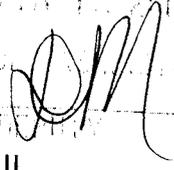


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No. 36349-6-II

STATE OF WASHINGTON  
BY 

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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DAVID A. HANNUM and CYNTHIA L. HANNUM, *Appellants*,

v.

WASHINGTON STATE DEPARTMENT OF LICENSING, a  
department of the State of Washington, LIZ LUCE, Director of the  
Washington State Department of Licensing, JOHN DOE, and JANE  
DOE, *Respondents*,

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BRIEF OF APPELLANTS

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ORIGINAL

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*Assignments of Error*

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No. 2. The trial court erred by entering the Order dated May 4, 2007 denying the Hannums' motion for partial summary judgment on liability the Hannums' Cause of Action Five (Negligence) against Washington State Department of Licensing because there were sufficient undisputed facts and the Hannums were entitled to a judgment as a matter of law.

No. 3. The trial court erred by finding Mr. Hannum suffered no damages where he was ejected from his bus driving course immediately after the course supervisor asked Mr. Hannum why the Department of Licensing was not giving him his commercial driver's license and Mr. Hannum informed the course supervisor the annotation was preventing him from getting his commercial driver's license.

No. 4. The trial court erred by entering the Order granting the Department of Licensing's and Liz Luce's motion for summary judgment on the Hannums' Causes of Action One and Two (Washington State Constitution, art. I, § 3) because there were questions of material fact and the Department of Licensing and Liz Luce were not entitled to a judgment as a matter of law.

No. 5. The trial court erred by entering the Order granting the Department of Licensing's motion for summary judgment

on the Hannums' Cause of Action Six (Negligent Infliction of Emotional Distress) because there were questions of material fact and the Department of Licensing was not entitled to a judgment as a matter of law.

No. 6. The trial court erred by entering the Order dated May 4, 2007 denying the Hannums' motion to amend the complaint to add Fred Stephens as a defendant and add a 42 U.S.C. § 1983 claim against Mr. Stephens.

No. 7. The trial court erred when it denied the Hannums' request for attorneys fees under R.C.W. § 4.84.350.

*Issues Pertaining to Assignments of Error*

No. 1. Did the trial court's Order dated May 4, 2007 violate the summary judgment standard of C.R. 56 because there were questions of material fact and the Hanums were entitled to a judgment as a matter of law on their Negligence claim against Washington State Department of Licensing? (Assignment of Error 1).

No. 2. Did the trial court err in fact and law when it found the annotation caused no economic damage where the Department of Licensing did not inform Mr. Hannum of the annotation or keep records related to the annotation, the Department of Licensing told Mr. Hannum that it was his burden to investigate the annotation, Mr. Hannum spent two weeks trying convince 10 state employees he was not mentally ill, and while Mr. Hannum was investigating the annotation his bus driving course instructor ejected him from the course when he learned the annotation was preventing him from getting his CDL? (Assignments of Error 1-6).

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No. 6. Did the trial court err when it found R.C.W. § 46.20.041 was not unconstitutional as written or as applied when the statute does not require records to be kept of who places an annotation and why they placed the annotation, and it does not require a person be informed of the annotation at the time it is placed so that it can be challenged before it causes damages? (Assignment of Error 4).

No. 7. Did the trial court err when it denied the Hannums' motion to amend the complaint under C.R. 15 to add a 42 U.S.C. § 1983 claim against the former director of the Department of Licensing where the discovery produced by the Department of Licensing showed there was no policy or rules in place which required records to be kept including the

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## **A. ASSIGNMENTS OF ERROR**

### **Assignments of Error**

1. The trial court erred by entering the Order dated May 4, 2007 granting the Washington State Department of Licensing's motion for summary judgment on the Hannums' Cause of Action Five (Negligence) against Washington State Department of Licensing because there were questions of material fact and the Department of Licensing was not entitled to a judgment as a matter of law.
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### **Issues Pertaining to Assignments of Error**

1. Did the trial court's Order dated May 4, 2007 violate the summary judgment standard of C.R. 56 because there were questions of material fact and the Hanums were entitled to a judgment as a matter of law on their Negligence claim against Washington State Department of Licensing? (Assignment of Error 1).
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10. Should this Court award the Hannums costs and expert fees for the work at the trial level and on appeal to date under 42 U.S.C. § 1988 and R. App. P. 18(i)? (Assignment of Error 6).

#### **B. STATEMENT OF THE CASE**

David Hannum came to Washington State in 2001 with 23 years of experience in the nuclear field to work at Hanford training personnel in nuclear fuel handling procedures. Clerk's Papers ("CP") at 2,556,609,626,736. After beginning work at Fluor Hanford as an instructor, Mr. Hannum noticed what appeared to be improper procedures. CP at 557. Mr. Hannum made complaints regarding the procedures and regarding cutbacks in security. Id. Then there was a nuclear incident which was caused by the improper procedures Mr. Hannum complained about. Id. After this event, Mr. Hannum reminded Fluor Hanford of his complaints that they needed proper handling procedures and Mr. Hannum was

then terminated. Id.

Shortly after Mr. Hannum was terminated, Mr. Hannum decided to get a Washington State Driver's License. Id. At some point, someone placed a statement on his Washington State Driver's License record which stated Mr. Hannum had a mental condition that required annual psychiatric evaluations. Id. Mr. Hannum was not informed of the database entry until March, 2005 after Mr. Hannum was damaged by the statement. Id. Mr. Hannum was not given notice or opportunity to challenge the statement before the false statement was put on his Washington State Driver's License record. Id.

After Mr. Hannum was terminated, Fluor Hanford attempted to discredit him. Id. Mr. Hannum attempted to find out who at Fluor Hanford was making allegations related to him but Fluor Hanford would not identify who was making the allegations. Id. Various persons in the Tri-Cities area made statements suggesting that since Mr. Hannum had become a whistleblower against Fluor Hanford, people in the community would make sure Mr. Hannum would not be able to find work in the area. Id.

With a wife and four children, David Hannum has a large family to provide for, so he decided to go to Work Source to find a

job. Id. Work Source is a partnership of Washington State agencies, local agencies, and local businesses. CP at 558. At Work Source in Kennewick, Mr. Hannum described what had transpired at Fluor Hanford. Id. After describing what had transpired at Fluor Hanford, the managers at Work Source began to treat him differently. Id.

On December 22, 2003, Mr. Hannum was the victim of a road rage incident. Id. At his wife's urging, Mr. Hannum went to the City of Pasco Police Department to make a report. Mr. Hannum was met by Officer Dawn French. Id. Officer French requested his identifying information, including Mr. Hannum believes, his drivers' license number. Officer French then left the room. Officer French has stated in a report that she accessed the false and defamatory statements related to Mr. Hannum maintained in the Washington State Department of Licensing database. Id. Officer French then returned to the room and began berating Mr. Hannum. Id. Based on Officer French's behavior, Mr. Hannum decided to leave and not pursue the road rage claim. Id.

Officer French admitted in her deposition that she saw the annotation when she was running Mr. Hannum's record. CP at 839, line 22, 806. Once she saw the annotation incorrectly

identifying Mr. Hannum as a Washington State Driver with mental problems during her investigation, this bell could not be unring.

On December 22, 2003, Mrs. Hannum received a telephone call from a male person who stated he was with the Pasco Police Department. CP at 555. He stated to Cynthia Hannum that David Hannum was at the Pasco Police Department. Id. The officer stated that her husband was "paranoid" and asked her if he was dangerous. Declaration of Cynthia Hannum. Id. The officer asked her if there were any problems at home and she said, "No." Id. At this point in the conversation Mrs. Hannum became extremely stressed, angry, and aggravated. Id.

On April 2, 2004, Mr. Hannum was at a meeting with Wayne Barrett, the Assistant Principal of his son's school talking about his son and the Assistant Principal appeared to be distracted. CP at 558. The Assistant Principal began speaking into his cell phone and made a statement substantially similar to the following: that he "had the person there they had been talking about". Id. Mr. Hannum believed he recognized the voice on the other end of the cell phone communication and Mr. Hannum asked if it was Officer Dawn French, and the Assistant Principal confirmed it was Officer Dawn French. Id. Mr. Hannum then heard Officer French state she

was "responding". Id. Mr. Hannum decided he did not want to have contact with Officer French based on her previous behavior, so Mr. Hannum stopped discussing his son and left the school. Id.

David Hannum has four children and he is good with children, so Mr. Hannum decided that he would enroll in a school district bus driving course in February, 2005 which was a prerequisite to getting a bus driving job in the Tri-Cities area. CP at 558,566. At one point in the class, Mr. Hannum was instructed to get a commercial drivers' license ("CDL"). CP at 559. Mr. Hannum passed the written exams required for a CDL on or about February 18, 2005. Id. Mr. Hannum previously was given the required medical examiner's card for a CDL by Lourdes Health Network on or about February 15, 2005. Id.

When Mr. Hannum went to get a CDL, the attendant at the Washington State Department of Licensing checked his Washington State Department of Licensing record and handed him a form and stated that Mr. Hannum could not get a CDL until a doctor filled out the form. CP at 559. Mr. Hannum provided the medical examiner's card for a CDL and she stated that it was not good enough. Id. Mr. Hannum then left the Department of Licensing office. Id. Mr. Hannum began examining the form and it

appeared to be a mental examination report. Id. Mr. Hannum went back early the following week and asked the Department of Licensing why he had to have a mental exam to get a CDL and Mr. Hannum was told there was a note on his driver's record and they would not give him a CDL until a doctor filled out the form. Id. Mr. Hannum told the Washington State Department of Licensing that the annotation was some kind of mistake, but the Department of Licensing said it was Mr. Hannum's problem and he would have to figure it out. CP at 808.

Mr. Hannum then set up an appointment with his medical health care provider to obtain a statement that the Washington State Department of Licensing annotation was false. CP at 559. A couple days, on or about February 24, 2005, Mr. Hannum went to the appointment Mr. Hannum set up with Advanced Nurse Practitioner Jaeniffer Ang Kaiser. Id. On or about March 3, 2005 at the school district bus driving course, the supervisor asked him if Mr. Hannum had obtained a CDL. CP at 560. Mr. Hannum responded to the questions and stated that there was an annotation on his driver's record, that it was a mistake, and that Mr. Hannum could not get the CDL until the Washington State Department of Licensing reviewed his doctor's report. Id. The

supervisor then told him to leave the class and not come back. Id.

On or about March 4, 2005, Eric at the Washington State Department of Licensing in Olympia confirmed that there was an annotation on his driver's record which contained a statement substantially similar to: "Annual psychiatric evaluations required until mental condition cleared." CP at 559. Mr. Hannum made notes of this statement shortly after it was made. Id. Eric also informed him that other statements were also on his driver's record. CP at 559-560. Mr. Hannum stated to Eric that Mr. Hannum was going to request the database entries under the Public Records Act and that Eric should preserve all database entries. CP at 560.

Attached to the Hannum Declaration as Exhibit A is a true and correct copy of a document Mr. Hannum received in response to his Public Records Act request to the Washington State Department of Licensing with his personal information redacted. CP at 564. Mr. Hannum was never informed of the medical notation until Mr. Hannum challenged it when Mr. Hannum passed the written exams for a Commercial Drivers' License ("CDL") and went to the counter to get his permit on or about February 18, 2005 and the following week. CP at 560. At the time Mr. Hannum was enrolled in a Pasco School District bus driving course and Mr.

Hannum had advanced in the course to a point where Mr. Hannum was instructed to get a CDL. Id. Attached to the Hannum Declaration as Exhibit B are true and correct copies of a document from the course. CP at 566. When Mr. Hannum returned to the course, the course supervisor asked him to describe the status of his attempt to get a commercial driver's license and Mr. Hannum stated that Mr. Hannum was having difficulty getting a CDL, and informed them of a record that needed to be corrected, Mr. Hannum was told to leave and not come back. CP at 559,561. Mr. Hannum suffered the loss of the right to compete for the job, economic damages and damage to his reputation, and severe emotional distress. CP at 561.

On or about March 9, 2005, Steven Welch of the Department of Licensing Kennewick sent a letter dated March 4, 2005 admitting the annotation was placed on the record in 2001. CP at 560. Attached to the David Hannum Declaration as Exhibit C is a true and correct copy of the letter dated March 4, 2006. CP at 568.

On or about March 15, 2005 Virginia Claudia of the Department of Licensing Olympia stated the records related to the medical annotation were gone. CP at 560. She stated the records were deleted. Id. Mr. Hannum then spoke with Mr. Knudson senior

technical consultant with the Department of Licensing Olympia and he confirmed the records had been deleted. CP at 560,561.

Prior to the attempt to get employment at the Pasco School District, Mr. Hannum applied for a couple other jobs. CP at 561. During the job application process with the Kennewick School District in the July, 2003 timeframe, they requested that Mr. Hannum give them an abstract of his driving record. Mr. Hannum obtained the abstract from the Department of Licensing Kennewick. Id. Mr. Hannum noticed the “med cert” annotation on the abstract but Mr. Hannum did not know what it meant at that time. Id. After Mr. Hannum submitted the abstract, they stopped communicating with him. Id. Mr. Hannum does recall that a Kennewick School District employee made a point of asking him questions about his abstract and acted strange, but she did not tell him the reason for her reaction. Id.

After the denial of the right to compete for jobs caused by the Department of Licensing database document related to him, the incident at the Pasco Police Department, and the incident at his son’s school, Mr. Hannum went and saw Advanced Nurse Practitioner Jaenniffer Eng Kaiser. CP at 561. The annotation caused him to suffer stress, emotional distress, and damage to his

reputation. CP at 561,562. The advanced nurse practitioner stated her opinion that Mr. Hannum was suffering from emotional distress due to the error in the Washington Department of Licensing database document and her opinion that the medical annotation has no basis in fact. CP at 547.

Liz Luce has submitted a sworn statement in her answers to Appellants' first interrogatories stating her appointment as the Director of the Department of Licensing was not effective until March 31, 2005. CP at 810,823, line 2. The annotation was removed from the Appellant's driver's record sometime during the period of about March 4<sup>th</sup> to March 9<sup>th</sup>, 2005. CP at 568,569. Since Liz Luce is still the director of the Department of Licensing injunctive relief remains available under all of the Hannums' causes of action. Fred Stephens is the former Director of the Department of Licensing. CP at 816. Discovery conducted after the case was filed shows some of the annotations were not tracked. The Defendants' answers to Appellants' first interrogatories also indicate that there was no mandatory system to track who places annotations on licenses and the basis for the annotations. CP at 825, § (l)(B), ¶ 3. The policy states, "A tracking system may be set up to best fit individual office operations." *Id.* The policy does not

require that records be kept on who placed the annotation and why the annotation was placed on the record. *Id.*

The Hannums filed the Complaint on May 30, 2006. CP at 5. The Defendants then removed the case to federal court. CP at 18. The Washington State Department of Licensing provided answers to the Hannum's interrogatories and admitted that the annotation was placed in 2001, and that there were no procedures in place to require that records be kept of who placed the annotation and when it was placed, so the Hannums brought a motion to amend the complaint in the removed case. CP at 257. The Federal Court then remanded the case and stated that the Hannums could renew their motion to amend the complaint in the state court. CP at 430. The Defendants brought a motion for summary judgment, CP at 608, and the Hannums brought a cross-motion for summary judgment and renewed their motion to amend the complaint. CP at 794.

The trial court granted the Washington State Department of Licensing's motion for summary judgment and denied the Hannums' motion for partial summary judgment on liability. CP at 933. Transcript of Verbatim Report of Proceedings of Hearing on May 4, 2007 ("TR") at 48,49. The trial court also denied the

Hannums' motion to amend the complaint. CP at 931, TR at 48. The Hannums filed a Notice of Appeal on May 31, 2007. CP at 936.

### **C. SUMMARY OF ARGUMENT**

The Parties filed cross-motions for summary judgment on the Hannums' negligence cause of action. The Hannums argued there were enough uncontroverted facts to grant a summary judgment on liability on their behalf because the annotation prevented Mr. Hannum from receiving his commercial drivers license while he was enrolled in the bus driving course. When the bus driving course instructor asked Mr. Hannum why he could not get his CDL, Mr. Hannum described the annotation and the instructor told Mr. Hannum to leave the bus driving course and not come back. This denied him the right to compete for a job. The Department of Licensing admits the annotation prevented Mr. Hannum from getting his CDL while he was in the bus driving course. The instructor now claims that his own comments to Mr. Hannum at the time should be overlooked and that his new reason should be adopted as the reason for the expulsion from the class.

Mr. Hannum also suffered emotional distress and damage to reputation when he had to convince approximately 10 state

employees and the bus driving course instructor that he was not mentally ill.

Both Mr. Hannum and Mrs. Hannum suffered from emotional distress when Mr. Hannum went to the local police station to report a road rage incident. The officer saw the annotation and a call was made to Mrs. Hannum by an officer who asked whether Mr. Hannum was mentally ill. Several months later, Mr. Hannum heard the same officer state to the Vice Principal of Mr. Hannum's son's school that she had spoken with the Vice Principal about Mr. Hannum. These comments poisoned the relationship between the Vice Principal and Mr. Hannum.

The Parties also filed cross-motions for summary judgment on Cause of Action One, a claim that R.C.W. § 46.20.041 violates the procedural due process requirements of the Washington State Constitution. The Hannums argue the statute is unconstitutional as applied because the statute does not require the state to inform a driver of a state's determination regardless of any other action that may be taken against the license and it does not require adequate records to be kept regarding who placed the annotation, when the annotation was placed, and why it was placed on the driver's record.

The Department of Licensing filed a motion for summary judgment on Cause of Action Two which was a substantive due process claim also brought under the Washington State Constitution. The trial court erred by granting the Department of Licensing's motion for summary judgment because there were questions of fact and the Hannums were entitled to a judgment as a matter of law.

The trial court also erred by granting the Department of Licensing's motion for summary judgment on Cause of Action Six (negligent infliction of emotional distress). Mr. Hannum provided a statement from a medical health care provider that stated that the annotation caused Mr. Hannum to suffer emotional distress. The department did not keep any records of who at the department decided that Mr. Hannum was mentally ill and why they decided that. When Mr. Hannum learned of the annotation, he challenged it and the department placed the burden on Mr. Hannum to clear up the matter. Over a two week period, Mr. Hannum tried to convince 10 state bureaucrats the annotation was a mistake and that he was not mentally ill. He was not able to get his CDL and was kicked out of his bus driving course when he had to explain to the course instructor why the department would not give him a CDL. Finally,

Officer French had seen the annotation and was providing information to his son's school, which poisoned his relationship with the school. There is a question of fact under C.R. 56 whether the annotation caused emotional distress and this cause of action should be remanded for trial.

The Hannums filed a renewed motion to amend the Complaint to add a 42 U.S.C. § 1983 claim against the previous director of the Department of Licensing because discovery obtained after the case was filed indicated no rules were in place requiring the department to identify the person who places annotations on Washington State drivers' records and why the annotations were placed. This was a renewed motion that the federal court stated could be renewed in state court after the remand. The trial court abused its discretion by not allowing the amendment.

The Hannums request attorneys fees under 42 U.S.C. § 1988 based on the requested amendment to add a claim under 42 U.S.C. § 1983 and based on R.C.W. § 4.84.350(1). Mr. Hannum requests attorneys fees under R.C.W. § 4.84.350(1) because even though he did not make a formal administrative appeal, he took actions to challenge the annotation and he was not able to challenge the annotation because the Department of Licensing did

not keep records of who placed the annotation, why it was placed, or what decision needed to be appealed.

#### D. ARGUMENT

**1. The trial court erred in granting the Washington State Department of Licensing's Motion for Summary Judgment and denying the Hannums' Motion for Partial Summary Judgment on their Negligence Cause of Action because there are questions of material fact remaining but there are enough uncontested facts to grant the Hannum's motion.**

An order granting summary judgment is reviewed de novo, and an appellate court engages in the same inquiry as the trial court, considering all the facts and reasonable inferences in the light most favorable to the nonmoving party. *Simpson Tacoma Kraft Co. v. Dept. of Ecology*, 119 Wn.2d 640, 646, 835 P.2d 1030 (1992), *Mannington Carpets, Inc. v. Hazelrigg*, 94 Wn. App. 899, 904, 973 P.2d 1103 (1999). A court may grant summary judgment only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. C.R. 56(a), *Simpson*, 119 Wn.2d at 646.

In the Order dated May 4, 2007, the trial court granted Washington State Department of Licensing's and Liz Luce's motion for summary judgment. CP at 933,934, TR at 48. The Hannums also brought a cross-motion for partial summary judgment on

liability under C.R. 56(a) and C.R. 56(d) against the Washington State Department of Licensing. CP at 615.

**a. The Legislative Exception to the Public Duty Doctrine applies to Hannums' negligence claims against the Washington State Department of Licensing.**

The Legislative Intent Exception to the Public Duty Doctrine, the public duty rule of nonliability does not apply where the legislature enacts legislation for the protection of persons of the Appellant's class. *Oberg v. Department of Natural Resources*, 114 Wn.2d 278,284, 787 P.2d 918 (1990), *Halvorson v. Dahl*, 89 Wn.2d 673,676, 574 P.2d 1190 (1978), CP at 616. Liability can be founded upon a municipal code if that code by its terms evidences a clear intent to identify and protect a particular and circumscribed class of persons. *Halvorson*, 89 Wn.2d at 676, CP at 616.

Here, the Washington State Legislature specifically identified a class of persons that are to be protected in the statute, R.C.W. § 46.20.041. CP at 616. The Legislature stated that those persons the State alleges have a mental or psychological condition shall be protected by being given notice and an opportunity to respond to show that person is able to safely drive a motor vehicle, which means the legislative exception applies. R.C.W. § 46.20.041(a)(1).  
Id.

David Hannum's driver's record shows that the Department of Licensing placed the annotation on David Hannum's driver's record and the Washington State Department of Licensing has admitted to placing the annotation on David Hannum's record. CP at 568,569,616. The Department of Licensing was required to inform Mr. Hannum of the annotation, but it failed to perform the notification and the notation stayed on Mr. Hannum's record for several years and caused Mr. Hannum to suffer damages. CP at 616,617.

**b. There are sufficient uncontested facts on Cause of Action Five to award the Hannums a summary judgment on liability on Cause of Action Five against Washington State Department of Licensing.**

Negligence requires duty, breach, causation, and damages. *Alger v. Mukilteo*, 107 Wn.2d 541,545, 730 P.2d 1333 (1987), CP at 617. The determination of proximate cause is generally a question of fact, although with undisputed facts the question may become a determination of law. *Alger*, 107. Wn.2d at 545 (citing *France v. Peck*, 71 Wn.2d 592, 430 P.2d 513 (1967)), CP at 617.

Washington State Department of Licensing, was negligent when it breached the duty of care owed to Appellants by placing and maintaining until March, 2005 the notation on Appellant David

Hannum's licensing record which stated he had a mental or psychological condition. CP at 617. Second, Washington State Department of Licensing was negligent by failing to follow the procedures stated in R.C.W. § 46.20.041 by failing to give Mr. Hannum notice and opportunity to respond to the allegation. Id. The Defendants' negligence caused Appellants to suffer damages, including past and future wage loss, loss of fringe benefits, emotional distress, loss of consortium, and damage to reputation. Id.

The statute provides in relevant part:

"(1) If the department has reason to believe that a person is suffering from a physical or mental disability or disease that may affect that person's ability to drive a motor vehicle, the department must evaluate whether the person is able to safely drive a motor vehicle. As part of the evaluation:

(a) The department shall permit the person to demonstrate personally that notwithstanding the disability or disease he or she is able to safely drive a motor vehicle.

(b) The department may require the person to obtain a statement signed by a licensed physician or other proper authority designated by the department certifying the person's condition. ... " R.C.W. §46.20.041 (emphasis added), CP at 617,618.

In the present case, the Washington State Department of Licensing admits in a letter the annotation had no basis in fact and that it kept no records regarding the annotation. CP at 618,568,569. The Washington State Department of Licensing's

own rules also require a medical certificate to be tracked, but no tracking system for the certificate or records was maintained. Washington State Department of Licensing Policy 8.1, CP at 825,618.

The Washington State Department of Licensing's annotation stayed on Mr. Hannum's record apparently from 2001 until 2005 and Mr. Hannum was not informed of the annotation and he was not allowed to challenge the annotation until after it caused damages. CP at 618. In 2005, Mr. Hannum was in a bus driving course taught by the Pasco School District. Id. He completed the physical on or about February 15, 2005 and completed the commercial driver's license (CDL) test and when he went to get his CDL, he was told he could not get a CDL until a doctor signed a form. Id. He informed the attendant he had a physical and passed the CDL test. Id. He left and came back a few days later to again question the requirement that he get a mental examination and was told there was an annotation in the Washington State Department of Licensing database that stated he had a mental condition that required annual exams and that he had to get a mental examination. CP at 618,619. Mr. Hannum made repeated calls to Washington State Department of Licensing employees and several

stated that the database indicated he had a mental condition that required annual exams. CP at 619.

Mr. Hannum suffered emotional distress, and damage to his reputation when he was told repeatedly that the Washington State Department of Licensing had made a determination that he had a mental condition. Id. This fact was compounded because the Washington State Department of Licensing could produce no records of (1) who made the determination, and (2) what the determination was based on, and (3) who made the database entry. Mr. Hannum was also not given the opportunity to challenge the determination and show it was a false defamatory statement. Id. The Washington State Department of Licensing's actions also caused a loss of consortium and loss of society and companionship between Mr. and Mrs. Hannum. Id.

When Mr. Hannum went to his medical health care provider to evaluate the Washington State Department of Licensing database entry, Advanced Registered Nurse Practitioner Jaeniffer Ang Kaiser stated there was no basis for the Washington State Department of Licensing annotation. CP at 619,547.

After Mr. Hannum learned of the Washington State Department of Licensing database entry, while he was at the Pasco

School District bus driving course, the course supervisor Mr. Gobel asked Mr. Hannum why he was having difficulty getting his CDL and Mr. Hannum answered that there was an annotation on his driver's record which stated that he had a mental condition that required him to have a doctor fill out a report before he could get a CDL. CP at 619,620,559,561. Mr. Hannum stated that it was a mistake, and that he could not get his CDL until the Washington State Department of Licensing reviewed his doctor's report. Course Supervisor Gobel immediately told Mr. Hannum to leave and not come back. Id.

The fact that Gobel removed Hannum from the driving course immediately after Gobel asked Hannum why he could not get his CDL and Hannum responded that the Department of Licensing would not give him his CDL because of the annotation establishes causation. CP at 620. The United States Supreme Court has ruled that when one event closely follows another event, in the context of an adverse employment decision, the closeness in time of the first event establishes causation for the second. *Clark County School District v. Breeden*, 532 U.S. 268,273, 121 S.Ct. 1508, 149 L.Ed.2d 509 (2001)(citing with approval, *O'Neal v. Ferguson Constr. Co.*, 237 F.3d 1248,1253 (10<sup>th</sup> Cir. 2001)), CP at

620. It should be noted that David Hannum not only has the temporal circumstances, but Gobel began the conversation with the question of why Mr. Hannum was having difficulty getting his Commercial Drivers' License. CP at 620.

When Mr. Hannum had to reveal to Mr. Gobel that the Washington State Department of Licensing's annotation that said he had a mental condition and that he had to get a mental evaluation before he could drive, Mr. Hannum suffered additional emotional distress and damage to his reputation. CP at 620. The further inability to obtain a job due to the annotation caused additional loss of consortium and loss of society and companionship between Mr. and Mrs. Hannum. CP at 620,748,749.

The annotation caused additional damages in other circumstances. First, during a previous bus driving job application process (prior to the Pasco School District bus driving course incident where he discovered the facts behind the Washington State Department of Licensing's database entry) at the Kennewick School District, David Hannum was required to give a copy of his driver's record abstract to the Kennewick School District during the job application process. CP at 620. After he submitted the

abstract, a Kennewick School District representative asked Mr. Hannum about the annotation, but Mr. Hannum did not know what it meant. Id. After he submitted the abstract, the Kennewick School District treated him differently and stopped communicating with him. Id. Therefore, the annotation denied him the right to compete for that job also, causing additional loss of the right to compete for employment, loss of consortium, loss of society and companionship, and damage to reputation. Id.

These actions also caused Mrs. Hannum to suffer loss of consortium. Id. Mrs. Hannum also suffered emotional distress when Mr. Hannum went to the Pasco Police Department to report a road rage incident, the Pasco Police Department accessed the annotation which stated Mr. Hannum was mentally ill, and they then called Mrs. Hannum and asked if Mr. Hannum was mentally ill. Id.

Since Washington State Department of Licensing negligently placed a determination that Appellant David Hannum was mentally ill in their database, and negligently failed to give David Hannum a right to challenge the annotation until after it caused damages to David and Cynthia Hannum, the Hannums are entitled to a summary judgment on liability on Cause of Action Five against

Washington State Department of Licensing under C.R. 56(a). CP at 621.

**2. The trial court erred by granting the Department of Licensing's motion for summary judgment against Washington State Department of Licensing on Causes of Action One and Two (Washington State Constitution, Article I, Section 3, Procedural and Substantive Due Process) and denying the Hannums' motion for summary judgment on Cause of Action One.**

An order granting summary judgment is reviewed de novo, and an appellate court engages in the same inquiry as the trial court, considering all the facts and reasonable inferences in the light most favorable to the nonmoving party. *Simpson Tacoma Kraft Co.*, 119 Wn.2d at 646, *Mannington Carpets, Inc.*, 94 Wn. App. At 904. A court may grant summary judgment only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. C.R. 56(a), *Simpson*, 119 Wn.2d at 646.

Issues regarding statutory construction are reviewed de novo. *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004)(citing *State v. J.M.*, 144 Wn.2d 472,480, 28 P.3d 720 (2001)). Constitutional challenges are questions of law and are also reviewed de novo. *City of Redmond*, 151 Wn.2d at 668 (citing *Weden v. San Juan County*, 135 Wn.2d 678,693, 958 P.2d 273

(1998)).

In the Order dated May 4, 2007, the trial court granted Washington State Department of Licensing's and Liz Luce's motion for summary judgment on Causes of Action One and Two. CP at 93, TR at 49. The Hannums also brought a cross-motion for partial summary judgment on liability under C.R. 56(a) and C.R. 56(d) against the Washington State Department of Licensing. CP at 621.

The Washington State Constitution provides that no person shall be deprived of "life, liberty, or property, without due process of law". Wash. Const. art. I, § 3, CP at 621. State deprivation of these protected interests is unconstitutional unless accompanied by adequate procedural safeguards. *Id.* The due process protection under the Washington State Constitution is largely coextensive with that of the U.S. Constitution. *State v. Manussier*, 129 Wn.2d 652, 679-80, 921 P.2d 473 (1996), cert. denied, 520 U.S. 1201, 117 S. Ct. 1563, 137 L. Ed. 2d 709 (1997), CP at 621. In looking at the degree of process that will be afforded, the court balances the following interests: (1) the private interest to be protected; (2) the risk of erroneous deprivation of that interest by the government's procedures and the probable value of additional or substitute procedural safeguards; and (3) the government's interest in

maintaining the procedures. *Rivett v. City of Tacoma*, 123 Wn.2d 573, 583, 870 P.2d 299 (1994)(citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)), *In re Young*, 122 Wn.2d 1, 43-44, 857 P.2d 989 (1993), CP at 621.

The placement of a determination that a person has a mental disability into a Washington State Department of Licensing database is an agency action and a quasi-judicial determination which requires procedural due process under Article I, Section 3 of the Washington State Constitution. CP at 622. Cause of Action One alleged that the Defendants violated the Appellants' procedural due process rights under Article I, Section 3 of the Washington State Constitution. *Id.* This claim is ripe for summary judgment because there are no questions of material fact and the Appellants are entitled to a judgment as a matter of law. C.R. 56, CP at 622.

There are two time periods relevant to this claim. CP at 622. The first time period is 2001 to the time period where the Washington State Department of Licensing refused to give Appellant David Hannum his Commercial Drivers' License and required a doctor to state he could drive despite the mental condition the State alleged. *Id.* The second time period is the two week time period that extends from the time the Department of

Licensing refused to give Mr. Hannum his CDL to the time the Department of Licensing admitted there was no basis for the annotation and agreed to remove it from their database. *Id.* During the circumstances of the first time period the statute is unconstitutional as written and as applied by the Department of Licensing. *Id.* During the circumstances of the second time period the statute is unconstitutional as applied by the Washington State Department of Licensing. *Id.*

During the first time period, the Washington State Department of Licensing did not inform Mr. Hannum of the annotation and it did not provide him with any process for challenging the annotation. CP at 622. The Department of Licensing also did not maintain adequate records of who put the annotation on Mr. Hannum's record and why it was put on his record. *Id.* Since R.C.W. § 46.20.041 does not contain any provisions for notifying a driver if no actions are taken against a person's license and since the Washington State Department of Licensing did not notify Mr. Hannum, the R.C.W. § 46.20.041 is unconstitutional as written and as applied when an annotation is placed but no action is taken against a license. CP at 622,623. The burden of notification and adequate record keeping by the

government is minimal compared to the serious effects that an annotation can have on a person. CP at 623. The facts of this case clearly show that an annotation can cause great damage even if no action is taken against a license, because many jobs require that a job applicant provide a license summary to the prospective employer. Id. The police may also access the records as happened in this case, which can cause additional damages. Id.

During the second period, some process was provided, but since there were no adequate records of who put the annotation on and why it was put on, there was a delay of several weeks which caused damages. Id. Therefore, R.C.W. § 46.20.041 was unconstitutional as applied for this time period. Id. Once again the minimal burden of notification and adequate record keeping is outweighed by the serious damage the annotation can cause. Id.

Appellants request this Court reverse the trial court and enter summary judgment for the Hannums on Cause of Action One and rule R.C.W. § 46.20.041(a)(1) was unconstitutional in violation of Washington State Constitution, Article I, Section 3 as written and as applied when the Washington State Department of Licensing placed an annotation on Mr. Hannum's Washington State Department of Licensing record, did not give him any process for

challenging the placement of the annotation before any action was taken against his drivers license, and did not maintain adequate records of who placed the annotation and why it was placed. *Id.* Appellants request this Court reverse the trial court and enter an order requiring the Washington State Department of Licensing to maintain adequate records of who places all annotations under R.C.W. § 46.20.041 and why the annotations were placed. *Id.* Appellants also request this Court reverse the trial court and enter an order requiring the trial court to order the Washington State Department of Licensing to also take steps to adequately notify anyone whose Washington State Department of Licensing database record receives an entry under R.C.W. § 46.20.041 regardless if any other action is taken so that damages can be prevented. CP at 623,627.

**3. The trial court erred by granting the Department of Licensing's motion for summary judgment against Washington State Department of Licensing on Cause of Action Six (Negligent Infliction of Emotional Distress) because there were questions of material fact remaining.**

An order granting summary judgment is reviewed de novo, and an appellate court engages in the same inquiry as the trial court, considering all the facts and reasonable inferences in the light most favorable to the nonmoving party. *Simpson Tacoma*

*Kraft Co.*, 119 Wn.2d at 646, *Mannington Carpets, Inc.*, 94 Wn. App. At 904. A court may grant summary judgment only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. C.R. 56(a), *Simpson*, 119 Wn.2d at 646.

In the Order dated May 4, 2007, the trial court granted Washington State Department of Licensing's and Liz Luce's motion for summary judgment. CP at 934, TR at 48.

Negligent infliction of emotional distress requires established concepts of duty, breach, proximate cause, and damage or injury. *Reid v. Pierce County*, 136 Wn.2d 195,204, 961 P.2d 333 (1998)(citing *Hunsley v. Giard*, 87 Wn.2d 424,436, 553 P.2d 1096 (1976)), CP at 751. The duty to refrain from negligent infliction of emotional harm is owed to those who are foreseeably endangered by the conduct and with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous. *Hunsley*, 87 Wn.2d at 436, CP at 751. To establish negligent infliction of emotional distress, there must be objective physical symptoms. *Hunsley*, 87 Wn.2d at 435, *Brower v. Ackerley*, 88 Wn.App. 87,97, 943 P.2d 1141 (1997), CP at 751.

In 2005, Mr. Hannum was in a bus driving course taught by

the Pasco School District. CP at 750. He completed the physical on or about February 15, 2005 and completed the commercial driver's license (CDL) test and when he went to get his CDL, he was told he could not get a CDL until a doctor signed a form which turned out to be a mental evaluation form. Id. He informed the attendant he had a physical and passed the CDL test. Id.

He left and came back a few days later to again question the requirement that he get a mental examination and was told there was an annotation on his record that required that he get a mental examination. Id. Mr. Hannum told the Department of Licensing when he went back that the annotation had no basis but the Department of Licensing told him it was his responsibility to clear it up. Id. He suffered emotional distress during the many telephone calls to many employees of the Department of Licensing during the two weeks that it took him to convince the Department of Licensing that their annotation had no basis. Id. He then set up an appointment with his medical health care provider. Id.

At the driving course, the instructor asked Mr. Hannum why he was having difficulty getting his CDL and Mr. Hannum stated that there was an annotation on his driver's record, that it was a mistake, and that he could not get his CDL until the Washington

State Department of Licensing reviewed his doctor's report. Mr. Hannum was required to answer the questions of the course supervisor. CP at 752. The supervisor then told Mr. Hannum to leave the class and not come back. Id. Mr. Hannum also suffered emotional distress attempting to find out the basis for the determination, who made the determination he was mentally ill, and what records existed related to the determination. Id. The Washington State Department of Licensing therefore negligently caused Mr. Hannum to suffer emotional distress. Id.

When he went to his medical health care provider's appointment, Advanced Registered Nurse Practitioner Jaeniffer Ang Kaiser stated there was no basis for the Washington State Department of Licensing annotation. Id. Ms. Ang Kaiser specifically noted that Mr. Hannum was suffering from objective symptoms of emotional distress caused by the Washington State Department of Licensing's determination. Id.

Therefore, the Department of Licensing is not entitled to summary judgment on Cause of Action Six because the evidence shows the annotation caused Mr. Hannum to suffer emotional distress. Id. The Washington State Department of Licensing also placed the burden on Mr. Hannum for over two weeks to prove he

did not have a mental condition. *Id.* During this time, the annotation caused Mr. Hannum to be removed from a bus driving course he was in at the time. CP at 752,753. Mr. Hannum suffered emotional distress during communications with 10 state officials when he was trying to have the annotation removed and he suffered emotional distress when the course instructor Gobel asked him about the annotation and other actions taken by the Washington State Department of Licensing. CP at 753.

**4. The Trial Court erred in denying the Hannums' Motion to Amend the Complaint to add Fred Stephens as a Defendant because there was no prejudice, the annotation caused damages, and Fred Stephens did not insure that procedures were followed and records were kept of who placed the annotation and why they placed it on Mr. Hannum's record.**

The denial of a motion to amend a pleading is reviewed for manifest abuse of discretion. *Herron v. Tribune Publishing Co.*, 108 Wn.2d 162, 165, 736 P.2d 249 (1987). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *Nepstad v. Beasley*, 77 Wn. App. 459, 468, 892 P.2d 110 (1995). The touchstone for denial of an amendment is the prejudice such amendment would cause the nonmoving party. *Caruso v. Local Union No. 690 of Intl. Bhd. of Teamsters*, 100 Wn.2d 343, 350, 670 P.2d 240 (1983). In determining prejudice, a court may consider undue delay and unfair surprise as well as the

futility of amendment. *Herron*, 108 Wn.2d at 165.

The trial court denied the Hannums' request to amend their complaint. CP at 931, TR at 48.

Court Rule 15(a) authorizes a party to bring a motion to amend a complaint and leave shall be freely given when justice so requires. CP at 799. Court Rule 15(a) states in relevant part:

"...Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. ..."  
C.R. 15 (a)(emphasis added), CP at 799.

The U.S. Supreme Court has stated that the clause "leave shall be freely given when justice so requires" in the equivalent federal rule of civil procedure governing motions to amend should be interpreted as follows:

"Rule 15 (a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded. See generally, 3 Moore, Federal Practice (2d ed. 1948), 15.08, 15.10. **If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.** In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - **the leave sought should, as the rules require, be "freely given."** Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying

reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." *Foman v. Davis*, 371 U.S. 178,182, 83 S.Ct. 227,230, 9 L.Ed.2d 222 (1962)(citing Fed. R. Civ. P. 15 (a))(emphasis added), CP at 800.

Washington Courts have followed a similar reasoning when interpreting C.R. 15(a). *Quality Rock v. Thurston County*, 126 Wn.App. 250,273, 108 P.3d 805 (2005)(citations omitted), *Herron*, 108 Wn.2d at 165, CP at 800.

State officers can be sued in their individual capacities under 42 U.S.C. § 1983 for violations of state employees' rights under the Fourteenth Amendment. U.S. Const., Amend. XIV, *Hafer v. Melo*, 502 U.S. 21,32, 112 S.Ct. 358,365, 116 L.Ed.2d 301 (1991), CP at 801.

In determining whether a public official is liable under Appellant's 42 U.S.C. § 1983 cause of action, a court must determine whether the Defendants violated Constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800,818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982), CP at 801. What the reasonable Defendant would have known is determined at the time of the tortious conduct, and

qualified immunity is determined objectively by what a reasonable person should know. *Harlow*, 457 U.S. at 818-19, CP at 801.

Liz Luce stated in her answers to Appellants' first interrogatories that her appointment as the Director of the Department of Licensing was not effective until March 31, 2005. CP at 810,823. The annotation was removed from the Appellant's driver's record on or about March 4, 2005. CP at 568,569. The Luce answers to Appellants' first interrogatories also indicate that there was no mandatory system to track who places annotations on licenses and the basis for the annotations. CP at 825, § (I)(B), ¶ 3. The policy states in relevant part: "A tracking system may be set up to best fit individual office operations." *Id.* The policy also does not require that records be kept regarding who placed the annotation and why the annotation was placed on the record. CP at 801.

An official who has failed to prevent a constitutional violation by inadequately training, supervising or investigating his subordinates, or setting policies can be liable under 42 U.S.C. § 1983. *Gausvik v. Perez*, 239 F.Supp.2d 1067,1099-1100 (E.D. Wash. 2002), reversed in part, 345 F.3d 813 (9<sup>th</sup> Cir. 2003)(citing *Redman v. County of San Diego*, 942 F.2d 1435, 1446-7 (9<sup>th</sup> Cir. 1991)(en banc), cert. denied 502 U.S. 1074 (1992)), CP at 801,802.

Culpability is established by showing the supervisor was deliberately indifferent to acts by others which the supervisor knows or reasonably should know would cause others to inflict the constitutional injury. CP at 802. When applied to determine culpability of a supervisor who failed to act to prevent a constitutional injury, the deliberate indifference standard is objective in nature. *Id.*

State officials can also be liable under negligence and negligent infliction of emotional distress causes of action which require duty, breach, causation, and damages. *Alger*, 107 Wn.2d at 545, CP at 802. Here the discovery to date shows Fred Stephens was negligent when he breached the duty of care owed to Appellants by failing to supervise, train, and establish policies that would have prevented the placement and maintenance of false statements on David Hannum's licensing record for approximately four years which caused damages. *Id.*

Since Liz Luce's interrogatory answers state she replaced Fred Stephens after the time the annotation was removed and since there were no mandatory policies and procedures to maintain records of who placed the annotations in one or more state databases and why they were placed, and no mandatory policies

and procedures to inform individuals that the state determined they had a mental condition, the former director should be added as a defendant for purposes of Appellants' 42 U.S.C. § 1983 claims, negligence claims, and negligent infliction of emotional distress claims. The Hannums therefore request this Court reverse the trial court and remand the claims against Fred Stephens for trial.

**5. The Hannums request this Court award attorneys fees under R. App. P. 18 and R.C.W. § 4.84.350(1).**

Issues regarding statutory construction are reviewed de novo. *City of Redmond*, 151 Wn.2d at 664, (citing *State v. J.M.*, 144 Wn.2d at 480). Constitutional challenges are questions of law and are also reviewed de novo. *City of Redmond*, 151 Wn.2d at 668 (citing *Weden*, 135 Wn.2d at 693).

The Equal Access to Justice Act, R.C.W. § 4.84.350(1) provides:

"(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought." R.C.W. § 4.84.350(1), CP at 756,757,624.

The trial court denied the Hannums' requests for attorneys

fees. CP at 939, TR at 49,50. The trial court found that there was no administrative appeal in this case, but there was no administrative appeal because the Department of Licensing kept no records and therefore under the unique circumstances of the Department of Licensing's interpretation of R.C.W. § 46.20.041, there was no decision to appeal. After two weeks of work and after expending some attorneys fees, Mr. Hannum caused the department to remove the annotation. The issue remaining to be reviewed, based on the discovery is whether the lack of rules regarding keeping records of who places an annotation, why it was placed, and the fact that the department does not inform persons that the annotation exists unless it affects a license – despite the fact that it is accessed by law enforcement and potential employers – passes constitutional muster.

Mr. Hannum is therefore requesting a judicial review of the Washington State Department of Licensing's interpretation of R.C.W. § 46.20.041 under which the Department of Licensing claims it can place an annotation on a person's Washington State Department of Licensing database record under R.C.W. § 46.20.041 without notifying the person and keep no records if no action is taken against the person's license, despite the fact that

these interpretations will likely cause damages to other drivers. CP at 624. He is also requesting this Court order the trial court to enter an order requiring the Department of Licensing to adequately inform any person who receives an annotation under R.C.W. § 46.20.041, maintain adequate records of who placed the annotation, and maintain adequate records of why the annotation was placed. CP at 624,756.

If Mr. Hannum prevails on any review related to Washington State Department of Licensing's action or inaction, he requests attorneys fees and expenses under R.C.W. § 4.84.350. Id.

**6. The Hannums request this Court award costs and expert fees under R. App. P. 18 and 42 U.S.C. § 1988.**

Rule of Appellate Procedure 18 states that if a statute grants a party the right to recover expenses, then the party may request costs. R. App. P. 18(a). 42 U.S.C. § 1988 states that a plaintiff who prevails in a claim under 42 U.S.C. § 1983 may recover expenses and expert fees. 42 U.S.C. § 1988(b), (c). The U.S. Supreme Court has recognized a presumption that successful section 1983 plaintiffs should recover reasonable attorney's fee and costs. *Hensley v. Eckerhart*, 461 U.S. 424,429, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983).

In this case, the Hannums brought a motion to amend the

complaint to add a claim under 42 U.S.C. § 1983 claim against Fred Stephens for not requiring records to be kept of who, when, and why annotations are placed on licenses, and not supervising department employees in a manner that would have prevented the violations of Mr. Hannum's rights. CP at 794. The motion was denied and the Hannums have requested this Court reverse the trial court so that this claim may be litigated. CP at 941. Rule of Appellate Procedure 18(i) states that a party may request the appellate court to direct the trial court to determine the amount of costs. R. App. P. 18(i). The Hannums request this Court grant them expenses and direct the trial court to determine the amount of expenses on remand.

**7. The Hannums request this Court award attorneys fees under R. App. P. 18 and 42 U.S.C. § 1988.**

Rule of Appellate Procedure 18 states that if a statute grants a party the right to recover attorneys fees, then the party may request attorneys fees. R. App. P. 18(a). 42 U.S.C. § 1988 states that a plaintiff who prevails in a claim under 42 U.S.C. § 1983 may recover attorneys fees. 42 U.S.C. § 1988(b). The U.S. Supreme Court has recognized a presumption that successful section 1983 plaintiffs should recover reasonable attorney's fee and costs. *Hensley*, 461 U.S. at 429.

In this case, the Hannums brought a motion to amend the complaint to add a claim under 42 U.S.C. § 1983 claim against Fred Stephens for not requiring records to be kept of who, when, and why annotations are placed on licenses. CP at 794. The motion was denied and the Hannums have requested this Court reverse the trial court so that this claim may be litigated. CP at 941. Rule of Appellate Procedure 18(i) states that a party may request the appellate court to direct the trial court to determine the amount of attorneys fees. R. App. P. 18(i). The Hannums request this Court grant them attorneys fees and direct the trial court to determine the amount of expenses on remand.

#### **E. CONCLUSION**

The Hannums request this Court reverse the trial court and enter summary judgment on liability for Appellants David Hannum and Cynthia Hannum against Defendant Washington State Department of Licensing on Cause of Action Five (Negligence) and remand for a trial on damages. The Hannums also request this Court enter summary judgment for Appellants David Hannum and Cynthia Hannum against Defendant Washington State Department of Licensing on Cause of Action One (Washington State Constitution, Article I, Section 3, Procedural Due Process), declare

that statute is unconstitutional as written and as applied by the Washington State Department of Licensing and the Director Liz Luce. The Hannums also request attorneys fees and expenses under R.C.W. § 4.84.350.

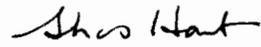
The Appellants request this Court reverse the trial court's Order and judgment dated May 4, 2007 granting Washington State Department of Licensing's motion for summary judgment on the Hannums' Negligence, Negligent Infliction of Emotional Distress, constitutional causes of action.

Appellants also request the Court reverse the trial court's denial of the Hannums' Motion for Partial Summary Judgment on Liability on their Negligence Cause of Action and State Constitutional Cause of Action. The Hannums request this Court enter judgment on liability on their Negligence Cause of Action Against the Washington State Department of Licensing and remand for a trial on damages.

The Hannums also request this Court reverse the Order May 4, 2007 denying their motion to amend the complaint to add Fred Stephens as a Defendant, remand this cause of action for trial, and grant them attorneys fess and costs at the trial level and on appeal under 42 U.S.C. § 1988.

Respectfully submitted this 16<sup>th</sup> day of August, 2007.

HART LAW OFFICE



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Shawn G. Hart, WSBA# 25917  
Attorney for Appellants

**F. APPENDIX**

**R.C.W. § 46.20.041**

(1) If the department has reason to believe that a person is suffering from a physical or mental disability or disease that may affect that person's ability to drive a motor vehicle, the department must evaluate whether the person is able to safely drive a motor vehicle. As part of the evaluation:

(a) The department shall permit the person to demonstrate personally that notwithstanding the disability or disease he or she is able to safely drive a motor vehicle.

(b) The department may require the person to obtain a statement signed by a licensed physician or other proper authority designated by the department certifying the person's condition.

(i) The statement is for the confidential use of the director and the chief of the Washington state patrol and for other public officials designated by law. It is exempt from public inspection and copying notwithstanding chapter 42.56 RCW.

(ii) The statement may not be offered as evidence in any court except when appeal is taken from the order of the director canceling or withholding a person's driving privilege. However, the department may make the statement available to the director of the department of retirement systems for use in determining eligibility for or continuance of disability benefits and it may be offered and admitted as evidence in any administrative proceeding or court action concerning the disability benefits.

(2) On the basis of the evaluation the department may:

(a) Issue or renew a driver's license to the person without restrictions;

(b) Cancel or withhold the driving privilege from the person;

or

(c) Issue a restricted driver's license to the person. The restrictions must be suitable to the licensee's driving ability.

The restrictions may include:

(i) Special mechanical control devices on the motor vehicle operated by the licensee;

(ii) Limitations on the type of motor vehicle that the licensee may operate; or

(iii) Other restrictions determined by the department to be appropriate to assure the licensee's safe operation of a motor vehicle.

(3) The department may either issue a special restricted license or may set forth the restrictions upon the usual license form.

(4) The department may suspend or revoke a restricted license upon receiving satisfactory evidence of any violation of the restrictions. In that event the licensee is entitled to a driver improvement interview and a hearing as provided by RCW 46.20.322 or 46.20.328.

(5) Operating a motor vehicle in violation of the restrictions imposed in a restricted license is a traffic infraction.

### **42 U.S.C. § 1983**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

**42 U.S.C. § 1988 (b), (c)**

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 (20 U.S.C. 1681 et seq.), the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), or section 13981 of this title,, [1] the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

CERTIFICATE OF SERVICE

Shawn Hart, attorney for Appellants certifies:

On August 16, 2007, I served a copy of Brief of Appellants on attorneys for Respondents by delivery of a copy of the Brief of Appellants to the Washington State Attorney General's Office, 629 Woodland Square Loop SE, Olympia, WA 98504-0126.

DATED this 16<sup>th</sup> day of August, 2007 at Seattle, Washington.

HART LAW OFFICE



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STATE OF WASHINGTON  
BY  IDENTITY  
court of appeals  
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