 and would reassert those arguments here if this were an appeal on the merits of the Commission decision. However, as determined by the Superior Court, a review of the record for a decision on the merits of the

{GAR838627.DOC;1\00093.130013\ }

appeal could not be made due to the inadequate record. In light of the remand for a new proceeding, these arguments are moot.

6. Skinner's arguments that the record lacks sufficient evidence to support the termination of Skinner's employment is moot in light of the remand.

At pages 21-33 of his opening brief, Skinner argues that the record is insufficient to support the Commission's findings. He points to gaps in the hearing record, unadmitted exhibits that should be stricken from the hearing record, and failure of the City to follow its own rules. Again Skinner attempts to argue the merits of his case when the order being appealed is an order of remand for a new proceeding. These same arguments were made to the Superior Court and responded to by the City in its briefing at CP 33-45. The Superior Court determined that it could not decide the merits of the appeal without a complete transcription. If the record is inadequate for judicial review, a review on the merits of the appeal is inappropriate.

Skinner also fails to point out to the court that he filed an earlier motion with the Superior Court to strike the City's hearing exhibits from the record and that his motion was denied. See Appendix A hereto. He does not appeal the Order denying his motion to strike. Since the Order denying his motion to strike did not prejudice the entry of the remand

Order being appealed, the Order denying his motion to strike is not subject to review on this appeal. RAP 2.4(b).

7. Sanctions should be imposed under CR 11, including reimbursement of attorney fees.

This appeal is not warranted by existing law or even warrant a good faith argument that existing law should be modified. Skinner and his counsel should be sanctioned under CR 11, a copy of which is included as Appendix B hereto.

In attempting to discredit the Superior Court's order of remand, Skinner makes arguments on the statutory construction of RCW 41.12.090 contrary to arguments he made in the earlier appeal and contrary to the decision made by this court and the state Supreme Court in deciding the earlier appeal. He argues a very strict construction of RCW 41.12.090 that was rejected in the prior appeal. His arguments that the language of RCW 41.12.090 prohibits a remand for new proceedings and that the legislature intended that a remand not be remedy if the record is inadequate for judicial review are not made in good faith.

Sanctions should be imposed including an award of attorney fees to the City.

E. CONCLUSION

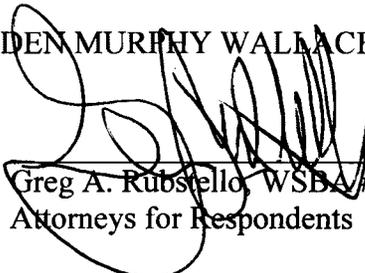
This appeal should be denied and the Superior Court's order of remand affirmed. Sanction should be imposed, including reimbursement of the City's attorney fees and other expenses on this appeal.

RESPECTFULLY SUBMITTED this 6th day of December, 2010.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By



Greg A. Rubstello, WSBA #6271
Attorneys for Respondents

APPENDIX A

{GAR838627.DOC;1\00093.130013\ }

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED
KING COUNTY WASHINGTON
JUL 13 2010
SUPERIOR COURT CLERK
BY DAWN TUBBS
DEPUTY

The Honorable Julie Spector
Trial Date: August 8, 2010

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

ROGER L. SKINNER,

Petitioner,

v.

CIVIL SERVICE COMMISSION of the City of
Medina, THE CITY OF MEDINA, a municipal
corporation, MEDINA POLICE DEPARTMENT,

Respondents.

NO. 06-2-33267-9 SEA

~~[PROPOSED]~~ ORDER DENYING
PETITIONER SKINNER'S MOTION TO
STRIKE CERTAIN EXHIBITS

This matter having come on for hearing on the motion of the Petitioner Roger L. Skinner to strike certain exhibits from the administrative record; and the court having reviewed the pleadings finds that the requested relief should to be Denied.

NOW, THEREFORE, IT IS HEREBY

ORDERED that:

- 1. The Petitioner's Motion to Strike Certain Exhibits is hereby DENIED.

Dated this 12th day of July, 2010.

ORIGINAL

Joan DuBucque

Judge,
King County Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:

OGDEN MURPHY WALLACE, P.L.L.C.

By: _____

Greg A. Rubstello, WSBA #6271
Attorneys for Respondents City of Medina and Medina Police Department

APPENDIX B

{GAR838627.DOC;1\00093.130013\}



[Courts Home](#) | [Court Rules](#)



[Search](#) | [Site Map](#) | [eService Center](#)

RULE CR 11
SIGNING OF PLEADINGS, MOTIONS, AND LEGAL
MEMORANDA: SANCTIONS

(a) 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 in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4)

the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

[Amended effective January 1, 1974; September 1, 1985; September 1, 1990; September 17, 1993; October 15, 2002; September 1, 2005.]

Click here to view in a PDF.

Courts | Organizations | News | Opinions | Rules | Forms | Directory | Library
Back to Top | Privacy and Disclaimer Notices

No. 66120-5-1

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

ROGER L. SKINNER

Appellant,

v.

CIVIL SERVICE COMMISSION of the City of Medina,
THE CITY OF MEDINA, a municipal corporation,
MEDINA POLICE DEPARTMENT,

Respondents.

DECLARATION OF SERVICE

Greg A. Rubstello, WSBA #6271
Attorneys for Respondents
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

2010 DEC -6 PM 4:50
RECEIVED
COURT OF APPEALS
DIVISION I

ORIGINAL

N. Kay Richards hereby makes the following declaration: I am now and was at all times material hereto over the age of 18 years. I am not a party to the above-entitled action and am competent to be a witness herein.

I certify that on December 6, 2010, I mailed copies, via postage-paid U.S. First Class Mail, of RESPONSE BRIEF BY RESPONDENTS CITY OF MEDINA AND THE MEDINA POLICE DEPARTMENT and this DECLARATION OF SERVICE to the following counsel:

William J. Murphy
Law Office of William J. Murphy
P.O. Box 4781
Rollingbay, WA 98061

P. Stephen DiJulio
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299

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

12/6/10 Seattle, WA
Date and Place

N. Kay Richards
N. Kay Richards