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NO. 67907-4

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

LORI S. HASKELL,

Appellant,

v.

BYERS & ANDERSON, INC. and LAUREL TERRY,

Respondents.

APPEAL FROM THE KING COUNTY
SUPERIOR COURT

(Cause No. 11-2-17775-1 SEA)

APPELLANT'S BRIEF

JANET L. RICE
Counsel for Appellant
SCHROETER, GOLDMARK & BENDER
810 Third Avenue, Suite 500
Seattle, Washington 98104
(206) 622-8000

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I. INTRODUCTION

Plaintiff/appellant Lori Haskell seeks reversal of the trial court's order granting defendants/appellees Byers & Anderson and Laurel Terry's motion for summary judgment and dismissing the case.

II. ASSIGNMENTS OF ERROR

A. The trial court erroneously held that defendants did not violate RCW 18.145.130, WAC 308-14-130, and did not act unprofessionally in violation of RCW 18.145.130.

B. The trial court erroneously held that there was insufficient evidence to support a private cause of action against defendants based on violation of the above statute and administrative regulation.

C. The trial court erroneously held that there was insufficient evidence to support a Consumer Protection Act claim.

D. The trial court erroneously held that there was insufficient evidence to support a claim for intentional interference in the plaintiff's business relationship to her client.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Did defendants violate the requirement to provide their services on "equal terms" to the parties when they did not provide the transcript to the plaintiff, a solo practitioner, on the same terms as they provided the transcript to the Farmer Insurance Company's attorney?

B. Is it a basis for a private cause of action against defendants when the defendants violated their professional obligations under RCW 18.145.130 and WAC 308-14-130?

C. Is it a basis for a Consumer Protection Act (RCW 19.86 et seq.) claim when defendants violated a statute and administrative code designed to protect the public?

D. Is there evidence of defendants' interference with the business relationship of the plaintiff with her client when defendants intentionally violated the regulations governing court reporters harming plaintiff's relationship with her client?

IV. STATEMENT OF THE CASE

A. Procedural History Of The Case.

On May 17, 2011, plaintiff Lori Haskell, a plaintiff personal injury attorney, filed a lawsuit against defendants Byers & Anderson, a court reporting service, and Laurel Terry, a court reporter. CP 1 and 7. Plaintiff claimed defendants violated RCW 18.145.130 and WAC 308-14-130(1), (7) and (12) pertaining to court reporters, the Consumer Protection Act, and intentionally interfered with the business relationship between Ms. Haskell and her client. CP 10. Defendants answered the complaint denying liability. CP 14.

On September 16, 2011, defendants moved for summary judgment, asking the Court to dismiss all claims against them. CP 20-169, 348-341. Plaintiff opposed the motion. CP 170-246. On October 14, 2011, the matter was heard before the Honorable Michael Heavey. RP 1-22. Judge Heavey granted the motion and dismissed the case. *Id.*; CP 441-443.

On November 9, 2011, the plaintiff appealed the case. CP 444-448.

B. The Facts Of The Case.

Ms. Haskell is a sole practitioner who represents plaintiffs. CP 194. Her practice focuses on personal injury and employment issues. *Id.* Ms. Haskell represented her client Susan Reiter in a claim for personal injuries resulting from an automobile accident. *Id.* In conjunction with the third party claim, Ms. Haskell notified Farmers Insurance Company (hereafter “Farmers”) of her client’s intent to bring an uninsured motorist claim against Farmers. CP 195. As a consequence, Farmers notified Ms. Haskell that it wanted to take the deposition of her client on April 29, 2011. *Id.*

Ms. Haskell and her client attended the deposition on April 29. At the beginning of the deposition, the defendant Laurel Terry, the court reporter, asked Ms. Haskell for her contact information and inquired whether she was in solo practice. *Id.* At the end of the deposition, the

Farmers lawyer asked for the deposition to be transcribed and Ms. Haskell requested a copy of the deposition transcript. *Id.* As Ms. Haskell started to leave, defendant Terry said, “You’ll have to sign this first and held up a paper on which were blanks for filling in credit card information. *Id.* Ms. Haskell asked why she needed to sign the form and defendant Terry stated, “Because you are a sole practitioner.” *Id.* Ms. Haskell stated she would not sign the form based on her status as a sole practitioner. *Id.* Credit card information was not requested from the Farmers’ attorney. CP 196. Ms. Haskell assumed she would receive an invoice for the deposition, pay the bill and get her client’s transcript. *Id.*

On or around May 10, 2011, Ms. Haskell received a letter dated May 5, 2011, stating the deposition transcript had been served upon the Farmers’ attorney. CP 196, 205. The letter stated that Ms. Haskell’s client had 30 days to review the transcript “at a convenient time and place for reading and signing”. CP 204. Ms. Haskell was surprised that she had neither received a copy of the transcript, as ordered at the deposition, nor had received a bill for a copy. CP 196. In fact, defendant Byers & Anderson had e-mailed the transcript to the Farmers’ attorney on May 4, 2011, the day before it sent the letter to Ms. Haskell. CP 228.

Ms. Haskell called defendant Byers & Anderson, the court reporting office that had dispatched defendant Terry to the deposition, and

that handled the financial arrangements for payment of the transcript. CP 196. Ms. Haskell asked for the copy of the transcript. *Id.* She was told by the billing manager that before she would be provided a copy of the transcript she had to “promise to pay” for it. *Id.* Ms. Haskell then asked for the amount that she had to promise to pay. *Id.* The billing manager had not prepared a bill and could not tell her the amount. *Id.*

Through discovery, it was learned that it is the practice of defendant Byers & Anderson to require solo practitioners to give their credit card information in writing at a deposition. CP 209-215.

So I am asking you all to [be] vigilant about sole practitioners with whom you have never worked who are ordering transcripts. Pay attention to whether they are plaintiffs (who will pay if they win, but not pay if they lose), whether it is obvious that the client has little or no money, whether it appears the attorney seems to have little or no money

CP 209 (memo from Jenni Anderson to her staff dated November 30, 2005) (emphasis added).

Effective immediately we will require a credit card from ALL sole practitioners with whom we do not already have an established financial relationship or the transcript will be sent COD. If sole practitioners call to schedule a deposition, the staff will procure a signed authorization form with a credit card number as a guarantee before the job begins.

CP 210 (memo from Jenni Anderson to her staff dated February 25, 2010) (emphasis added).

Attached is the Transcript Order Form for you to print out and take with [sic] to your jobs involving sole practitioners, small firms, etc., that will be paying in advance for transcripts.

In the past we have referred to these as “COD” folks, but now the policy has been changed to limiting the way these folks order transcripts to payment by credit card only. So we’ll change that to “Credit-Card-Only” folks.

If we schedule something for one of these folks, we will obtain their credit card information in advance

CP 215 (memo from Jenni Anderson to her staff dated March 26, 2010)

(emphasis added).

Other solo practitioners have been subjected to this unusual practice. CP 238-240, 241-243, 244-246.

....As a sole practitioner, I felt that I was being singled out...Following the deposition some company associated with Byers & Anderson, Veritext, kept calling asking me to fill out the form and I insisted that I was not going to as I was not certain that I would order the deposition. These calls continued on a regular basis. I recall that I needed the deposition, but I was so incensed by Byers’ actions that I refused to order the deposition....

CP 239 (Declaration of Patricia P. Skrinar, p. 2).

...I am a sole practitioner...I then received notice that my client’s transcript had been provided to opposing counsel who represented Safeco Insurance. I immediately called Byers & Anderson and told them that I wanted a copy and asked them why they would release it to the defense but not provide me the transcript...

Byers and Anderson refused to provide me a copy of my client's transcript. The court reporting service maintained that they would not provide me a copy until I gave them my credit card information. I refused....

CP 241-242 (Declaration of Crystal Grace Rutherford).

...I am a sole practitioner...At the end of the deposition, I reserved signature and when the defense ordered the transcript I ordered a copy. It was at that point, after the deposition was concluded that Ms. Terry told me that I needed to provide a credit card number in order to receive a copy of my client's transcript. I refused...

CP 244-245 (Declaration of Patricia Willner).

The practice of providing the deposition transcript to both attorneys at the same time is the customary and usual practice in the state.

CP 232-234, 235-237. Former President of the Washington Court Reporters Association Karen Larsen states that it is the standard of practice in Washington to give all parties the deposition transcript at the same time.

...The standard of practice in the state of Washington is that all parties are provided deposition transcripts at the same time....A court reporter is an officer of the court and is to remain neutral. Therefore, transcripts must be provided at the same time to all parties and the fees charged must be on equal terms. . . I have never heard of a court reporter or court reporting firm refusing to provide a transcript without credit card information...

CP 236 (Declaration of Karen L. Larsen, CCR).

Darr Cannon, a court reporter and former owner of Moburg and Associates, a court reporting firm, agrees that the standard of practice in

the state is to provide a deposition transcript to the parties at the same time.

...The standard of practice in the state of Washington is that all parties are provided deposition transcripts at the same time...This practice is codified in WAC 308-14-130(1), which states that certified court reporters shall “offer arrangements on a case concerning court reporting services or fees to all parties on equal terms”. ...

CP 233 (Declaration of Darr Cannon, CCR).

Defendants justify their unusual (and as later explained, illegal) practice because it “better ensure[s] payment for services provided.”

CP 22. Undoubtedly defendants have provided a transcript to a party and not been paid for it, however, the practice of providing the transcript at the same time to the attorneys ordering the transcript is the rule, not the exception. WAC 308-14-130(1).

When Ms. Haskell could neither get the bill nor the transcript, she filed this lawsuit and moved in ex parte for additional time for her client to review the transcript. CP 197. Ms. Haskell received the transcript on May 17, 2011, thirteen days after the Farmers attorney received the deposition transcript. *Id.* Defendant Byers & Anderson provided the transcript on the day that Ms. Haskell filed suit. *Id.*

On October 14, 2011, Judge Heavey found that, “The plaintiff’s lawyer, as a sole practitioner, was treated differently than the attorney for

Farmers.” RP 17. He ruled as a matter of law that court reporting agencies can exercise “reasonable business judgments” regarding the extension of credit to certain customers and not others and that such a practice does not violate WAC 308-14-130(1). RP 18. He granted the defendants summary judgment and dismissed the plaintiff’s case. CP 441.

V. SUMMARY OF ARGUMENT

Defendants violated the statute and administrative regulations governing court reporters when they failed to provide the deposition transcript to plaintiff on “equal terms” with the Farmers attorney. WAC 308-14-130(1). The defendants’ justification of “sound business practice” is not an exception to the standards of professional conduct established by the legislature. Plaintiff presented evidence supporting an implied cause of action based on violation of the statute and administrative regulations, a claim under the Consumer Protection Act and a claim for intentional interference with business relations. The trial court erred in granting defendants’ motion for summary judgment. The trial court’s decision should be reversed and the case remanded to the trial court.

VI. ARGUMENT

A. Standard Of Review.

A summary judgment order is reviewed de novo. *Sheikh v. Choe*, 156 Wn.2d 441, 128 P.3d 574 (2006). In determining whether there are

factual issues, the Court must construe the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Hertog v. City of Seattle*, 138 Wn.2d 265, 979 P.2d 400 (1999). In this case, the appellant/plaintiff Lori Haskell is the nonmoving party. Summary judgment is appropriate only if reasonable minds could reach only one conclusion after considering all of the evidence presented. *Hiatt v. Walker Chevrolet Co.*, 120 Wn.2d 57, 65-66, 837 P.2d 618 (1992).

B. Defendants Violated RCW 18.145.130 And WAC 308-14-130.

1. Defendants Did Not Provide Their Services To “All Parties On Equal Terms.”

The central issue in this case is whether defendants violated the statute and administrative regulations governing court reporters. RCW 18.145.130, part of the Court Reporting Practice Act, defines “unprofessional conduct” under the act.

The following conduct, acts, or conditions constitute unprofessional conduct for any certificate holder or applicant under the jurisdiction of this chapter:

....

(6) Violation of any state or federal statute or administrative rule regulating the profession....

RCW 18.145.130(6).

The Washington Administrative Code more fully defines what is “professional conduct”. WAC 308-14-130.

All certified court reporters (CCR) shall comply with the following professional standards except where differing standards are established by court or governmental agency. Failure to comply with the following standards is deemed unprofessional conduct. Certified court reporters shall:

(1) Offer arrangements on a case concerning court reporting services or fees to all parties on equal terms.

....

(7) Disclose conflicts, potential conflicts, or appearance of conflicts to all involved parties.

....

(12) Supply certified copies of transcripts to any involved party, upon appropriate request.

WAC 308-14-130.

If WAC 308-14-130 had defined the term “equal terms” then it would govern this action. *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 458, 832 P.2d 1303 (1992). In the absence of such a definition in the regulation itself, the words “equal terms” should be given their ordinary meaning, which may be determined by referring to a dictionary.¹ *Dahl-*

¹ CR 28(d) which incorporates the requirement of “equal terms” from the WAC does not define the term “equal terms” either:

(d) Equal Terms Required. Any arrangement concerning court reporting services or fees in a case shall be offered to all parties on equal terms. This rule applies to any arrangement or agreement between the person before whom a deposition is taken or a court reporting firm, consortium or other organization providing a court reporter, and any party or any person arranging or paying for court reporting services in the case, including any attorney, law firm, person or entity with a financial interest in the outcome of the litigation, or person or entity paying for court reporting services in the case.

Smyth, Inc. v. City of Walla Walla, 148 Wn.2d 835, 842-43, 64 P.3d 15 (2003).

According to Webster's Dictionary, the word "equal" is defined as "having the same rights, privileges, ability, rank, etc." Webster's New Twentieth Century Dictionary, Unabridged, p. 616 (1983) (other definitions of the word are less relevant to the context here). The word "terms" is defined as "conditions of a contract, agreement, sale, etc. that limit or define its scope or the action involved; as *terms* of payment, the *terms* of treaty." *Id.* at p. 1882 (italics in original). Combining these definitions, the two words "equal terms" means the parties are accorded the same rights and privileges in the contract or agreement. In this case, it would mean the parties are treated the same by defendants in the provision of the deposition transcript. That is, Ms. Haskell and the Farmers attorney should have been provided the transcript at the same time with the same requirements of payment.

The facts in this case are that the parties were not offered the deposition transcript on equal terms. Specifically:

- 1) The Farmers attorney was notified of the completion of the deposition by e-mail on May 4, 2011, and Ms. Haskell was notified of the completion of the deposition by letter sent May 5, 2011, which she did not receive until May 11, 2011.

2) The Farmers attorney was sent the deposition transcript by e-mail, without paying for it, on May 4th. Ms. Haskell was not provided the deposition transcript by e-mail on May 4th rather she was informed by letter seven days later that she would not be sent the transcript and her client would have to go to the court reporter's office to review it. CP 204. Further, she was denied a copy of the transcript because she had not provided credit card information and did not otherwise promise to pay for it, even though she was not told the cost of the transcript.

3) Ms. Haskell falls within a group of solo practitioners who defendants require to provide credit card information before receiving a deposition transcript. Non solo practitioners such as the Farmers attorney are not required to provide credit card information prior to receiving a deposition transcript.

The defendants' practice of providing one attorney with a transcript immediately and the other attorney with notice of the transcript by mail, and only providing a copy upon presentation of a "blank check" (the equivalent of giving credit card information without notice of the amount owed) is neither authorized by statute nor the standard of practice in the state. Karen Larsen, past President of the Washington Court Reporters Association, and Darr Cannon, a practicing court reporter since

1970, both confirm that the standard of practice in the state is to provide the deposition transcripts to all parties at the same time. CP 236, 233.

Based on the ordinary meaning of the word “equal terms”, the defendants violated WAC 308-14-130(1) and (12). Defendants also violated section 7 of WAC 308-14-130 by failing to disclose an arrangement that they had with the Farmers attorney to send the transcript via e-mail to the Farmers attorney. This arrangement represented a conflict or, at a minimum, an appearance of a conflict, that affected defendants’ treatment of plaintiff. Treating the parties equally is of supreme importance in maintaining the impartiality of the court reporter and the appearance of fairness in the litigation process. Treating plaintiff as a second-class litigant denigrates the principle of “equal justice before the law.”² The defendants’ actions also violated the standard of practice of court reporters in the state.

Defendants argued before the trial court that it is a reasonable business practice to ask solo practitioners to provide credit card information. CP 22. They also argued that not all solo practitioners are asked for this information. *Id.* The evidence is that only solo practitioners

² This phrase is displayed on the western pediment of the U.S. Supreme Court building.

are required to sign a “transcript order form” - the request for credit card billing information. CP 118 (form), 209.

...So I am asking you all to vigilant [sic] about sole practitioners with whom you have never worked who are ordering transcripts. Pay attention to whether they are plaintiffs (who will pay if they win, but not pay if they lose), whether it is obvious that the client has little or no money, whether it appears the attorney seems to have little or no money, and any other clues that perhaps you will not get paid....

CP 209; *also see* CP 210, 212, 214, 217.

The evidence is also that Ms. Haskell was asked for credit card information because she was a solo practitioner.

Laurel just worked with a Lori Haskell out of Seattle, a solo gal. She wasn't marked CCO in the calendar or anything but Laurel tried to have her sign a form at the dep for her copy cuz she was solo. The attorney had questioned why she had to fill it out and just wanted to be billed so Laurel didn't push it. Looks like we've billed her a handful of times in the last few years, average pay w/in 6 weeks. She does want a copy of the recent transcript...think I'm ok to just call and explain 30 day payment policy or should we get prepayment?

CP 217 (emphasis added).

Defendants' justification of their treatment of Ms. Haskell and solo practitioners on the basis of reasonable business practice is an admission that they dealt with her on unequal terms than they did the Farmers attorney. Defendants obviously believe that the rules governing the professional conduct of court reporters allow for exceptions to these rules,

and one of the exceptions is the rules may be flouted if reasonable business practice would so dictate. Certainly, reasonable business practice often runs contrary to the requirements of professional conduct in a profession for which high standards are required. An example is an attorney would be reasonable, from a business perspective, in withholding the client file from the client until he paid his bill. However, professional standards require the attorney to forfeit the file when the attorney is discharged regardless of whether the attorney's bill has been paid. RPC 1.16, comment 9. In like manner, reasonable business practice for a court reporter may be to withhold the transcript from an attorney who "seems to have little or no money" until the attorney presents a credit card. CP 209. However, such a practice violates the standards of the profession.³

Setting aside defendants' characterization of their practices, their practices violate the professional conduct standards established by law. If defendants' logic were to prevail in this instance, any professional doing business in the state could avoid the dictates of "professional conduct" on the basis that it is "sound business practice". CP 23. It is undoubtedly more economical to follow certain business practices than comply with

³ Defendant's argument before the trial court that their policy of requiring credit card information is justified because it is based on the lack of "an established positive credit history" of the attorney is just another way to argue that they were reasonable in treating plaintiff differently from the Farmers attorney. Such arguments fail in light of the professional standards required of court reporters.

professional standards. However, in the case of court reporters, such practices distort the administration of justice (of which the court reporters are a part) and call into question the impartiality and appearance of fairness required of officers of the court. Further, it gives defendants a distinct economical advantage over other court reporters who are following the requirements of the regulations and complying with the standard of practice for court reporters in the state.

2. The Trial Court Agreed That Plaintiff Had Been Treated Differently Than The Farmers Attorney.

The trial court agreed that Ms. Haskell was treated differently from the Farmers attorney.

...I look to see if there are genuine issues of material fact, and I don't think there are any genuine issues. The plaintiff's lawyer, as a sole practitioner, was treated differently than the attorney for Farmers....

RP 17.

Even though the trial court found that the lawyers were treated differently, he did not find defendants had violated the Washington Administrative Code. RP 18. He found that a "court reporter agency exercising reasonable business judgments regarding the extension of credit to customers" is not a violation of WAC 308-14-130. RP 18. The trial court's findings of fact and legal conclusion are in conflict. The trial court

erroneously concluded that “reasonable business judgments” can trump professional standards of conduct required by the legislature.

The trial court’s legal conclusion that plaintiff had no claim is better explained by its statement that it did not find that the defendants’ actions were a basis on which a lawsuit can be brought.

Life is a contact sport. We all get injured. We all get hurt. Our self-esteem gets hurt. It doesn’t mean every injury is a lawsuit.

CP 18.

The trial court was wrong when it concluded that plaintiff had no basis to bring her lawsuit. The facts in the case support claims of an implied cause of action based on violation of the statute and WAC, a violation of the Consumer Protection Act (RCW 19.86), and intentional interference with business relations.

C. The Statute Governing Court Reporters Includes An Implied Cause Of Action.

Washington courts have long recognized that an act of the legislature may give rise to a private right of action. *Bennett v. Hardy*, 113 Wn.2d 912, 919-20, 784 P.2d 1258 (1990) (holding that older workers had an implied cause of action under statute that made it an unfair practice for employer to discriminate on the basis of age). Courts may imply a cause of action from a statutory provision that creates a *right* or an *obligation* without providing a corresponding remedy. *Id.*; *see also*

Cameron v. Neon Sky, Inc., 41 Wn. App. 219, 703 P.2d 315 (1985) (holding that employee had implied cause of action under statute that makes it unlawful for employer to withhold or divert an employee's wages); *Tyner v. State Dept. of Social and Health Services, Child Protective Services* *Dep't of Social & Health Serv.*, 141 Wn.2d 68, 82, 1 P.3d 1148 (2000) (holding that parent harmed by negligent investigation into child abuse had implied cause of action under statute that imposed duty on State to conduct child abuse investigations with care). As Justice Brachtenbach noted, dissenting, in *McNeal v. Allen*, it was a principle of English common law as far back as 1703 that:

[W]here-ever a statute enacts anything, or prohibits anything, for the advantage of any person, that person shall have the remedy to recover the advantage given him, or to have satisfaction for the injury done him contrary to law by the same statute, for it would be a fine thing to make a law by which one has a right, but no remedy but in equity....

McNeal v. Allen, 95 Wn.2d 265, 274, 621 P.2d 1285 (1980) (quoting *Anonymous*, 87 Eng. Rep. 791 (1703)); *see also Bennett*, 113 Wn.2d at 919-20 (quoting *McNeal*, 95 Wn.2d at 277 (Brachtenbach, J., dissenting)).

The following three factors guide the Court's analysis:

- (1) whether the plaintiff is within the class for whose "especial" benefit the statute was enacted;
- (2) whether legislative intent, explicitly or implicitly, supports creating a remedy;

(3) whether implying a remedy is consistent with the underlying purpose of the legislation.

Bennett, 113 Wn.2d at 920-21 (citing *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed. 2d 26 (1975) and *In re Washington Public Power Supply System Securities Litigation*, 823 F.2d 1349, 1353 (9th Cir. 1987)).

1. The Legislature Enacted The Unprofessional Conduct Statute to Protect Attorneys And Their Clients.

The first factor of the three-part test queries whether attorneys are within the class of persons for whom the statute was enacted. The main users of court reporters' services are attorneys and their clients. As expected, CR 28(d) requires that the "equal terms" for arrangements for court reporting services apply to any party or person arranging or paying for court reporting services "including any attorney, law firm..." *Id.* Attorneys are the biggest users of court reporters' services and are included within the public for which the statute was passed. *See* RCW 18.145.005 ("to protect the public safety and well-being").

2. Legislative Intent Supports Creating A Cause Of Action.

The second factor in the analysis looks to whether legislative intent supports creating a cause of action. This court "can assume that the legislature is aware of the doctrine of implied statutory causes of action," even where the statute is silent as to civil remedies. *Bennett*, 113 Wn.2d at 919 (quoting *McNeal v. Allen*, 95 Wn.2d 265, 277, 621 P.2d 1285 (1980)

(Brachtenbach, J., dissenting)). When the purposes of a statute are consistent with an implied cause of action, the court will recognize an implied cause of action. *Beggs v. State, Dept of Soc. & Health Services*, 171 Wn.2d 69, 247 P.3d 421 (2011)(finding mandatory reporter statute implied a cause of action against a mandatory reporter who failed to report suspected child abuse); *Tyner, supra* (state's statutory duty of care in investigation owed to children extended to parent suspected of abuse and a private cause of action could be implied from statutory language); *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 850, 50 P.3d 256 (2002) (Employer's failure to give employees 10-minute rest break while working overtime, in violation of regulation prohibiting employers from working employees more than three hours without a paid 10-minute rest period, gave rise to implied private cause of action for unpaid wages under industrial welfare statutes).

This Court in *Wingert, supra*, stated that creation of a right by the legislature creates the assumption that citizens can enforce the right.

[W]e may rely on the assumption that the Department of Labor and Industries, through the delegated authority of the Legislature, would not create a right to regular, periodic rest periods if it did not intend for employees to be able to enforce that right....

Wingert, 104 Wn. App. at 591-92 (2001).

Likewise, it should be assumed that the Department of Licensing, through its delegated authority, would not have created a right to equal treatment by users of court reporting services if it were not expected that a user (here, an attorney) would be permitted to invoke the right.

3. An Attorney’s Enforcement Of The Law Is Consistent With the Underlying Purpose Of The Legislation

The third factor considers whether a private right of action is consistent with the underlying purpose of the legislation. Attorneys and their clients are the “public” who were intended to be protected under the law. Their enforcement of the law is consistent with the underlying purpose of the law – to ensure that professional standards of conduct are met by court reporters.

With these three factors for implying a cause of action met, plaintiff established her cause of action based on violation of RCW 18.145.30 and WAC 308-14-130.

D. Defendants Violated The Consumer Protection Act.

The facts also support plaintiff’s claim that the defendants violated the Consumer Protection Act (hereafter “CPA”), RCW 19.86 et seq. CP 3. Division 2 has held that court reporting services are not exempt from the protections of the CPA. *Singleton v. Naegeli Reporting Corp.*, 142 Wn. App. 598, 175 P.3d 594 (2008). Each of the elements of a CPA claim are met here.

1. Defendants Actions Were Unfair Acts Or Practices In Trade Or Commerce Which Affect The Public Interest.

In bringing a CPA claim, a plaintiff must establish five elements under the CPA: 1) an unfair or deceptive act or practice; 2) in trade or commerce; 3) which affects the public interest; 4) which injures plaintiff in her business or property; and 5) there is a causal link between the unfair or deceptive act complained of and the injury suffered. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785-86, 719 P.2d 531 (1986). Each of these elements is supported by the evidence in this case.

To establish the first element of her CPA claim, plaintiff may rely on the violation by defendants of the statute and administrative rule establishing professional conduct. *Hangman Ridge*, 105 Wn.2d at 786, citing *State v. Reader's Digest Ass'n, Inc.*, 81 Wn.2d 259, 501 P.2d 290 (1972), *appeal dismissed*, 411 U.S. 945, 93 S.Ct. 1927, 36 L. Ed. 2d 406 (1973) (“What is illegal and against public policy is per se an unfair trade practice” at 270); *Salois v. Mutual of Omaha Ins. Co.*, 90 Wn.2d 355, 359, 581 P.2d 1349 (1978) (violation of statute requiring good faith and fair dealing establishes first element of CPA); *Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 755, 87 P.3d 774 (2004) (first

element of CPA claim can be established by violation of WAC 284-30-330 – the definition of insurance unfair claims settlement practices).

[T]hese two elements (act or practice occurring in the conduct of trade) may be established by a showing that the alleged act constitutes a per se unfair trade practice. A per se unfair trade practice exists when a statute which has been declared by the Legislature to constitute an unfair or deceptive act in trade or commerce has been violated.

Hangman Ridge, 105 Wn.2d at 786.

The third element (affects public interest) is established because the unfair practice is an established policy on which defendants regularly rely in charging and collecting their fees from solo practitioners, a substantial portion of the plaintiffs bar. By definition, the violation of the statute affects the “public safety and well-being.” RCW 18.145.005.

2. Defendants’ Actions Harmed Plaintiff In Her Business.

The fourth and fifth elements of a CPA claim are met here. As a consequence of defendants’ refusal to provide Ms. Haskell with the deposition transcript on May 4th, Ms. Haskell spent at least 30 hours of her time in a frantic attempt to obtain a copy of the deposition transcript so that she could provide it to her client for her review within 30 days of the issuance of the deposition transcript. CP 199. Typically, receipt of a deposition transcript is a ministerial function that requires no time. In this case, Ms. Haskell had contacted the defendants on multiple occasions and even requested that the state of Washington intervene. CP 196-197.

Ms. Haskell researched the law and advised the defendants that she was legally entitled to the transcript. CP 201-202. Finally, she was forced to file a lawsuit to obtain the transcript. CP 197. Such an expenditure of time has been found to satisfy the injury requirement. *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 564, 825 P.2d 714 (1992). Costs and time devoted to investigating the effect of an unfair act are sufficient evidence to establish injury under the CPA. *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 470, 962 P.2d 854 (1998)(“State Farm incurred expenses for experts, interpreters, transcribers, attorneys and its own employees during its investigation...evidence [that] supports violation of the CPA...”).

3. Defendants Did Not Dispute That Violation of the Court Reporting Statutes And Regulations Is An Unfair Practice.

In their summary judgment motion, defendants argued that their actions did not violate the CPA because they were entitled to use their “business discretion to decline credit to any sole practitioners.” CP 39. They did not argue that violation of the regulations governing them would not constitute a violation of the CPA. Nor could they. The Legislature saw fit to regulate the practice of court reporting “to protect the public safety and well-being”. RCW 18.145.005. The Legislature defined what constituted professional conduct among court reporters and prohibited the

“violation of any state or federal statute or administrative rule regulating the profession.” RCW 18.145.130(6). Thus, the only issue here is whether defendants violated the statute and regulation governing them. If so, a CPA claim is legally sustainable in this case.

E. Defendants Intentionally Interfered In Ms. Haskell’s Business Relationship With Her Client.

The third claim brought by Ms. Haskell against the defendants is that they intentionally interfered in Ms. Haskell’s relationship with her client. Evidence of each of the elements of the claim were submitted by Ms. Haskell to the trial court.

1. The Five Elements Of The Tort Of Interference With A Business Relationship Are Met Here.

The elements of the tort of interference with a business relationship are: 1) the existence of a valid contractual relationship or business expectancy; 2) defendants had knowledge of that relationship; 3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; 4) defendants interfered for an improper purpose or used improper means; and 5) damage resulted there from. *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 157, 930 P.2d 288 (1997).

The evidence in this case is that Ms. Haskell was acting as her client’s attorney and therefore a contractual agreement existed between

them. The defendants were aware of this relationship. The defendants treated Ms. Haskell in a way that impugned her integrity and credit worthiness. Ms. Haskell was forced to relay to her client that the defendants would not provide the deposition transcript and that her client would have to drive into downtown Seattle and review it at defendants' office. The client knew that this was not the usual practice based on the fact that Ms. Haskell was asked at the deposition to provide credit card information and Ms. Haskell had to explain why the deposition transcript would not be provided to her for review in her own home. Based on years of experience in this field, the defendants knew or should have known that their actions would negatively impact Ms. Haskell's relationship with her client by forcing the client to drive to the court reporters' office. The defendants improperly put this pressure on Ms. Haskell and her client in order to obtain credit card information. As a consequence, Ms. Haskell's client has not pursued her UIM claim against Farmers. CP 188.

2. The Defendants' Actions, In Violation Of The Law, Were Intended To Put Pressure On Ms. Haskell In Order To Obtain Payment For The Deposition Transcript On Unequal Terms From The Terms Imposed On The Farmers Attorneys.

The defendants' actions, using the tactic of withholding the deposition transcript and treating Ms. Haskell differently from the Farmers attorney, were intended to strain the relationship between Ms. Haskell and

her client for the purpose of forcing Ms. Haskell to give her credit card information to defendants.

Defendant disputed this claim in the trial court on the basis that it did not act wrongfully in providing the transcript to plaintiff. CP 41. As explained above, plaintiff has provided sufficient evidence on the five elements of the claim of intentional interference with business relations.

F. Plaintiff Requests Attorney Fees In The Event She Prevails On Appeal.

Plaintiff requests attorney fees pursuant to RCW 19.86.090. Under the Consumer Protection Act, the prevailing party is entitled to attorney fees. *Id.*; *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983) (fees awarded on appeal of summary judgment ruling).

VII. CONCLUSION

The trial court erred in concluding that defendants did not violate RCW 18.145.130 and WAC 308-14-130(1), (7), and (12). Further, the trial court erred in holding that there was insufficient evidence to support plaintiff's claims of violation of the statute and administrative claim, Consumer Protection Act, and intentional interference in business

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relations. Viewing the evidence in the light most favorable to the plaintiff,
the motion for summary judgment should have been denied.

RESPECTFULLY SUBMITTED this 23 day of March, 2012.

SCHROETER, GOLDMARK & BENDER



JANET L. RICE, WSBA #9386
Counsel for Appellants
810 Third Avenue, Suite 500
Seattle, Washington 98104
(206) 622-8000