

No. 35519-1-II

COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON

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EDGECOMB, on behalf of Columbia Community Credit Union, and  
CATHRYN CHUDY, EMMY WINTERBURN, AND KATHRYN  
EDGECOMB, as individuals,

Appellants,

vs.

DUANE BEQUETTE, STEVE STRAUB, JOHN CHEEK, MARK AIL,  
ROBERT BYRD, AND PARKER CANN,

Respondents

and

COLUMBIA COMMUNITY CREDIT UNION,

Intervenor-Respondent.

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BRIEF OF RESPONDENTS  
AND MOTION TO MODIFY COMMISSIONER'S RULING

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## I. INTRODUCTION AND OVERVIEW

Defendants and respondents in this action are three current and two former directors (the “director defendants”) of Columbia Community Credit Union (“Columbia”) and Columbia’s Chief Executive Officer (the “CEO”), J. Parker Cann. Columbia is an intervenor-defendant in the action.<sup>1</sup> Appellants are two former directors of Columbia (the “director plaintiffs”). At the time they commenced the action (which consists *solely* of claims for declaratory and injunctive relief pertaining to their status as directors) and when they filed this appeal, director plaintiffs were members of Columbia’s Board of Directors (“Board”) and members of Columbia. Since November 15, 2006, however, director plaintiffs are no longer directors or members of Columbia.<sup>2</sup> And since the Annual Meeting of Columbia on December 28, 2006, the Board of Columbia has changed such that it is completely reconstituted, and the director defendants no longer compose the majority of the Board.<sup>3</sup>

These fundamental changes in the status of the parties render this case moot. As detailed below, the gravamen of director plaintiffs’

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<sup>1</sup> Included in the Appendix is a copy of the superior court’s order granting Columbia’s motion to intervene in this action.

<sup>2</sup> See Declaration of J. Parker Cann in Support of Respondents’ Motion to Dismiss (“Cann Decl.”), ¶ 4. For the Court’s convenience, a copy of this declaration is attached in the Appendix.

<sup>3</sup> Cann Decl., ¶¶ 7-8.

complaint and the relief they sought was inextricably tied not only to their director status but also to the contention that director defendants controlled the Board of Columbia. Because of the change in the status of the parties, any decision on the merits of the appeal would constitute merely an advisory opinion that would have no bearing on any of the parties or their current legal relationship. Accordingly, in addition to responding to the director plaintiffs' opening brief, the director defendants, CEO, and Columbia move to modify the commissioner's ruling denying their motion to dismiss this appeal on mootness grounds. Pursuant to RAP 10.4(d) and 17.4(d), respondents include the motion to modify in their brief on the merits below because if the motion is granted, it will preclude hearing the case on the merits.

Though this court should dismiss the appeal as moot, if it does not, it should affirm dismissal of the complaint. As correctly found by the superior court, director plaintiffs failed to allege any basis under either the Washington State Credit Union Act (the "WSCUA") or case law to establish a right of action by director plaintiffs against their fellow directors and the CEO. The director plaintiffs failed to allege that the director defendants acted wrongfully in making the decisions that the director plaintiffs protest or that the CEO acted wrongfully in abiding by

the decisions of the Board. At best, director plaintiffs alleged only that their fellow directors made decisions with which director plaintiffs disagree. Under settled legal principles, the court has no role to play in refereeing disputes in a credit union boardroom; rather, to the extent credit union directors may act in a manner that is contrary to law and the best interests of the credit union, the Washington Department of Financial Institutions (“DFI”) is charged with ensuring compliance with law. Indeed, DFI is empowered to attend credit union board meetings. RCW 31.12.633. This regulatory overlay, which has no counterpart in the corporate context, cautions against wholesale incorporation of corporate law principles as urged by director plaintiffs.

In short, this case is either moot or correctly decided for the reasons set forth below.

## **II. MOTION TO MODIFY COMMISSIONER’S RULING**

### **A. Identity of Moving Party**

The director defendants, CEO, and Columbia (collectively, “respondents”) seek the relief designated in part B.

### **B. Statement of Relief Sought**

Pursuant to RAP 17.7, respondents move to modify the ruling of the Commissioner filed on February 22, 2007. The ruling denied

Respondents' Motion to Dismiss the appeal on mootness grounds. Because the director plaintiffs are no longer directors (or members) of Columbia and because their complaint is inextricably tied to their former director status, this court should grant the respondents' motion to dismiss.

**C. Facts Relevant to Motion**

Columbia is a credit union organized as a nonprofit corporation under the WSCUA, Chapter 31.12 RCW. See Cann Decl., ¶ 2. Columbia's Board consists of nine individuals. Cann Decl., ¶ 2 and Ex. 1.

Director plaintiffs filed their complaint in July 2005. CP 5. At that time, the director plaintiffs were serving on Columbia's Board, as were all five of the director defendants. Cann Decl., ¶ 3.

The superior court ruled that director plaintiffs failed to state a claim upon which relief could be granted and dismissed their complaint on September 29, 2006. CP 40-43. Director plaintiffs Cathryn Chudy and Kathryn Edgecomb filed this appeal on October 30, 2006. CP 44. Plaintiff Emmy Winterburn did not join in the appeal. CP 44.

On October 16, 2006, pursuant to RCW 31.12.285, Columbia's Board suspended Chudy and Edgecomb from their director positions and scheduled a special membership meeting to consider removal of Chudy and Edgecomb as directors and their expulsion from membership in

Columbia. Cann Decl., ¶ 4. Thereafter, on November 15, 2006, at the special meeting, Columbia's members voted to remove Chudy and Edgecomb from their positions as directors on Columbia's Board. Cann Decl., ¶ 4. That same day, Columbia's members expelled Chudy and Edgecomb from membership in the Credit Union. Cann Decl., ¶ 4. Winterburn resigned from Columbia's Board on November 15, 2006. Cann Decl., ¶ 5.

On December 28, 2006, Columbia held its 2006 Annual Meeting, at which time six new directors were elected to fill open positions on Columbia's Board. Cann Decl., ¶¶ 6-7. At the Annual Meeting, director defendant John Cheek was re-elected to another term. Cann Decl., ¶ 7. Director defendants Mark Ail and Robert Byrd, whose terms expired at the 2006 Annual Meeting, did not seek re-election and are no longer serving on Columbia's Board. Cann Decl., ¶ 7. Thus, of the eight individuals who were parties to the action at the trial-court level and were Columbia's directors at the time the action commenced, only three are currently serving on Columbia's Board: director defendants Duane Bequette, John Cheek, and Steve Straub. Cann Decl., ¶ 8.

**D. Grounds for Relief and Argument**

1. Director plaintiffs are no longer directors or members of Columbia, and their action is moot.

This appeal is moot. In their complaint, director plaintiffs alleged that the director defendants controlled Columbia's Board and its records, that the director defendants and the CEO denied director plaintiffs access to Columbia's records, and that the director defendants excluded them from Board and committee meetings and prohibited them from registering their objections in Board meeting minutes. CP 1-3. Director plaintiffs further alleged that these actions by the director defendants and CEO prevented them from fulfilling their fiduciary duties *as directors* under RCW 31.12.267 and from exercising the duties and powers *as directors* set forth in RCW 31.12.255. CP 3. Director plaintiffs sought: (a) a declaration that *as directors* they may examine and copy all of Columbia's corporate records; (b) a declaration that *as directors* they are entitled to attend the entirety of all of Columbia's Board and committee meetings; (c) a declaration that they are entitled to register any objections in the director meeting minutes; (d) a declaration that the meeting minutes of Columbia's Board and committees must reflect the views of all directors;

and (e) an injunction preventing the director defendants and CEO from denying director plaintiffs any of the foregoing. CP 4-5.

As is evident from their allegations and requested relief, director plaintiffs' action is inextricably tied to their status as directors—a status that no longer exists. And just as importantly, director plaintiffs' action is directed at a five-member Board majority that *no longer exists*. As explained above, Ail and Byrd did not seek re-election at Columbia's Annual Meeting and are no longer directors.

Moreover, the director plaintiffs themselves are not only no longer members of Columbia's Board, but also they are no longer members of Columbia itself. Under no circumstances do director plaintiffs have a right to examine or copy any of Columbia's records, attend Board or committee meetings, or register objections in meeting minutes. Director plaintiffs have, in other words, no right to any of the relief sought in their complaint, even if they had meritorious claims.

In sum, the director plaintiffs, who are no longer directors, seek equitable relief from the superior court concerning decisions<sup>4</sup> once made

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<sup>4</sup> The director plaintiffs' counsel himself characterizes this action on his Web site as one involving the "minority directors" against the "majority directors," which only further highlights the mootness of the action. See <http://doug2.com/saveccu/>. The "minority" and the "majority" no longer

by a board of directors that no longer exists and will never exist. And director plaintiffs seek no relief from Columbia at all. Accordingly, the action is moot and should be dismissed. See Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984) (“A case is moot if a court can no longer provide effective relief.”); Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972) (the general rule is that, “where only moot questions or abstract propositions are involved, or where the substantial questions involved in the trial court no longer exist, the appeal . . . should be dismissed.”).

2. Director plaintiffs’ asserted grounds for continuing this appeal are plainly insufficient.

In their opposition to Respondents’ Motion to Dismiss, director plaintiffs asserted four grounds in support of continuing this appeal: (a) they intend to challenge the legality of their removal from the Board in a separate action pending in Thurston County Superior Court; (b) their “claim” for indemnity is not moot; (c) this court may provide “effective relief” by cleansing their records of the “stigma” associated with a civil 12(b)(6) order of dismissal; and (d) the public-interest exception to the mootness rule applies to this private dispute. Because the

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exist. There is no relief that can be provided to director plaintiffs on these facts.

commissioner's ruling states only that the "motion to dismiss is denied," it is unclear upon which of director plaintiffs' asserted grounds for continuing their appeal, if any, Commissioner Skerlec based her ruling. Regardless, each of the grounds advanced by director plaintiffs in support of continuing this appeal is insufficient and the appeal should be dismissed.

a. **Director plaintiffs' challenge to the legality of their removal from office in another action does not impact the mootness of this action.**

In their opposition to Respondents' Motion to Dismiss, director plaintiffs argued that this action is not moot because they intend to amend their complaint in Thurston County Superior Court (the "Thurston County Action") to challenge the legality of their removal from Columbia's Board. Appellants' Response at 7-8. But *even if* director plaintiffs are permitted to amend their complaint in the Thurston County Action to challenge the legality of their removal from office and *even if* they ultimately prevail in such a challenge, this case will still be moot.

As explained above, Ail and Byrd, two of the five director defendants, *are no longer directors*. Cann Decl., ¶ 7. Further, two other directors serving on Columbia's Board at the time director plaintiffs

commenced this action, Ralph Erdmann and Emmy Winterburn,<sup>5</sup> *are also no longer directors*. Cann Decl., ¶ 5. And on December 28, 2006, Columbia’s members elected *six entirely new directors* to the Board. Cann Decl., ¶ 7. Thus, even if director plaintiffs ultimately prevail in the Thurston County Action (and could be legally reinstated as directors, even though they did not seek to enjoin or otherwise challenge Columbia’s December 28, 2006, Annual Meeting),<sup>6</sup> they will be members of a different Board—a Board that may have a position on these issues that is different from that of the director defendants. Because the complaint is based upon the composition of Columbia’s Board as it existed on July 3, 2006, it is moot, no matter what happens in the Thurston County Action.

b. **Any “indemnity claim” is moot.**

Director plaintiffs argued that their “claim” to indemnification survives. Appellants’ Response at 8. But in the trial court, director plaintiffs characterized their complaint as one seeking declaratory relief as to their rights as directors vis-à-vis other directors, not as a complaint for “indemnity.” CP 22. But in any event, any indemnity “claim” is also moot. Director plaintiffs asked in their prayer for relief that the superior

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<sup>5</sup> Emmy Winterburn was a named plaintiff in the trial-court action but did not participate in this appeal. CP 44.

<sup>6</sup> Supplemental Declaration of J. Parker Cann in Support of Respondents’ Motion to Dismiss, ¶ 2.

court order “Defendants to cause [Columbia] to indemnify Plaintiff Directors . . . .” CP 5. Ail and Byrd are no longer directors and thus cannot “cause” Columbia to do anything, let alone indemnify the director plaintiffs. Nor can the other director defendants, who are merely three members of a new nine-person Board.

c. **There is no “effective relief” to be provided.**

Director plaintiffs also argued that the appeal is not moot because the court may be able to provide effective relief in the form of “a public cleansing of a party’s reputation caused by stigmatizing and erroneous court orders.” Appellants’ Response at 8. But in the cases they cite, the “cleansing” was connected not to an order dismissing an action under CR 12(b)(6), but instead to an order, which because of its substance (anti-harassment order and an order of contempt), gave rise to an alleged stigma. See Hough v. Stockbridge, 113 Wn. App. 532, 54 P.3d 192 (2002), rev’d in part on other grounds by 150 Wn.2d 234 (2003) (cleansing of record connected to an anti-harassment order); State v. Turner, 98 Wn.2d 731, 733, 658 P.2d 658 (1983) (cleansing of record connected to an invalid contempt order and subsequent incarceration in a juvenile-detention facility).

An order dismissing an action carries no “stigma.” Taken to its logical extension, director plaintiffs’ argument would result in no case ever being dismissed as moot because any order—whether civil or criminal—later reversed by an appellate court of this State could provide an effective “cleansing” by removing the “stigma” of an adverse order.

d. **The public-interest exception does not apply.**

Director plaintiffs’ finally argued that the appeal should not be dismissed on mootness grounds because the case “concerns a significant matter of public interest.” Appellants’ Response at 10. This argument should be rejected because the factors necessary to justify application of the exception are not present.

In determining whether a case, although moot, warrants review under the public-interest exception, there are three “essential” factors to be considered: “(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.” Hart v. Dept. of Social and Health Services, 111 Wn.2d 445, 448, 759 P.2d 1206 (1988) (en banc) (citations omitted). As the Washington Supreme Court cautioned in Hart, after noting that the “increased use of

the [public-interest] exception threatens to swallow the basic rule of not issuing decisions in moot cases[,]” actual application of the three factors “to each case where the exception is urged is necessary to ensure that an actual benefit to the public interest in reviewing a moot case outweighs the harm from an essentially advisory opinion.” 111 Wn.2d at 450.

The case at bar involves as plaintiffs two former directors of a credit union who are challenging policies allegedly adopted by five defendant directors of Columbia, two of whom no longer serve. It is a quintessential private dispute. Unlike Welfare of B.D.F., 126 Wn. App. 562, 109 P.3d 464 (2005), cited by director plaintiffs, which involved the standing of a court-appointed guardian ad litem in a dependency action bearing on the “best interests” of children and therefore concerned a “significant matter of public interest,” this case involves the standing of (former) credit union directors to sue over the manner in which the now nonexistent Board conducted itself. That is not a matter of significant public interest.

Further, an “authoritative determination” to “provide future guidance to public officers” is unnecessary. Plaintiff directors argued in their Response to Motion to Dismiss that this court’s decision in Save Columbia CU Committee v. Columbia Community Credit Union, 134 Wn.

App. 175, 139 P.3d 386 (2006), has resulted in “confusion” and that as a result, “the public officials in DFI as well as the lower courts need clarification concerning the issues raised in this pending case.” Appellants’ Response at 10-11. Director plaintiffs have provided no factual support for this contention. And while director plaintiffs may be unhappy with the outcome of Save Columbia, given their association with the plaintiffs in that case,<sup>7</sup> and would like to use this case to “overrule” it, their self-interest does not rise to the level of warranting an advisory decision for DFI and the lower courts regarding the issues raised here. E.g., Batey v. Batey, 35 Wn.2d 791, 798, 215 P.2d 694 (1950) (prohibiting collateral attacks on final judgments).

Finally, there is no suggestion here that this issue is likely to recur, and indeed it cannot, given that two of the director defendants no longer serve and the Board has been reconstituted. As for the unsubstantiated insinuation that “the close fraternity of credit union executives and counsel in this state” will result in the implementation of a removal strategy “rendering forever beyond judicial review any credit union governance

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<sup>7</sup> Director plaintiffs Cathryn Chudy and Kathryn Edgecomb are members of the Board of Directors of Save Columbia CU Committee, one of the plaintiffs in Save Columbia. See Declaration of Heather K. Cavanaugh in Support of Respondents’ Motion to Dismiss, ¶ 3.

issue” (Appellants’ Response at 11), it was the *members* of Columbia who voted to remove director plaintiffs from their positions and from the credit union. Cann Decl., ¶ 4. If members want to vote to remove directors who are the cause of unproductive dissension, then courts should be loath to opine on questions that members have decided are not worth the candle. It cannot be said here that the “actual benefit to the public interest in reviewing a moot case outweighs the harm from an essentially advisory opinion.” Hart, 111 Wn.2d at 450.

In sum, the director plaintiffs are no longer directors of Columbia, and neither are two of the director defendants. Director plaintiffs are also no longer members of Columbia. And Columbia’s Board has been completely reconstituted. Further, none of director plaintiffs’ asserted grounds for continuing to prosecute the appeal are sufficient to justify proceeding on these moot facts. Respondents thus request that the appeal be dismissed. If the court does not dismiss the appeal, at a minimum, director defendants Ail and Byrd should be dismissed. They are no longer directors and can under no circumstances be ordered to provide any of the relief sought by director plaintiffs.

### **III. BRIEF OF RESPONDENTS**

#### **A. Statement of the Case**

On July 3, 2006, director plaintiffs Cathryn Chudy, Kathryn Edgecomb and Emmy Winterburn, at the time three members of Columbia's nine-person Board, commenced this action against five director defendants (Mark Ail, Duane Bequette, Robert Byrd, John Cheek, and Steve Straub), as well as Columbia's CEO, J. Parker Cann. CP 1-5. Director plaintiffs asserted that: (1) the director defendants controlled Columbia's Board and its records, and the director defendants and the CEO denied director plaintiffs access to Columbia's corporate records; (2) the director defendants excluded them from Board and committee meetings; and (3) the director defendants disallowed them from registering their objections in Board meeting minutes. CP 1-3. Director plaintiffs sought declarations that they were entitled to access to all corporate records, to attend Board and committee meetings in their entirety, to register their objections in Board meeting minutes, and to enjoin the director defendants and CEO from prohibiting the director plaintiffs from doing any of the foregoing. CP 4.

On October 25, 2006, Columbia moved to intervene in the action as an intervenor-defendant. Pursuant to RAP 9.6(a), concurrent with the

filing of this brief, respondents intend to supplement the record to include this pleading, as well as other relevant intervention pleadings. The court granted Columbia's motion to intervene in an order dated September 6, 2006. See appendix.

On September 12, 2006, the court entered a Ruling wherein it granted Defendants' Motion to Dismiss Plaintiffs' Complaint Pursuant to CR 12(b)(6). CP 38-39.

**B. Argument**

1. Summary of argument.

The superior court properly dismissed director plaintiffs' complaint. Director plaintiffs did not allege that the conduct by director defendants and the CEO was wrongful or that the director defendants or CEO breached a duty owed by them. For this reason, director plaintiffs failed to state a claim. Further, director plaintiffs, as directors of a credit union, have rights that are defined and limited by the WSCUA. Nowhere in the WSCUA or other Washington law are director plaintiffs entitled, either directly or derivatively, to assert claims against their fellow directors and the CEO. To the extent the internal conduct of board affairs is concerned, if such conduct contravenes the WSCUA, DFI is empowered to act—not director plaintiffs.

For these reasons, this court should affirm the superior court and deny director plaintiffs' appeal.

2. The superior court properly dismissed plaintiffs' complaint.

a. **Director plaintiffs failed to state a claim.**

It is axiomatic that in order to state a claim for relief, director plaintiffs must allege that director defendants and the CEO acted unlawfully or in breach of some duty owed director plaintiffs.<sup>8</sup> Director plaintiffs did not do so—all director plaintiffs alleged was that the director defendants, as a majority, acted to deprive the minority director plaintiffs certain access to records and meetings and prevented them from registering their objections in meeting minutes. CP 2-3. That does not state a claim for relief—it describes a situation in which different directors have a difference of opinion on conducting the affairs of the credit union.

By statute, the “business and affairs of the credit union shall be managed by [the] board.” RCW 31.12.255(1). In making decisions

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<sup>8</sup> In order to assert a claim for declaratory judgment, director plaintiffs must allege a legal entitlement to such a judgment. See Wash. Fed'n of State Employees v. State Pers. Bd., 23 Wn. App. 142, 148, 594 P.2d 1375 (1979) (“in order to invoke the declaratory judgment remedy, the plaintiff must assert a legal right capable of judicial protection which exists in a statute, constitution or common law.”). Absent “a legal right capable of judicial protection,” the director plaintiffs have no claim. See also Bercier v. Kiga, 127 Wn. App. 809, 813, 103 P.3d 232 (2004), *rev. denied*, 155 Wn.2d 1015 (1995) (dismissing declaratory-judgment action for failure to allege a legal right that was protected by statute).

affecting the credit union, a director owes a duty directly to the credit union. RCW 31.12.267 provides that:

Directors . . . and senior operating officers are deemed to stand in a fiduciary relationship to the credit union, and must discharge the duties of their respective positions:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director or officer reasonably believes to be in the best interests of the credit union.

(Emphasis added.) Thus, each director owes his or her duty to act in the best interests of the credit union.

Here, the director plaintiffs did not allege that the director defendants' and CEO's alleged conduct contravened the duties they owed to Columbia. Director plaintiffs do not allege that the director defendants' conduct was in bad faith, that a reasonably prudent person would act otherwise, or that the alleged conduct is not in the best interests of Columbia. Thus, it is presumed that the director defendants and the CEO acted consistent with their fiduciary duty.<sup>9</sup>

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<sup>9</sup> See Nursing Home Bldg. Corp. v. DeHart, 13 Wn. App. 489, 498, 535 P.2d 137 (1975), *rev. denied*, 86 Wn.2d 1005 (1975) (“The ‘business judgment rule’ immunizes management from liability in a corporate transaction undertaken within both the power of the corporation and the authority of management where there is a reasonable basis to indicate that the transaction was made in good faith.”). While the business-judgment

Seeking to avail themselves of decisional law in the corporate context that grants directors of corporations apparent rights to access to records,<sup>10</sup> director plaintiffs argue that this court should look to corporate law because in certain situations, DFI has looked to analogous corporate law. Opening Brief at 12-18. As an initial matter, the fact that DFI may elect to exercise its discretion to look to corporate law as instructive where DFI believes it is appropriate is not a basis for the court to do so.

But more importantly, in other situations the courts have refused to adopt corporate-law principles into situations such as this. In State ex rel. Wicks v. Puget Sound Sav. & Loan Ass'n, 8 Wn.2d 599, 113 P.2d 70 (1941), members of a savings and loan association sought to inspect the records of the savings and loan and argued that they possessed a common-law and statutory right to do so. 8 Wn.2d at 604. The Washington Supreme Court refused to apply such law to members of a savings and loan association because of extensive regulatory oversight. 8 Wn.2d at 602-04. Notably, in rejecting the plaintiff savings and loan members' claims in Wicks, the court refused to follow Anderson v. Frederickson,

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rule is a rule applicable to directors of other corporate forms, given the statutory duty of a credit union director, there is no reason to believe that a credit union director's decision is not similarly presumed to be protected.  
<sup>10</sup> Opening Brief at 21-23.

133 Wash. 2d, 233 P. 291 (1925), which is cited by director plaintiffs (Opening Brief at 21) for the proposition that corporate directors must have unrestricted access to records. 8 Wn.2d at 602.

In determining that the plaintiffs were not entitled to access to records, the Wicks court explained that savings and loan associations “are creatures of statute” and that the supervisor of savings and loans was charged with administering the laws “and shall require each association to conduct its business in accordance with the provisions of this act.” 8 Wn.2d at 602-03 (quoting Rem. Rev. Stat. (Sup.) § 3717-94). The court concluded that “[w]e are of the opinion that this measure provides the exclusive method of examination of the books and records of savings and loan associations . . . .” 8 Wn.2d at 604 (emphasis added).

The same is true here. The WSCUA vests DFI with the authority to initiate actions and proceedings and to remove a director from office. For instance, RCW 31.12.516(1) provides that DFI “shall require each credit union to conduct business in compliance with this chapter.” (Emphasis added.) That same statute further provides that DFI “has the power to commence and prosecute actions and proceedings, to enjoin violations . . . .” Id. And RCW 31.12.575 provides DFI with the authority to remove a director or an officer from office under certain circumstances.

Under RCW 31.12.633, DFI may attend a Board meeting “if the [DFI] director believes that attendance at the meeting is necessary for the welfare of the credit union, or the purposes of this chapter . . . .” Finally, under RCW 31.12.545(2)(a), DFI has “full access to the credit union’s books and records and files, including but not limited to computer files.”

This regulatory overlay by DFI led the court in Save Columbia to hold that the plaintiff credit union members lacked standing to assert a claim for breach of fiduciary duty against directors. 134 Wn. App. at 191. The court analogized to Wicks in rejecting the plaintiffs’ argument that the corporate common law provided them the necessary standing. 134 Wn. App. at 189. Specifically, the court explained that “a credit union is a creature of statute,” and just as the supreme court held that state officers were charged with the protection of savings and loan members in Wicks, DFI is charged with protecting the interests of credit union members. 134 Wn. App. at 190. The court concluded that “the extensive regulatory oversight that the legislature provides for credit unions suggests that the legislature did not intend for individual members to bring actions against a credit union’s directors; rather, the legislature contemplated that the DFI director would protect the members’ interests.” 134 Wn. App. at 191 (citing Wicks, 8 Wn.2d at 603).

The Legislature has empowered DFI to act as referee in the credit union boardroom under the circumstances set forth in the WSCUA. If DFI believed that one set of directors was unlawfully impairing another director's ability to perform that director's fiduciary duty, DFI possesses the authority to enforce compliance with the provisions of the WSCUA to ensure performance of a director's fiduciary duties. The presence of this regulatory overlay in the credit union context for which there is no analogue in the corporate context is a critical distinction and militates against wholesale incorporation by a court of corporate-law principles.

Director plaintiffs' complaint is devoid of any contention that director defendants are acting in any manner contrary to the best interests of Columbia or in contravention of the WSCUA. The director plaintiffs' failure to allege that the director defendants and CEO breached a duty to Columbia is telling. Situations can easily arise in which certain directors have conflicts of interests—e.g., they are affiliated with a party suing the credit union<sup>11</sup>—and should not have access to certain records or certain board deliberations.

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<sup>11</sup> As noted in footnote 7, the director plaintiffs are affiliated with Save CCU, which sued Columbia.

In the absence of allegations of wrongful conduct or breach of a duty to the credit union, the director plaintiffs, like the plaintiffs in Wicks and Save Columbia, have no claim. The director plaintiffs' action is nothing more than a generalized grievance against fellow directors and the CEO.<sup>12</sup> As noted by the superior court, "the legislature didn't mandate civility." CP 39. Courts do not sit to referee internal board disputes; board members are permitted to disagree with one another. If the WSCUA authorized suits under these circumstances, the court would become a referee of any decision of a majority of a board that the minority disliked. The WSCUA does not authorize such a suit, and neither does case law<sup>13</sup> or logic. The superior court properly dismissed director plaintiffs' complaint.<sup>14</sup>

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<sup>12</sup> With respect to the CEO, Mr. Cann answers directly to the Board. See, e.g., RCW 31.12.255. The director plaintiffs did not allege that the CEO has undertaken this action wrongfully, independently of the Board, or in bad faith. Since the CEO answers to the Board, his conduct in doing so cannot in any sense be wrongful as to director plaintiffs.

<sup>13</sup> This is consistent with the general rule in the corporate context; that is, a director may not institute an action against a co-director. See, e.g., 2 Fletcher Cyc. Corp. § 535 (Rev. 2006) ("Although in rare cases, such as if authorized by statute, a single director may institute an action against a co-director for an injury to the corporation, the general rule is that such suits are not permitted and the directors must act as a body, not individually.") (emphasis added). See also, Circle Security Agency, Inc. v. Ross, 99 Ill. App. 3d 1111, 425 N.E.2d 1283 (1981) ("We believe that no authority exists in [Illinois] that allows a director of a corporation to bring an action against a co-director to account for and pay over monies to a corporation because of the latter's misconduct"); Kidwell v. Meikle,

b. **Director plaintiffs lack standing to assert a direct action against the director defendants and CEO.**

In addition to failing to state a claim, director plaintiffs also lack standing to assert a direct action against the director defendants and CEO. Director plaintiffs alleged that they are *directors*, but they did not allege any law or statute that entitles them as such to assert a direct action against the director defendants and CEO. And the reason for this omission is simple—no such law or statute exists.

As explained above, a director or senior officer’s fiduciary obligation is owed to the *credit union* under RCW 31.12.267. Nowhere in the WSCUA does it provide that directors or senior operating officers owe a fiduciary duty to *directors*. Absent such a duty, the director plaintiffs lack standing, and the superior court properly dismissed the action consistent with this court’s analysis in Save Columbia.

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597 F.2d 1273 (9th Cir. 1979), overruled on other grounds by Hollinger v. Titan Capital Corp., 914 F.2d 1564 (9th Cir. 1990) (explaining that a “directors’ derivative suit” is something “not contemplated by the procedural rules of the federal courts”).

<sup>14</sup> This court may affirm the superior court’s dismissal of director plaintiffs’ action on the ground that they failed to state a claim. See, e.g., McGowan v. State, 148 Wn.2d 278, 288, 60 P.3d 67 (2002) (prevailing party “entitled to argue any grounds in support of the superior court’s order that are supported by the record”). Director defendants argued below that director plaintiffs failed to state a claim. CP 13-14.

- c. **If director plaintiffs have attempted to assert a derivative action, they have no right to do so and did not properly plead one.**

In the caption of the complaint, director plaintiffs stated that they bring the action both “on behalf of Columbia Community Credit Union” and “as individuals.” CP 1. This appears to be an attempt to assert a derivative action, which director plaintiffs have no right to do.

In Lundberg v. Coleman, 115 Wn. App. 172, 178, 60 P.3d 595 (2002), rev. denied, 150 Wn.2d 1010 (2003), the court held that a director in a nonprofit corporation did not have a right to bring a derivative lawsuit on behalf of the nonprofit corporation. In reaching this decision, the court explained that the Nonprofit Corporation Act “carefully delineates when actions may be brought on behalf of the corporation” and observed that nowhere in the act did the Legislature “confer the right for a single or minority director/trustee to bring an action on behalf of the corporation.” 115 Wn. App. at 177. Further, the court explained that the presence of a derivative procedure in the for-profit corporation context but the lack of such procedure in the nonprofit corporation context evinced a difference in legislative intent. Id. Specifically, the court explained that since a shareholder in a for-profit corporation was explicitly granted the right to

bring a derivative action but a director in a nonprofit corporation was not, the directors in a nonprofit corporation lacked authority to bring such an action. Id.

The same is true here. While the Business Corporation Act permits shareholders to bring derivative actions, the Credit Union Act does not authorize members or directors to initiate derivative actions. The Save Columbia court specifically held that members were not authorized to bring derivative actions because the Credit Union Act did not so provide, and it reached that result applying the logic of Lundberg. 134 Wn. App. at 191. That same logic compels the same conclusion as to directors: if the legislature had intended to permit credit union directors to bring derivative suits, it would have so provided. It did not, and thus the director plaintiffs may not assert a derivative claim.

Finally, in addition to the fact that they lack standing to assert a derivative action, the director plaintiffs have not properly pleaded one. Director plaintiffs stated in the caption but did not plead in their complaint that they brought their complaint “on behalf of Columbia Community Credit Union.” Director plaintiffs have also failed to plead specific injury to Columbia itself and have utterly failed to comply with the provisions of CR 23.1. For instance, CR 23.1 provides that in a derivative action, the

“complaint shall be verified and shall allege (a) that the plaintiff was a shareholder or member at the time of the transaction of which he complains . . . and (b) that the action is not a collusive one to confer jurisdiction on a court of this state which it would not otherwise have.” Further, CR 23.1 provides that the “complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority . . . and the reasons for his failure to obtain the action or for not making the effort.” The director plaintiffs have not complied with any of the requirements of this rule.

In sum, Washington law does not provide the director plaintiffs with the right to pursue a derivative action, and to the extent the director plaintiffs have attempted to bring such an action, it was properly dismissed.

3. The issue here is not DFI’s adjudicatory jurisdiction.

Director plaintiffs argue that it “cannot be the case” that the superior court is “without power to adjudicate” director plaintiffs’ claims because of the “oversight responsibility” of DFI. Opening Brief at 25. In support of this argument, director plaintiffs cite to State ex rel. Graham v.

Northshore School District No. 417, 99 Wn.2d 232, 662 P.2d 38 (1983), for the proposition that “the declaration of legal rights and interpretation of legal questions is the province of the courts and not of administrative agencies.” Opening Brief at 26. This argument misses the point.

The Graham case cited by director plaintiffs involved whether a declaratory-judgment action properly within the jurisdiction of the superior court *and* the intervenor-administrative agency, the Public Employment Relations Commission (“PERC”), was properly adjudicated by the superior court. 99 Wn.2d at 240. Graham, therefore, involved issues of exclusive and primary jurisdiction in which PERC was a party.<sup>15</sup> Here, DFI is not a party to the action, and the dispute is not one in the “exclusive” or “primary” jurisdiction of DFI. Instead, the dispute centers on whether the director plaintiffs have the proper standing to pursue the action. As explained above, director plaintiffs do not have standing under the WSCUA or any other Washington law to assert these claims directly or derivatively.

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<sup>15</sup> The Graham case also involved a challenge to the plaintiff State Auditor’s standing. 99 Wn.2d at 242-43. Ultimately, the Washington Supreme Court concluded that the Auditor possessed standing to pursue the declaratory-judgment action at issue, but this analysis was distinct from the analysis regarding the jurisdiction of the superior court and PERC. Id.

Director plaintiffs' final argument is that the court should adjudicate their claims because "DFI has no authority to adjudicate issues involving the responsibilities and rights of directors of a financially sound credit union[.]" Opening Brief at 28. This, too, misses the point. The issue here is not whether DFI may "adjudicate" issues involving rights and responsibilities of directors; the issue is whether director plaintiffs have a claim against other directors and an officer of the credit union. But in any event, DFI has clear authority to enforce the provisions of the WSCUA, and included within this authority is the right to *attend board meetings*. RCW 31.12.633. Plaintiff directors, in other words, have in DFI the referee they are looking for in this court.

4. Plaintiffs have no claim for indemnification.

Director plaintiffs inquire as to whether there is an "insuperable bar" to their request for indemnification. Opening Brief at 28. The answer to this question is yes. Director plaintiffs have alleged no claim for indemnification, and even if they had, no such claim exists under these circumstances.

In their brief, director plaintiffs characterize their request for indemnification as a "claim for indemnification." But in the superior

court, the director plaintiffs themselves characterized their action as follows:

This case involves a declaratory judgment claim. Plaintiffs are bringing this claim as directors of the CCCU Board of Directors (Board), both individually and on behalf of CCCU. Plaintiffs are seeking a declaration that Plaintiff Directors have a right to examine all corporate records, attend all Board and committee meetings, and register in the meeting minutes their objections. Plaintiffs are also seeking a declaration that corporate minutes of meetings of the Board and its committees must reasonably reflect the views of all directors expressed at the meetings.

CP 22. Further, director plaintiffs stated: “Plaintiffs are requesting a judicial determination regarding whether they are entitled to access records, attend Board and committee meetings, and register their objections in the meetings minutes.” CP 26. Nowhere below did director plaintiffs characterize their request for indemnification as a declaratory-judgment “claim” for indemnification.

If director plaintiffs did assert a “claim” for indemnification, their requested relief was that the superior court order “Defendants to cause [Columbia] to indemnify Plaintiff Directors against their expenses, including attorney fees, arising from this action.” CP 5. Director plaintiffs, however, have not sued Columbia and cite no law for the proposition that they can sue other directors and an officer *to cause the credit union* to indemnify them. But even assuming that director plaintiffs

can sue individuals other than the credit union for indemnification, they do not explain how under Washington law they are entitled to mandatory indemnification when they are plaintiffs.

Director plaintiffs assert that they are “entitled to indemnification, from [Columbia], for their expenses, including attorney fees, relating to this action, which arise from the fact that they are directors, pursuant to [Columbia’s] Articles of Incorporation.” CP 4. While it is unclear, the only reasonable construction of this assertion is that director plaintiffs are seeking mandatory indemnification to which they are not entitled because they did not prevail in the action, and even if they had, they would not be entitled to indemnification because they are plaintiffs.

The WSCUA provides that a credit union may “[i]ndemnify its directors, supervisory committee members, officers, employees, and others in accordance with provisions of its articles of incorporation or bylaws that conform with RCW 23B.08.500 through 23B.08.600.” RCW 31.12.402(22). RCW 23B.08.520 in turn provides that “[u]nless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, *in the*

*defense of any proceeding* to which the director was a party<sup>16</sup> because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.” (Emphasis added.)

Director plaintiffs here are not defending a proceeding—they are prosecuting one. Under the plain language of the statute, director plaintiffs are not entitled to mandatory indemnification both because they are plaintiffs and because they did not prevail in the action. In order to be consistent with law, Columbia’s articles could not provide otherwise. Director plaintiffs have no claim to indemnity.

**C. Conclusion**

The superior court properly dismissed the director plaintiffs’ action. They have not only failed to state a claim by failing to allege wrongdoing on the part of the director defendants and CEO, but also they have no standing to pursue these claims against fellow directors and the

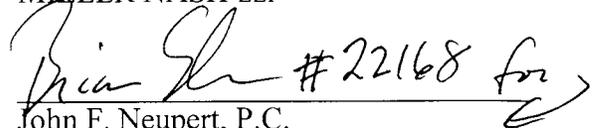
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<sup>16</sup> A “party” is defined under RCW 23B.08.500(6) as an “individual who was, is, or is threatened to be made *a named defendant or respondent* in a proceeding.”

CEO. Director plaintiffs' appeal should be denied and the superior court's decision affirmed.

Respectfully submitted this 23<sup>rd</sup> day of March, 2007.

MILLER NASH LLP

 #22168 for

John F. Neupert, P.C.  
OSB No. 78316 (Specially Admitted)  
Heather K. Cavanaugh  
WSB No. 33234

Attorneys for Respondents  
and Intervenor-Respondent

# Appendix A

Honorable Diane M. Woolard

**FILED**

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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CATHRYN CHUDY, EMMY WINTERBURN, AND KATHRYN EDGECOMB, on behalf of Columbia Community Credit Union, and CATHRYN CHUDY, EMMY WINTERBURN, AND KATHRYN EDGECOMB, as individuals,

Plaintiffs,

v.

DUANE BEQUETTE, STEVE STRAUB, JOHN CHEEK, MARK AIL, ROBERT BYRD, AND PARKER CANN,

Defendants

and

COLUMBIA COMMUNITY CREDIT UNION,

Proposed-Intervenor Defendant.

Case No. 06 2 03426 4

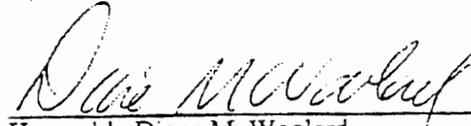
ORDER GRANTING COLUMBIA COMMUNITY CREDIT UNION'S MOTION TO INTERVENE

This matter came before the Court on Columbia Community Credit Union's ("Columbia") motion to intervene. The Court heard the oral argument of counsel and considered the files and records herein.

ORDER GRANTING COLUMBIA COMMUNITY CREDIT UNION'S MOTION TO INTERVENE - 1

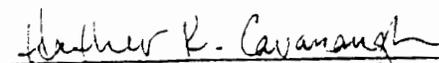
1 Based on the argument of counsel and the evidence presented, it is hereby  
2 ORDERED that the Columbia's motion is GRANTED. Pursuant to CR 24(b), Columbia is  
3 hereby designated an Intervenor-Defendant in this action.

4  
5 DATED this 6 day of September, 2006.

6  
7   
8 Honorable Diane M. Woolard

9 Presented by:

10 MILLER NASH LLP

11   
12 John F. Neupert, OSB No. 78316  
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15 Heather K. Cavanaugh, WSB No. 33234  
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19 Attorneys for Columbia Community Credit Union  
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ORDER GRANTING COLUMBIA COMMUNITY  
CREDIT UNION'S MOTION TO INTERVENE - 2

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# Appendix B

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No. 35519-1-II

COURT OF APPEALS  
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CATHRYN CHUDY, EMMY WINTERBURN, AND KATHRYN  
EDGECOMB, on behalf of Columbia Community Credit Union, and  
CATHRYN CHUDY, EMMY WINTERBURN, AND KATHRYN  
EDGECOMB, as individuals,

Appellants,

vs.

DUANE BEQUETTE, STEVE STRAUB, JOHN CHEEK, MARK AIL,  
ROBERT BYRD, AND PARKER CANN,

Respondents

and

COLUMBIA COMMUNITY CREDIT UNION,

Intervenor-Respondent.

---

DECLARATION OF J. PARKER CANN IN SUPPORT OF  
RESPONDENTS' MOTION TO DISMISS

---

John F. Neupert, P.C.  
Heather K. Cavanaugh  
Miller Nash LLP  
3400 U.S. Bancorp Tower  
111 S.W. Fifth Avenue  
Portland, Oregon 97204-3699  
(503) 241-5858

Attorneys for Respondents

I hereby declare, under penalty of perjury, in accordance with the laws of the state of Washington, that:

1. I am the chief executive officer of Columbia Community Credit Union ("Columbia"). I am competent to testify and have personal knowledge of the facts stated herein.

2. Columbia is a cooperative society organized as a nonprofit corporation under the Washington State Credit Union Act, Chapter 31.12 RCW. Columbia's Board of Directors ("Board") consists of nine individuals. Attached as Exhibit 1 is a copy of the portion of Columbia's bylaws pertaining to the Board of Directors.

3. When plaintiffs Cathryn Chudy, Kathryn Edgecomb, and Emmy Winterburn filed the underlying complaint in July, 2005, they were serving on Columbia's Board. The five director defendants, Mark Ail, Duane Bequette, Robert Byrd, John Cheek, and Steve Straub were also serving on Columbia's Board at that time. The then-ninth board member, Ralph Erdmann, was not a party to the action.

4. On October 16, 2006, Columbia's Board suspended Chudy and Edgecomb from their director positions pursuant to RCW 31.12.285 and scheduled a special membership meeting to consider removal of

Chudy and Edgecomb as directors and their expulsion from membership

in Columbia. Thereafter, on November 15, 2006, Columbia held a membership meeting at which, among other things, Columbia's members voted to permanently remove Chudy and Edgecomb from their positions as director on Columbia's Board. At the membership meeting, Columbia's members also expelled Chudy and Edgecomb from membership in the Credit Union.

5. On November 15, 2006, Winterburn resigned from Columbia's Board. That same day, Ralph Erdmann (the ninth director and not a party to the action), also resigned from Columbia's Board.

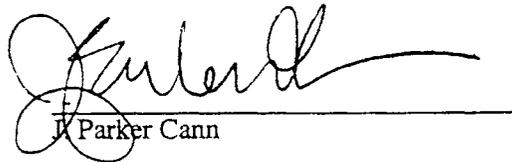
6. In advance of Columbia's 2006 Annual Meeting, there were seven positions on the Board that were up for election. This was due to the following: (1) the November 15, 2006, removal of Chudy and Edgecomb from their positions as Columbia's directors; (2) the November 15, 2006, resignation by Erdmann and Winterburn from their positions as Columbia's directors; and (3) the terms of service of defendants and respondents Ail, Byrd, and Cheek were expiring under Columbia's bylaws.

7. On December 28, 2006, Columbia held its 2006 Annual Meeting, at which time six new directors were elected to Columbia's Board, and defendant and respondent Cheek was re-elected to another term. Defendants and respondents Ail and Byrd did not seek re-election.

Ail is currently serving as a Director Emeritus on Columbia's Board. This is an honorary position, with no voting rights.

8. Currently, Columbia's Board is fully constituted and operational. Attached as Exhibit 2 is a list of Columbia's nine current Directors, printed from Columbia's website. Of the eight individuals who were parties to the action at the trial court level and were Columbia's directors at the time the action commenced, only three are currently serving on Columbia's Board: defendants and respondents Bequette, Cheek, and Straub.

Dated this 2nd day of February, 2007, at Vancouver, Washington

  
J. Parker Cann

## ARTICLE V. BOARD OF DIRECTORS

**Section 1. Composition.** The Board of Directors shall consist of nine (9) individuals. All Directors shall be elected in accordance with the procedures established in Article IV of these Bylaws. However, persons appointed to fill vacancies occurring on the Board shall be chosen in accordance with the procedures established in this Article. No change in the number of Directors shall be made without approval of the membership at an Annual Meeting, except in the case of a merger.

No Board member may also serve on the Supervisory Committee at the same time. No member may serve on or be a candidate for the Board, if any family member of the member is a candidate or would serve on the Board or Supervisory Committee at the same time. These restrictions shall apply to all Directors and Director nominees or appointees, except that it will not apply to Directors elected or appointed prior to 2006 during the remainder of such term.

Any candidate for the Board shall comply with any Board eligibility and independence requirements as set forth in Board Policy.

**Section 2. Term of Office.** Once elected, each Director shall serve until his or her successor is duly qualified and elected. Each Director may serve a maximum of three (3) consecutive, three (3) year terms. A mandatory absence from the Board and/or Supervisory Committee of two (2) years is required before a Board Director can serve additional terms of office. In no event shall a Director have more than five (5) consecutive terms of collective service as a Director and/or Supervisory Committee member. The election of Directors shall be staggered, with an equal number of Directors elected each year, as nearly as possible.

**Section 3. Eligibility.** In order to qualify to serve on the Board of Directors, an individual shall:

- a. Be a natural person and a Credit Union member at all times;
- b. Satisfy any bonding requirements of the Credit Union;
- c. Agree to the terms of the Credit Union's Code of Ethics for volunteers and the Credit Union's Organizational Diversity Plan;
- d. Be eligible to vote in Credit Union elections and at membership meetings, and meet the eligibility requirements in Article II, Section 2 of these Bylaws; and
- e. At the time of the nomination or appointment, not be employed by or have been employed by the Credit Union or its subsidiaries during the past two (2) years.

**Section 4. Meetings.** The Board of Directors shall meet at a regular meeting at least once a month, with the date of the meeting to be set by the Board. A majority of the total number of Directors shall constitute a quorum. Special meetings of the Board may be called at any time by the Board Chair or upon request to the Board Chair by three or more Directors. Meetings of the Board may take place in person, by telephone conference call, or with unanimous consent via electronic technology.

**Section 5. Notice.** The Board Chair shall give at least 48 hours advance notice of any special meeting of the Board of Directors, however, advance meeting notice may be waived by unanimous consent of Directors. All notices may be delivered via mail, facsimile, telephone, or e-mail as the Board may from time to time prescribe.

**Section 6. Expenses.** Directors shall not be compensated for services rendered to the Credit Union in their capacity as volunteers. However, Directors may be reimbursed for reasonable expenses incurred during the performance of their duties in accordance with a policy established by the Board.

**Section 7. Non-Preferential Treatment.** Loans extended to Directors shall be made under the same terms and conditions as those extended to other members of the Credit Union.

**Section 8. Non-Delegable Powers and Duties.** The Board of Directors shall have general direction over the business and affairs of the Credit Union. In addition to the powers and duties conferred by applicable law, the Board shall have the power and duty to conduct the following:

- a. Set the par value of shares, if any, of the Credit Union;
- b. Set the minimum number of shares, if any, required for membership;
- c. Establish the loan policies under which loans may be approved;
- d. Establish the conditions under which a member may be expelled for cause;
- e. Fill vacancies on all Committees except the Supervisory Committee;
- f. Approve an annual operating budget for the Credit Union;
- g. Designate those persons or positions authorized to execute or certify documents or records on behalf of the Credit Union;
- h. Review the Supervisory Committee's annual report; and
- i. Perform such other duties as the members may direct.

**Section 9. Delegable Powers and Duties.** The Board of Directors shall also have the powers listed under this section, however these powers may be delegated to a Committee, Officer, or employee under a policy established by the Board. The Board shall:

- a. Act upon applications for membership in the Credit Union;
- b. Determine the maximum amount of shares and deposits that a member may hold in the Credit Union;
- c. Declare dividends on shares and set the rate of interest on deposits;
- d. Set fees, if any, to be charged by the Credit Union to its members for the right to be a member of the Credit Union and for services rendered by the Credit Union;
- e. Determine the amount which may be loaned to a member together with the terms and conditions of the loan;
- f. Establish policies under which the Credit Union may borrow and invest; and
- g. Approve the charge-off of Credit Union losses.

Committees, Officers, and employees delegated the powers listed in this section shall make appropriate reporting to the Board.

**Section 10. Fiduciary Duties.** Directors shall perform their duties in a fiduciary manner as required by law.

**Section 11. Authority to Remove and Suspend.** The Board of Directors may, "for cause," suspend a Director until a membership meeting is held in accordance with Article III of these Bylaws.

A membership meeting contemplating the removal of a party suspended under this section shall be held within thirty (30) days of the suspension, and Credit Union members attending the meeting shall vote on whether to permanently remove the suspended party or parties.

"For cause" includes:

- a. Demonstrated financial irresponsibility;
- b. A breach of fiduciary duty to the Credit Union;
- c. Activities that threaten the safety and soundness of the Credit Union;
- d. Actions that violate the Credit Union's Bylaws, or the Credit Union's Code of Ethics for volunteers, or
- e. If the Director fails to meet the requirements in Article V, Section 3 of these Bylaws during his/her term, except for the requirements in Article V, Section 3a and b.

**Section 12. Removal by Operation of Law.** Directors shall be removed from their position by operation of law under the following circumstances:

- a. Should a Director cease to be a member of the Credit Union;
- b. Should a Director be absent from four of the regular Board meetings in any twelve month period unless reasonably excused by the Board; or
- c. Should a Director fail to meet the requirements for bondability.

**Section 13. Vacancies and Interim Board Directors.** If the members of the Credit Union remove less than a majority of Directors at a Special Meeting, the members may either:

- a. Elect an Interim Director(s) to complete the remainder of the term of office of the removed Director(s) who they have replaced, or
- b. Authorize the Board of Directors to appoint an Interim Director(s).

If the members of the Credit Union remove a majority of Directors, an Interim Director(s) elected by Credit Union members shall complete the remainder of the term of office of the removed Director(s) who they have replaced.

All vacancies on the Board, other than those filled by Credit Union members at a Special Meeting, shall be filled by Interim Directors appointed by the remaining members of the Board. When filling a vacancy, the Board shall, if possible, appoint the unsuccessful Board candidate from the last election with the highest number of votes who is willing, able and eligible to serve. However, the Board need not fill vacancies in terms scheduled to expire in less than ninety (90) days. Interim Directors appointed by the Board shall serve until the next Annual Meeting.



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Board of Directors

Columbia Credit Union Board of Directors



**Duane Bequette**  
Chair

Duane has been a member, supporter and champion of credit unions since 1987. Duane is the director of operations for Ann Sacks Tile, Stone & Plumbing in Portland. His work assignments have included leadership positions in production management, project management, industrial engineering, new product design and development, quality systems, budget management and strategic planning. Duane holds a BS degree in Ceramic Engineering and a BS degree in Engineering Management from the University of Missouri-Rolla. He was named the Distinguished Alumni in 2000 for the Ceramic Engineering department for his work with students on career planning and recruiting. Duane has a long track record of community service. As a former board member of the Kohler Credit Union in Sheboygan County, Wisconsin, he served on audit, budget and annual meeting committees.

**Became CCU Volunteer:** 2004  
**Became Director:** 2004  
**Current Term Expires:** 2007  
**Term as Board Chair:** 2005  
**Current Board Committees:**  
 Executive Committee  
 Executive Loan Committee  
**Email:** duaneb@columbiacu.org



**Steve Straub**  
Vice Chair

Steve, a CCU member for 33 years, has been directly involved with credit unions all his professional life. He worked for Columbia Credit Union 22 years, part of which he served as CEO. Steve's background includes 15-plus years of senior-level management positions at major credit unions. It was through the 80s and early 90s, a period of significant change within the financial services community, that he helped grow Columbia from one to seven branches. Today Steve owns a company that provides customer service monitoring capability to credit union clients throughout the country. Steve holds an MBA degree from University of Oregon. Several years ago, because of his professional knowledge and management skills, he was called in for special assignment by NCUA to provide turnaround management and leadership for a large, troubled East Coast credit union.

**Became CCU Volunteer:** 2004  
**Became Director:** 2004  
**Current Term Expires:** 2007  
**Current Board Committees:**  
 Executive Committee  
 Executive Loan Committee  
**Email:** straubs@columbiacu.org

**H. Dexter Garey**  
Secretary

**Member Since:** 2005  
**Residency:** Vancouver, WA  
**Employment Status:** Retired  
**Education:** Oregon State University - B.S. business administration, minor: mechanical



**Became CCU Volunteer:** 2006  
**Became Director:** 2006  
**Current Term Expires:** 2008  
**Current Board Committees:**  
 Executive Committee  
 Nominating Committee  
 Delivery Systems Committee  
**Email:** dexg@columbiacu.org

engineer Pepperdine University - M.B.A. strategic planning, dispute resolution  
**Employment History:** President, Dex Ltd - 1992-2001; Assistant Vice President, Quantum Commercial - 1989-91; Senior Vice President, Hayden Corporation - 1970-88; Manager, Shell Oil Co. - 1960-1969  
**Community/Volunteer Services:** Board Member, Multnomah Athletic Club - 1972-2006; President, North Portland Rotary - 1973-1988; Member, Vancouver Rotary - 1988-present; Foundation Chair, Real Estate Committee, Oregon State University - 1979-2005; President, Clark County Foundation - 1984-1987; St. Joseph's Catholic Church Foundation - 2000-present; Chairman, Fairway Village Long Range Planning Committee - 2003-present; Member Relations Committee, Columbia Credit Union - 2005-2006.



**Became CCU Volunteer:** 2006  
**Became Director:** 2006  
**Current Term Expires:** 2007  
**Current Board Committees:**  
 Executive Committee  
 Delivery Systems Committee  
**Email:** chuckm@columbiacu.org

**Charles McDonald**  
 Treasurer

**Member Since:** 2004  
**Residency:** Vancouver, WA  
**Employment Status:** Full-time  
**Education:** Michigan Technological University - B.S. civil engineering  
**Employment History:** Assistant Manager, Clark Regional Waste Water - 1994-2006; District Engineer, Hazel Dell Sewer - 1990-2006.  
**Community/Volunteer Services:** Board member, Vancouver Comm. Christ School - 2000-03; Member, CC Rural Centers Task Force - 1995 and 1999; Member, Team 99 - 1999-2006; Chairman, CC Storm Drainage Technical Advisory Comm. - 1998; Treasurer, Sunnyside Christian Church - 1978-80



**Became CCU Volunteer:** 2004  
**Became Director:** 2005  
**Current Term Expires:** 2009  
**Current Board Committees:**  
 Nominating Committee Chair  
 Delivery Systems Committee  
**Email:** johnc@columbiacu.org

**John Cheek**  
 Board Member

**Member Since:** 1999  
**Residency:** Vancouver, WA  
**Employment Status:** Retired, author  
**Education:** Washington State University - B.S. civil engineering (plus graduate courses); credit union training courses for board members from Credit Union National Association (CUNA), Washington State Credit Union League, Credit Union Executive Society and Columbia Credit Union; University of Oregon - business management training courses; Oregon State University - business management training courses; Dale Carnegie Institute - sales training  
**Employment History:** Manager Transmission Engineering, Pacific Power & Utah Power - 1988-90; Manager Transmissions & Substation Design, Pacific Power & Light Co. - 1984-88; Project Manager, Pacific Power & Light Co. - 1976-84; Design Engineer, Pacific Power & Light Co. 1961-76; Survey Crew Chief, City of Pullman, WA - 1957-61; Janitor, Washington State University - 1956-57; Survey Crew Member, US Bureau of Reclamation - 1955-56 and 1951-52; Enlisted Man in Korean War, US Army - 1952-55; Fruit Warehouse Laborer, Garrison Fruit - 1950-51  
**Community/Volunteer Services:** Board Member/Treasurer, Columbia Credit Union - 2005-06; Supervisory Committee Member, Columbia

Credit Union - 2004-06; Supervisory Committee Chair, Columbia Credit Union - 2004-05; Chair, Western Utility Group - 1981-90; Treasurer & Board Member, Save CCU - 2004; Team Manager, Little League - 1964-71; Chair, Yes for Kids, Binnsmead School - 1960s; Loaned Executive, United Good Neighbor - 1970s; Commodore, Willamette Yacht Club - 1985



**Brianna Johnston**  
Board Director

**Member Since:** 2004  
**Residency:** Vancouver, WA  
**Employment Status:** Student  
**Education:** University of Washington - Student, international studies; Junior State of America  
Princeton University - Graduate, international relations.  
**Employment History:** Marketing Director/Sales, Online Support Inc - 2005-06; Campaign Manager, Eric Olmsted for Vancouver City Council - 2005; Loan Officer Assistant, Capstone Home Loans - 2004-05  
**Community/Volunteer Services:** Volunteer Coordinator, Washington State Democrats Coordinated Campaign - 2004; Head Delegate, National Model United Nations - 2005-06; Volunteer, Relay for Life; Vice President/President, Students for Political Activism Now - 2003-06; Volunteer, Steve Stuart for County Commissioner - 2005; Volunteer, Habitat for Humanity - 2002

**Became CCU Volunteer:** 2006  
**Became Director:** 2006  
**Current Term Expires:** 2008  
**Current Committees:**  
Asset Liability Committee  
**Email:** briannaj@columbiacu.org



**Wayne R. Bigelow**  
Board Director

**Member Since:** 1990  
**Residency:** Brush Prairie, WA  
**Employment Status:** Full-time  
**Education:** Northeast Mo. State University - B.S. biology, business minor; City University - masters in teaching, K-8 teaching certificate; Lake Forest School of Business - M.B.A. strategic business planning  
**Employment History:** Sales Representative/Sales Manager, G.D. Searle & Co. - 1981-90; Owner/Operator, Dairy Queen Stores - 1990-present; Teacher, Evergreen Schools - 1999-present; Real Estate Investor - 1993-present  
**Community Service/Volunteer Services:** Volunteer with handicapped children, Camas School District, 1999; Club Member/Instructor, Clark Skamania Fly Fishers - 1992-present; Fish Habitat Volunteer Worker, Fish First Price Dairy Project - 1995

**Became CCU Volunteer:** 2006  
**Became Director:** 2006  
**Current Term Expires:** 2009  
**Current Board Committees:**  
Delivery Systems Committee  
Asset Liability Committee  
**Email:** wayneb@columbiacu.org



**Michael R. England**  
Board Director

**Member Since:** 2004  
**Residency:** Vancouver, WA  
**Employment Status:** Full-time  
**Education:** Oregon Institute of Technology - B.S. mechanical engineering; Willamette University - M.B.A. business and finance  
**Employment History:** Vice President of Finance, Columbia Ultimate Business Systems - 2000-present; Director, The J.D. White Company - 1997-2000; Finance Manager, Marine Worldwide/ West State Inc. - 1991-96  
**Community/Volunteer Services:** Scout Master, Boy Scouts of America - 1987-present; Member, High-Tech Council - 2002-04; Committee Member,

**Became CCU Volunteer:** 2006  
**Became Director:** 2006  
**Current Term Expires:** 2008  
**Current Board Committees:**  
Asset Liability Committee  
Executive Loan Committee

Email: chipman@ Columbiacu.org

Columbia Clear Economic Development Council (CREDC) - 1998-2000; Volunteer Raiser, Guide Dogs of America - 2000-present



**Judith L. Chipman**  
Board Director

**Member Since:** 1984

**Residency:** Vancouver, WA

**Employment Status:** Full-time

**Education:** Institute of Supply Mgmt. - certification purchasing management

**Employment History:** Business Manager for Supply Chain, Bonneville Power - 2001-06; Director of Procurement, Vanalco Inc. - 1994-2001.

**Community/Volunteer Services:** President, Northwest Senior Management Assoc. (N.S.M.A.) - 2005-2006; Board of Directors, N.S.M.A. - 1996-2000, 2005-06

**Became CCU Volunteer:** 2006

**Became Director:** 2006

**Current Term Expires:** 2009

**Current Board Committees:**

Executive Loan Committee

Nominating Committee

**Email:** judyc@columbiacu.org

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I hereby certify that I served the foregoing Declaration of J. Parker Cann in Support of Respondents' Motion to Dismiss on:

*VIA E-MAIL AND FIRST CLASS MAIL*

Douglas A. Schafer  
Schafer Law Firm  
950 Pacific Avenue, Suite 1050  
P.O. Box 1134  
Tacoma, WA 98401  
E-mail: Schafer@pobox.com

*VIA E-MAIL AND FIRST CLASS MAIL*

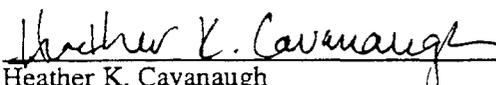
Peggy Hennessy  
Reeves Kahn & Hennessy  
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Portland, Oregon 97286  
E-mail: phennessy@rke-law.com

by the following indicated method or methods:

- by **e-mailing** and **mailing** full, true, and correct copies thereof in sealed, first-class postage-prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of the attorneys, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.

Under the laws of the state of Washington, the undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Executed at Portland, Oregon, this 2<sup>nd</sup> day of February, 2007.

  
Heather K. Cavanaugh

Of Attorneys for Columbia  
Community Credit Union, Mark Ail,  
Duane Bequette, Robert Byrd, J.  
Parker Cann, John Cheek and Steve  
Straub

Certificate of Service

PDXDOCS:1534513.1

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ATTORNEYS AT LAW  
TELEPHONE (503) 224-5858  
3400 U.S. BANCORP TOWER  
111 S.W. FIFTH AVENUE, PORTLAND, OREGON 97204-3699

I hereby certify that I served the foregoing Brief of Respondents and Motion to Modify Commissioner's Ruling on:

**VIA HAND-DELIVERY AND E-MAIL**

Douglas A. Schafer  
Schafer Law Firm  
950 Pacific Avenue, Suite 1050  
P.O. Box 1134  
Tacoma, Washington 98401  
E-mail: Schafer@pobox.com

**VIA E-MAIL AND FIRST-CLASS MAIL**

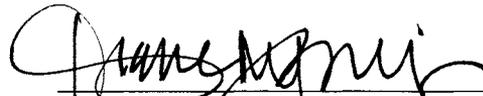
Peggy Hennessy  
Reeves Kahn & Hennessy  
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Portland, Oregon 97286  
E-mail: phennessy@rke-law.com

by the following indicated method or methods:

by **hand delivering** to Mr. Schafer and **mailing** to Ms. Hennessy full, true and correct copies thereof to the addresses of the attorneys as shown above, the last-known addresses of the attorneys on the date set forth below and **e-mailing** full, true and correct copies thereof to the e-mail addresses of the attorneys as shown above, the last-known e-mail addresses of the attorneys on the date set forth below.

The undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Executed at Portland, Oregon, this 23 day of March, 2007.

  
Diane M. Bulis

Of Attorneys for Respondents and  
Intervenor-Respondent

STATE OF OREGON  
BY  DEFENDANT  
07 MAR 23 PM 10:26  
COURT OF APPEALS  
DIVISION II

Certificate of Service