

COURT OF APPEALS
DIVISION II
09 SEP 25 AM 10:45
STATE OF WASHINGTON
BY CA
DEPUTY

No. 39133-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JAMES ROLLAND and SUSAN ROLLAND, husband and wife and the
marital community comprised thereof,

Appellants,

v.

WAYNE WILLIAMS and MELANIE STEWART, husband and wife and
the marital community comprised thereof, DOUGLAS WYCKOFF and
CAROL WYCKOFF, husband and wife and the marital community
comprised thereof, ROLLAND, O'MALLEY, WILLIAMS &
WYCKOFF, P.S., a Washington professional services corporation and
Washington professional services limited liability company.

Respondents.

BRIEF OF APPELLANTS

Susan L. Caulkins, WSBA #15692
John C. Kouklis, WSBA #2976
Davies Pearson, P.C.
920 So. Fawcett
P.O. Box 1657
Tacoma, WA 98402
Phone: (253) 620-1500
Attorneys for Plaintiffs/Appellants

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR	1
Error 1: The court erred in dismissing Rolland’s tort claims for damages from the improper solicitation of clients by Williams, Wyckoff and WWO.....	1
Issue 1: Are there material facts in dispute that there was a breach of fiduciary duty by Williams and Wyckoff to Rolland when they improperly solicited ROWW clients proximately to their termination of Rolland and formation of their new law firm, WWO?.....	1
Issue 2: Are there material facts in dispute that the acts of deceptive solicitation of ROWW clients by Williams, Wyckoff and WWO, coupled with the fiduciary relationship between Williams, Wyckoff and their terminated partner, Rolland, constituted tortious interference with Rolland's business relationship/expectancy with co-opted clients as a shareholder of ROWW?.....	1
Issue 3: Does Rolland, the ousted partner, bear the burden on his claim of damage that ROWW clients would have retained him as their counsel but for the tortious actions of Williams, Wyckoff and WWO, or does the unfair prejudice to Rolland by the nature of the Respondent's contact with the ROWW clients create a genuine issue of material fact of damage by the tainting of the clients' clear choice?.....	2
Error 2: The court erred in failing to find genuine issues of material fact on Rolland’s Consumer Protection Act claim where Williams and Wyckoff used deceptive communications to ROWW clients in their concerted effort to procure clients for their new and competing entity, WWO to the direct detriment of Rolland as the third shareholder of ROWW.....	2
Error 3: The court erred in failing to find genuine issues of material fact on Rolland’s claim for unjust enrichment arising from the retention of Williams, Wyckoff and WWO of the benefits, in the form of legal fees, from former clients of ROWW they	

	solicited in direct competition with ROWW and in contravention of their duty to Rolland and ROWW.	2
III.	STATEMENT OF THE CASE.....	2
IV.	ARGUMENT.....	8
	A. Standard of Review.....	8
	B. The Court Erred in Dismissing Appellant Rolland’s Tort Claims for Damages From the Improper Solicitation of Clients by Respondents Williams, Wyckoff and WWO.....	8
	C. Appellant Rolland Raised Genuine Issues of Material Fact of Respondent’s Violations of the Consumer Protection Act by Their Wrongful Solicitation for Their Own Ends of ROWW Clients in Contravention of the Public’s Interest in the Honorable Practice of Law and Lawyers’ Dealings With Their Colleagues and Their Clients.	26
	D. The court erred in failing to find genuine issues of material fact on Rolland’s claim for unjust enrichment arising from the retention of Williams, Wyckoff and WWO of the benefits, in the form of legal fees, from former clients of ROWW they solicited in direct competition with ROWW and in contravention of their duty to Rolland and ROWW.	28
V.	CONCLUSION	30

TABLE OF AUTHORITIES

Page(s)

Cases

<u>Adler, Barish, Daniels, Levin & Creskoff v. Epstein,</u> 482 Pa. 416, 393 A.2d 1175 (Pa. 1978)	16, 17, 18, 23
<u>Bates v. State Bar of Arizona,</u> 433 U.S. 350, 97 S. Ct. 2691, 53 L. Ed.2d 810 (1977).....	17
<u>Calbom v. Knudtson,</u> 65 Wn.2d 157, 396 P.2d 148 (1964).....	13, 14, 25
<u>Deep Water Brewing, LLC v. Fairway Resources, Inc.</u>	11
<u>Dowd and Dowd LTD v. Gleason,</u> 352 Ill. App. 3d 365, 816 N.E.2d 754 (2004).....	19, 20, 25
<u>Dragt v. Dragt/DeTray,</u> 139 Wn. App. 560, 161 P.3d 473 (2007).....	28, 29
<u>Ellerby v. Spiezer,</u> 138 Ill. App. 3d 77, 485 N.E.2d 413 (1985)	25
<u>Eriks v. Denver,</u> 118 Wn.2d 451, 463-64, 824 P.2d 1207 (1992).....	27, 28
<u>Farwest Steel Corp. v. Mainline Metal Works, Inc.,</u> 48 Wn. App. 719, 731-32, 741 P.2d 58 (1987).....	29
<u>Frates v. Nichols,</u> 167 So.2d 77 (Fla. App. 1964).....	25
<u>Gibbs v. Breed, Abbott & Morgan,</u> 271 A.D.2d 180, 710 N.Y.S.2d 578 (2000).....	25
<u>Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.,</u> 105 Wn.2d 778, 780, 719 P.2d 531 (1986).....	26
<u>Jewel v. Boxer,</u> 156 Cal. App.3d 171, 203 Cal. Rptr. 13, 17 (1984).....	16, 18, 25
<u>Kane v. Klos,</u> 50 Wn.2d 778, 784, 314 P.2d 672 (1957).....	10
<u>Kieburtz and Associates, Inc. v. Rehn,</u> 68 Wn. App. 260, 842 P.2d 985 (1992).....	12, 13
<u>LaMorte Burns & Co., Inc. v. Walters,</u> 167 N.J. 285, 305, 770 A.2d 1158 (2001).....	12
<u>Meinhard v. Salmon,</u> 249 N.Y. 458, 464, 164 N.E. 545 (1928).....	10

<u>Nordstrom, Inc. v. Tampourlos,</u> 107 Wn.2d 735, 739, 733 P.2d 208 (1987).....	26, 28
<u>Ohralik v. Ohio State Bar Association,</u> 436 U.S. 447, 457, 98 S. Ct. 1912, 1919, 56 L. Ed. 2d 444 (1978).....	18
<u>Olympic Fish Prods. v. Lloyd,</u> 93 Wn.2d 596, 611 P.2d 737 (1980).....	11
<u>Panag v. Farmers Ins. Co. of Washington,</u> 166 Wn.2d 27, 50, 204 P.3d 885 (2009).....	23
<u>Pleas v. City of Seattle,</u> 112 Wn.2d 794, 803-04, 774 P.2d 1158 (1989).....	10, 13
<u>Retired Public Employees’ Council of Wash. v. Charles,</u> 148 Wn.2d 602, 612-13, 62 P.3d 470 (2003).....	8
<u>Rosenfeld, Meyer & Susman v. Cohen,</u> 146 Cal. App. 3d 200, 194 Cal. Rptr. 180 (1983). 14, 15, 16, 18, 25	
<u>Saltzberg v. Fishman,</u> 123 Ill. App. 3d 477, 462 N.E.2d 901 (1984)	25
<u>Short v. Demopolis,</u> 103 Wn.2d 52, 61, 691 P.2d 163 (1984).....	27
<u>Sintra v. City of Seattle,</u> 119 Wn.2d 1, 28, 829 P.2d 765 (1992).....	10
<u>Wenzel v. Hopper & Galliher,</u> 779 N.E.2d. 30 (Ind. App. 2002)	25
<u>Wilson Court Ltd. Partnership v. Tony Maroni’s, Inc.,</u> 134 Wn.2d 692, 698, 952 P.2d 590 (1998).....	8

Statutes

RCW 19.86	26
RCW 19.86.090.....	28
Restatement (Second) of Agency, §393.....	13
Restatement (Second) of Torts §767, comments d and f (1979)	11

Other Authorities

45 Am.Jur. 2d, “Interference,” §30 (1969).....	11
6A Washington Practice: Washington Pattern Jury Instructions: Civil 352.04 (5 th ed. 2005) (WPI).....	11
W. Keeton, Prosser and Keeton on Torts, §129, at 986 (5 th ed.).....	12

Rules

CR 56(c).....	8
RPC 7.1, comment [2]	23
RPC 7.3	24

I. INTRODUCTION

Plaintiff James Rolland was dismissed from his Olympia law firm (ROWW) by his two co-shareholders. Concurrent with the dismissal, the two members, who had formed a new law firm (WVO), sent letters on WVO letterhead to all ROWW clients advising that they sign new retainer/fee agreements with WVO, which the vast majority did. The trial court, in summarily dismissing Rolland's tort claims for damages, placed upon Rolland the burden of producing evidence, on the issue of damages, that a client or clients would have signed on with Rolland after his termination but for the WVO letters.

II. ASSIGNMENTS OF ERROR

Error 1: The court erred in dismissing Rolland's tort claims for damages from the improper solicitation of clients by Williams, Wyckoff and WVO.

Issue 1: Are there material facts in dispute that there was a breach of fiduciary duty by Williams and Wyckoff to Rolland when they improperly solicited ROWW clients proximately to their termination of Rolland and formation of their new law firm, WVO?

Issue 2: Are there material facts in dispute that the acts of deceptive solicitation of ROWW clients by Williams, Wyckoff and WVO, coupled with the fiduciary relationship between Williams, Wyckoff and their terminated partner, Rolland, constituted tortious interference with Rolland's business relationship/expectancy with co-opted clients as a shareholder of ROWW?

Issue 3: Does Rolland, the ousted partner, bear the burden on his claim of damage that ROWW clients would have retained him as

their counsel but for the tortious actions of Williams, Wyckoff and WWO, or does the unfair prejudice to Rolland by the nature of the Respondent's contact with the ROWW clients create a genuine issue of material fact of damage by the tainting of the clients' clear choice?

Error 2: The court erred in failing to find genuine issues of material fact on Rolland's Consumer Protection Act claim where Williams and Wyckoff used deceptive communications to ROWW clients in their concerted effort to procure clients for their new and competing entity, WWO to the direct detriment of Rolland as the third shareholder of ROWW.

Error 3: The court erred in failing to find genuine issues of material fact on Rolland's claim for unjust enrichment arising from the retention of Williams, Wyckoff and WWO of the benefits, in the form of legal fees, from former clients of ROWW they solicited in direct competition with ROWW and in contravention of their duty to Rolland and ROWW.

III. STATEMENT OF THE CASE

Plaintiff James Rolland ("Rolland") formed the law firm of Rolland & O'Malley with Thomas O'Malley in 1980. (CP 84, ln. 4) Defendants Wayne Williams ("Williams") and Douglas Wyckoff ("Wyckoff") subsequently joined the firm, and in 1992 it became Rolland, O'Malley, Williams and Wyckoff, P.S. ("ROWW"). (CP 370, ln. 9) Thomas O'Malley died in 2001. (CP 84) Each of the remaining shareholders, Rolland, Williams and Wyckoff, held equal 1/3 interests in ROWW. (CP 8, ln. 19) The firm concentrated its practice in worker's compensation cases. For the majority of its existence, Rolland served as the managing partner of ROWW (CP 8, ln. 20) and over the course of his

25 year career with ROWW procured the bulk of ROWW's clients. (CP 87, ln. 9) Rolland handled every case in the office at some point, and he dealt with all cases coming into the office initially. (CP 404, ln. 9-12)

On March 19, 2005, Williams and Wyckoff held a Special Meeting of Shareholders without notice to Rolland, at which it was decided that Rolland would be terminated. (CP 536) Williams and Wyckoff, at this time, were also officers and directors of ROWW. (CP 479, 537). Subsequently, on March 21, 2005, Williams and Wyckoff, together with Dane Ostrander, formed their new firm, Williams, Wyckoff and Ostrander, PLLC. (WVO) (CP 482, ln. 10-12). On March 23, 2005, Williams and Wyckoff terminated Rolland's employment with ROWW. (CP 85, ln. 1) Also on March 23, 2005, Williams and Wyckoff provided Rolland with a written memorandum in which they pledged their willingness "to wait to send letters to your existing clients until you can get a phone and mailing address." (CP 94, 591) Williams and Wyckoff informed Rolland, however, that they felt they needed to do something regarding notice to clients by the following Monday, which would have been March 28, 2005. (CP 94). Williams and Wyckoff further arranged to move Rolland's desk and "related property" to Rolland's new office space on the second floor of the same building. (CP 94). Specifically, the memorandum stated in pertinent part:

Yesterday, you raised some issues and questions. Here are our responses:

We would be happy to wait to send letters to your existing clients until you can get a phone and mailing address. However, we feel we must do something by Monday afternoon. You can call Qwest and get a new phone in one day. Please get the information to Julie by noon, Monday to be included in our mailing.

We have no objection to you continuing to clean out your office today. However, at 3:00 pm today we are converting it to a conference room. We plan to move your desk and related property to the 2nd floor and will provide you with a key. In any event, we feel it is too disruptive to have you continue to come into the office after today.

You also asked for help in setting up your new office. You can ask any of our staff to help you, but not during the work day... .

(CP 94).

Despite these representations, on March 23 and March 24, 2005 Williams and Wyckoff sent a letter to most of ROWW's clients (CP 623-626), numbering several hundred, on WWO's letterhead. (CP 622, ln. 1-3; CP 629-630) The WWO March letter stated, in part:

...Because of the recent departure of Jim Rolland from our firm and the death of Tom O'Malley in 2001, we believe it is important to have our firm name reflect who the members are, both for our clients and the legal community... .

If you have been a client of Jim Rolland's, your case has already been assigned to an experienced partner who will represent you during this transition period... .

In order to satisfy the Department of Labor and Industries' requirements, we would request that you sign the enclosed forms and return them to us, reflecting our representation of you, under our new law firm name.

(CP 593-600, *See* Appendix 'A')

Furthermore, Williams and Wyckoff removed the library belonging to ROWW and retained the software and computers of ROWW for the benefit of their new law firm. (CP 584, ln. 3-9)

At the time WWO sent out the letters on March 23 and March 24, 2005 ("the March letter"), Williams and Wyckoff had knowledge of Rolland's home telephone number, but when clients called asking for Rolland, WWO simply replied, "that he was no longer with the firm" and that they did not know how to reach Rolland. (CP 9, 543, 615)

On March 25, 2009, Rolland received a copy of the WWO letters of March 23 and March 24, and he promptly notified Williams and Wyckoff of his objection. Over the objection, Williams and Wyckoff continued to send the WWO March letter to ROWW clients, together with various contracts, forms and releases on WWO letterhead, into April, 2005. (CP 603-12; App. 'A') It was not until March 31, 2005 that WWO sent out a second letter to ROWW clients providing Rolland's address and

telephone number. (CP 484, ln. 3) On March 31, 2005, Rolland also sent a letter to all ROWW clients with enclosures giving the clients an opportunity to select either WWO or Rolland as their counsel. (CP 419-426, 484, ln. 7) Thereafter, some clients signed both WWO's and Rolland's representation letters. (CP 227- 240, 484 at ln. 14)

Rolland was ultimately able to recapture only approximately 30 former ROWW clients after the dissemination of the March WWO letter. (CP 584 at ln. 10, CP 701, 714)

The total amount of fees to WWO from former ROWW clients from April 1, 2005 through June 30, 2007 totaled \$2,947,402 in addition to a pension balance of \$1,196,302 as of August 31, 2005. (CP 451-3) WWO also received a personal injury case settlement on the case of a ROWW client, which resulted in a \$25,000 contingent fee to WWO. (CP 639, ln. 4) WWO also took over a \$2000 monthly fee being paid to ROWW by a collection agency. (CP 209, ln. 1) Rolland would have held a one-third equity share in these assets but for the defendants' actions. (CP 262, 265, 720)

On October 5, 2005, Rolland filed the instant lawsuit against Williams, Wyckoff, WWO, and ROWW seeking (a) the winding up and judicial dissolution of ROWW; (b) damages against Williams and Wyckoff for breach of fiduciary duty toward Rolland; and (c) damages

against Williams, Wyckoff and WWO for tortious interference with business relationship/expectancy, for violation of Washington's Consumer Protection Act, and for unjust enrichment. (CP 7)

After some discovery, including an Order to Compel Discovery on December 1, 2006 (CP 311-2), defendants filed a Motion for Summary Judgment of Dismissal as to all of Rolland's causes of action.

On December 7, 2007, the Court granted Defendant's Motion for Summary Judgment of dismissal of Plaintiff's Complaint. As to the tort claims, the court ruled as follows:

The key to the remaining causes [the tort claims], in my opinion, are the issue of damages. If I have to go back to the letters, which I did many times, and some of the statements including Mr. Rolland, and figure out whether or not oppressive conduct has occurred or not, arguably, there is an issue of fact but there is no evidence, there is no issue of fact in this Court's opinion on the issue of damages. I think the plaintiff has the burden to come forward an [sic] each of these causes, each of which involved the element of damages to show that one or more – one client would have gone with Mr. Rolland but for these letters that were sent out and I didn't see that in the record, so I'm going to grant the motion for summary judgment.

(RP 12/7/2007, p. 23, ln. 4-16.)

Rolland filed his Motion for Reconsideration on December 17, 2007. On January 25, 2008, after argument, the court denied the Motion

for Reconsideration as to the tort claims, reserving for trial only the issues of distribution of ROWW corporate assets. (CP 800-01)

Rolland then timely brought his appeal of the interlocutory Summary Judgment of Dismissal of his remaining causes of action. (CP 795)

IV. ARGUMENT

A. Standard of Review

The standard of review of an order granting summary judgment is *de novo*. The court on appeal conducts the same inquiry as the trial court. Wilson Court Ltd. Partnership v. Tony Maroni's, Inc., 134 Wn.2d 692, 698, 952 P.2d 590 (1998). The court should resolve questions of fact as a matter of law on summary judgment "only if reasonable persons could reach but one conclusion." Retired Public Employees' Council of Wash. v. Charles, 148 Wn.2d 602, 612-13, 62 P.3d 470 (2003). In engaging in the CR 56(c) inquiry, the court shall consider all facts and draw reasonable inferences upon those facts in a light most favorable to the nonmoving party. Wilson Court, *supra*.

B. The Court Erred in Dismissing Appellant Rolland's Tort Claims for Damages From the Improper Solicitation of Clients by Respondents Williams, Wyckoff and WWO.

Issue 1: Are there material facts in dispute that there was a breach of fiduciary duty by Williams and Wyckoff to Rolland when they improperly solicited ROWW clients proximate to their

termination of Rolland and formation of their new law firm, WWO?

Issue 2: Are there material facts in dispute that the acts of deceptive solicitation of ROWW clients by Williams, Wyckoff and WWO, coupled with the fiduciary relationship between Williams, Wyckoff and their terminated partner, Rolland, constituted tortious interference with Rolland's business relationship/ expectancy with co-opted clients as a shareholder of ROWW?

There are material facts in dispute with respect to Respondents Williams' and Wyckoff's breach of their fiduciary duty to Appellant Rolland and improper interference with a business relationship when they improperly solicited ROWW clients concurrently with their termination of Rolland's employment and for the benefit of their new law firm, WWO.

More than 80 years ago, Judge Benjamin Cardozo set forth the duty of a fiduciary in a statement which has long since become a classic:

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this, there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by

the crowd. It will not consciously be lowered by any judgment of this Court.

(Emphasis added.) Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545 (1928).

Our Supreme Court directly applied this principle to corporate officers and directors engaging in self-dealing to the detriment of the corporation or other shareholders in Kane v. Klos, 50 Wn.2d 778, 784, 314 P.2d 672 (1957).

Such acts of self-dealing give rise to a cause of action for tortious interference with business relationships “from either the defendant’s pursuit of an improper objective of harming the plaintiff or the use of wrongful means that in fact cause injury to plaintiff’s contractual or business relationships.” Pleas v. City of Seattle, 112 Wn.2d 794, 803-04, 774 P.2d 1158 (1989). Tortious interference with contractual relations or business expectancy has the following elements:

1. The existence of a valid contractual relationship or business expectancy;
2. That defendants had knowledge of that relationship;
3. An intentional interference inducing or causing a breach or termination of the relationship or expectancy;
4. That defendants interfered for an improper purpose or used improper means; and
5. Resultant damages.

Sintra v. City of Seattle, 119 Wn.2d 1, 28, 829 P.2d 765 (1992).

The test for determining the liability of a corporate officer for tortious interference with the corporation's contractual relations was first addressed by the Washington Supreme Court in Olympic Fish Prods. v. Lloyd, 93 Wn.2d 596, 611 P.2d 737 (1980). A corporate officer faces personal liability for tortiously interfering with the contractual relations of the corporation where the officer does not act in good faith, said good faith being "nothing more than an intent to benefit the corporation." Id. at 599. Most recently in September, 2009, in Deep Water Brewing, LLC v. Fairway Resources, Inc., ___ Wn. App. ___, ___ P.3d ___, Slip Opinion September 10, 2009, Docket Nos. 27014-9-III, 27024-6-III (Div. III, 2009), Division III of the Court of Appeals viewed the Olympic Fish protective principle of good faith for a corporate officer to be an affirmative defense of the actor, and noted the comment to 6A Washington Practice: Washington Pattern Jury Instructions: Civil 352.04 (5th ed. 2005) (WPI) as follows:

With respect to the interests of the defendant, see Restatement (Second) of Torts §767, comments d and f (1979), and 45 Am.Jur. 2d, "Interference," §30 (1969). According to Prosser and Keeton on Torts:

The defendant is... permitted to interfere with another's contractual relations to protect his own present existing economic interests, such as the ownership or condition of property, or a prior contract of his own, or a financial interest in the affairs of the

person persuaded. *He is not free, under this rule, to induce a contract breach merely to obtain customers or other prospective economic advantage; but he may do so to protect what he perceives to be existing interests...*

W. Keeton, Prosser and Keeton on Torts, §129, at 986 (5th ed.).

(Emphasis in text.) ___ Wn. App. ___, ___ P.3d ___, Slip Opinion September 10, 2009, Docket Nos. 27014-9-III, 27024-6-III CDiv. III, 2009).

It has also been flatly held by our courts that an employee is not entitled to solicit clients for a rival business or in direct competition for his/her employer's business during employment. To do so violates the employee's duty of loyalty and constitutes tortious interference with a contract or business relationship. *See, e.g., Kieburtz and Associates, Inc. v. Rehn*, 68 Wn. App. 260, 842 P.2d 985 (1992); *LaMorte Burns & Co., Inc. v. Walters*, 167 N.J. 285, 305, 770 A.2d 1158 (2001).

Kieburtz and Associates was a corporation that provided consulting services to hospitals and medical clinics seeking to expand and develop new facilities. Between 1981 and 1989, the defendants Rehn and Skorheim worked for Kieburtz Corporation as full-time employees. Based upon data and client contacts they had gathered during their employment, Rehn and Skorheim arranged to perform services for firm clients under a new partnership they had set up. When the corporation discovered this, suit was brought. *Kieburtz, supra*, 68 Wn. App. at 263.

The Court of Appeals reversed a summary judgment which had been entered in favor of the defendants. The court adopted Restatement (Second) of Agency, §393 and held that during the period of his or her employment, an employee is not entitled to solicit customers for a rival business or to act in direct competition with his or her employer's business. Id. at 265-66. Such breach of loyalty by an employee to the employer satisfies the fourth prong of the tortious interference test, namely interference for an improper purpose or by improper means. Id. at 266.

That a lawyer has a protectable business expectancy in his or her attorney-client relationships, and may sue for intentional interference with such relationships, was established by our Supreme Court in Calbom v. Knudtson, 65 Wn.2d 157, 396 P.2d 148 (1964). The Calbom case remains a seminal case in this state, relied upon by our Supreme Court in Pleas v. City of Seattle, supra, and by the Court of Appeals in the Kieburtz case. In Calbom, the Supreme Court held that the cause of action for tortious interference is a remedy available to a lawyer just as much as to any other person with contracts or business expectancies, saying as follows:

Although the relationship thus established was terminable at the will of the parties, we are convinced the evidence and the reasonable inferences therefrom amply support the trial court's finding of an existing attorney-client relationship, which plaintiff had every right to anticipate would

continue, and which would have continued but for the intervention of defendants.

Calbom, 65 Wn.2d at 164.

Another leading case is Rosenfeld, Meyer & Susman v. Cohen, 146 Cal. App. 3d 200, 194 Cal. Rptr. 180 (1983). The Rosenfeld case involved the consequences to partners who left a law firm after breaches of their fiduciary duties to the partnership and to their fellow partners both before and after their departure. The departing lawyers in Rosenfeld (referred to as C & R) were originally hired by the firm (referred to as RM & S) as associates. They were assigned to work upon a large antitrust case which was not expected to be ready for trial for many years and which was expected to generate a fee of several million dollars for the firm. C & R worked exclusively on the antitrust case for five years and received substantial compensation from RM & S during this time. During this time, too, C & R became partners of the firm and were compensated by a percentage of the firm's profits determined by their partnership percentage. By late 1973, C & R believed the antitrust case would commence in the fall of 1974. In early 1974, C & R demanded that their partnership percentage be increased and threatened to leave the firm if their demands were not met. In the meantime, they began to negotiate with the client. On April 11, 1974, C & R announced in writing that they were withdrawing from the firm effective April 30, 1974. During the first week

of May 1974, C & R formed a new law firm. On May 14, 1974, the antitrust client mailed a letter to RM & S discharging it as attorney of record. On May 16, 1974, the client signed a retainer and contingent fee agreement with C & R. The antitrust case went to trial in November 1974 and was settled by C & R in August of 1975 for more than \$33,000,000. This settlement resulted in a fee to C & R of \$337,000 as current compensation for the period May 1974 through August, 1975 and a \$2,400,000 contingent fee. *Id.*, 194 Cal. Rptr. 184-186.

RM & S commenced an action to recover the fee and other damages due to C & R's breach of fiduciary duty to RM & S. The trial court recognized that C & R did breach their fiduciary duty as partners of RM & S and that the fee earned by C & R was in fact unfinished business of RM & S on which a constructive trust could well be imposed. However, the trial court held that, even given such breaches of fiduciary duties by C & R, RM & S failed to state a cause of action upon which relief could be granted since the partnership could be dissolved at will, irrespective of the motives of the partners seeking dissolution, and the clients were free to engage the counsel of their choice. *Id.*, 194 Cal. Rptr. at 186.

The appellate court reversed, holding that C & R were to be held accountable for their breaches of fiduciary duty to the partnership. The

court noted that a partner is a trustee for the other partners and is bound to “act in the highest good faith to his co-partner and may not obtain any advantage over him and the partnership affairs by the slightest misrepresentation, concealment or adverse pressure of any kind.” *Id.* at 188. (Emphasis added.) Despite the fact that as a matter of law a partner has “an absolute right to dissolve a partnership at will, this cannot be done without regard to fiduciary duties.” The court noted that such a holding would be contrary “to the principle that a person may be stopped from exercising rights in bad faith.” *Id.* at 189. (Emphasis added.)

When a breach of fiduciary duty occurs by way of a clear solicitation of the client prior to any public announcement of departure, any “choice” later made by the client is tainted. Then, it is not a choice of the client but a solicitation by the departing lawyer. *Jewel v. Boxer*, 156 Cal. App.3d 171, 203 Cal. Rptr. 13, 17 (1984). Even though the client “has the right to the attorneys of its choice,” that right is irrelevant to the rights and duties between the former partners with regard to income and unfinished partnership business. *Id.*

In *Adler, Barish, Daniels, Levin & Creskoff v. Epstein*, 482 Pa. 416, 393 A.2d 1175 (Pa. 1978), the Pennsylvania Supreme Court also articulated a clear distinction between the right of a client to retain the attorney of his

choice and the right of a law firm to be protected against the tortious interference with its business relationships by lawyers leaving the firm.

In Adler, a group of lawyers led by one Epstein terminated their employment relationship as salaried associates with the plaintiff firm on March 10, 1977. Epstein continued to use the firm office until March 19, 1977. During this time, and through April 4, Epstein contacted clients of the firm, and he advised them he was leaving and the clients could choose to be represented by him, by the firm, or by another attorney. He also mailed out to the clients contingent fee agreements and forms of retention letter discharging Adler Barish as counsel and retaining Epstein. Id., 393 A.2d 1177-78. Epstein defended Adler Barish's claim of tortious interference claim by asserting that the clients' contracts with the law firm were terminable at will, and that his contacts with the clients were an exercise of guaranteed free speech under Bates v. State Bar of Arizona, 433 U.S. 350, 97 S. Ct. 2691, 53 L. Ed.2d 810 (1977).

The Pennsylvania Supreme Court held that such actions constituted a tortious interference with the plaintiff's business relations by his solicitation of clients who had preexisting fee agreements with Adler Barish. The court noted that Epstein's aim in providing the fee agreement and retention forms was to promote swift action by the client without the burdens of great thought by the client. Such conduct amounted to

proscribed self-recommendation by in-person solicitation to which the court was averse. The court quoted Ohralik v. Ohio State Bar Association, 436 U.S. 447, 457, 98 S. Ct. 1912, 1919, 56 L. Ed. 2d 444 (1978): “Unlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, in-person solicitation may exert pressure and often demands an immediate response without providing an opportunity for comparison or reflection.” Adler, supra, 393 A.2d at 1180. “In the atmosphere surrounding appellees departure, appellees’ contacts unduly suggested a course of action for Adler Barish clients and unfairly prejudiced Adler Barish.” Id. Such was the WWO solicitation.

Issue 3: Does Rolland, the ousted partner, bear the burden on his claim of damage that ROWW clients would have retained him as their counsel but for the tortious actions of Williams, Wyckoff and WWO, or does the unfair prejudice to Rolland by the nature of the Respondent's contact with the ROWW clients create a genuine issue of material fact of damage by the tainting of the clients' clear choice?

This rule that wrongful solicitation taints the selection by the client and injures the party who is owed the fiduciary duty does not place a duty upon the aggrieved party to show that but for the wrongful solicitation the client would have chosen differently. *See, Rosenfeld, supra; Jewel v. Boxer, supra*

A recent case outside the State of Washington is particularly on point, namely Dowd and Dowd LTD v. Gleason, 352 Ill. App. 3d 365, 816 N.E.2d 754 (2004). The court in that case discussed at length the issues regarding both breach of fiduciary duty and intentional interference with a business expectancy, in the context of a law firm split. It upheld a judgment against departing shareholders of nearly \$2,500,000 for such tortious conduct.

In Dowd, the court held that solicitation by departing partners of firm clients constituted both breach of fiduciary duty and tortious interference, notwithstanding the defendants' contention that the major client who came to their new firm would have done so without the solicitation, and thus no damage could be shown. The court rejected this position, observing as follows:

The question posed to Riley during trial was: "If Mike Dowd had fired Nancy Gleason in 1990, would you have left the files that she was working on for you with Mike Dowd?" Following an objection, the court stated the answer would call for speculation. Defense counsel argued that it spoke to the "missing gap" in Dowd's reasonable expectation issue. The court then allowed counsel to ask a series of questions of Riley as an offer of proof. Riley was asked what effect Nancy Gleason's termination would have had on the handling of Allstate's files. Riley responded, "Disaster," because "Nancy was an integral part of this operation." Riley was also asked if he would have allowed the 200 Allstate

files to remain at Dowd absent Nancy Gleason, to which he answered, "No."

Riley's answers, in defendants' view, would support the conclusion that Dowd did not have a legitimate expectancy of continued business in the event that Gleason left Dowd. We find it important that there was no evidence that Dowd had any indication from Riley prior to December 31, 1990, that its continued business relationship was dependent upon Nancy Gleason's continued employment with Dowd. Even if Dowd had that understanding, Dowd was unaware of Nancy Gleason's intention to leave the firm. There was also no indication that Allstate was in any way dissatisfied with the services received from Dowd. More importantly, as we have already affirmed the finding that defendants succeeded in ending the relationship, their "purposeful interference" was committed in an unseemly manner. In our view, the trial court's order does not offend the well established rule that a client may discharge an attorney at any time, for any reason, or for no reason.

Id., 352 Ill. App. 3d at 381-82, 816 N.E. 2d at 768-69.

The Dowd case is particularly important in its analysis, and applicable to the instant case: namely that the terminable at will nature of the attorney-client relationship is in itself immaterial both to the questions of breach of fiduciary duty and of intentional interference. Rather it is the matter of and the manner in which departures or expulsions of a lawyer partner or shareholder from a firm are accomplished that make all the difference.

The case at bar is not simply a case in which the defendants terminated Jim Rolland for good reason or no reason at all, which in itself would not have been actionable. Nor would it have been actionable if they had simply notified clients of ROWW of that fact, as ROWW is entitled to communicate with its clients through its officers.

What was done here, however, was very different. Here, Williams and Wyckoff terminated Mr. Rolland without notice, thus removing him from the firm and access to his clients, premises and assets, and then, at the same time formed a separate legal entity – WWO - (as distinguished from changing the corporate name of ROWW) owned by them, and directly solicited the clients of ROWW to retain WWO in direct competition to ROWW in which Williams and Wyckoff were still shareholders, officers and directors. Their action was undertaken despite their representation to Rolland that letters of a neutral nature, not favoring either side, would be sent out after a few days. It was the manner in which Williams and Wyckoff expelled Rolland and purloined ROWW's clients that makes the difference in this case.

The WWO letter implied that Rolland was gone, not that he was opening his own practice on the second floor of the same building. Williams and Wyckoff in the letter then implied that WWO was the same as ROWW, stating “[a]s you can see from the new letterhead, there have

been some changes at our law firm,” identifying Williams, Wyckoff & Ostrander, PLLC as “*Formerly Rolland, O’Malley, Williams and Wyckoff, P.S.*,” all when WWO was, in fact, a new and separate entity and ROWW continued to exist in corporate form, and all of the clients were clients of ROWW, the corporation. Williams and Wyckoff also injected a note of urgency into their letter that “[i]n order to satisfy the Department of Labor and Industries’ requirements, we would request that you sign the enclosed forms and return them to us, reflecting our representation of you, under our new law firm name.” Wyckoff explained this urgency was necessary “to inform the Department of Labor and Industries that we had changed our firm name and get a new firm ID that we could then gain access to the files because the way that we feel it’s necessary to practice you have to look at things like our logs and imaging very frequently on a claim in order to know what’s going on.” (CP 634; App. ‘A’) Actually, though, these new documents are not necessary for the Department while the clients had agreements with ROWW, but, rather, are necessary if the client is moving from ROWW to WWO, a new legal entity in which Williams and Wyckoff had an interest, in direct conflict and competition with ROWW and its third shareholder, Rolland.

The clients had valid contractual relationships with ROWW in which Rolland had a clear interest. Williams and Wyckoff had knowledge

of the relationships. They intentionally interfered with the relationship to induce the clients to terminate their relationships with ROWW in Williams' and Wyckoff's own self-interest. Their act of self-dealing constituted a breach of their fiduciary duty to ROWW and to their co-shareholder, Rolland, with no reasonable justification.

Williams and Wyckoff may argue that they are shielded by any measure of truth in the WWO letter. However, "a communication may contain accurate information yet be deceptive. Deception exists 'if there is a representation, omission or practice that is likely to mislead' a reasonable consumer. [Citation omitted.] 'In evaluating the tendency of language to deceive, the [court] should **look not to the most sophisticated readers but rather to the least.**'" Panag v. Farmers Ins. Co. of Washington, 166 Wn.2d 27, 50, 204 P.3d 885 (2009). (Emphasis added.)

While not directly at issue here as they do not set the standard for civil liability, our Rules of Professional Conduct echo this principle. *See*, RPC 7.1, comment [2]. The fact that the WWO letter was deceptive is found in the confusion of several ROWW clients in signing both the WWO materials and Rolland's materials. Furthermore, the direct contact by WWO with the intimation of urgency, so similar to the conduct in Adler, supra, is illustrative of the "potential for abuse" identified in

RPC 7.3, comment [1], that “[t]he prospective client [of WWO]..., may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon being retained immediately.” Accordingly, the acts of Williams and Wyckoff engaging in the direct solicitation of ROWW on behalf of their new entity, WWO, amount to the improper purpose or improper means that is the breach of fiduciary duty that satisfies the fourth prong of the tortious interference test.

Damages are then established by looking to Williams and Wyckoff’s ill-gotten gains from their solicitation. The ROWW clients who moved to WWO provided WWO with the benefit of work in progress performed by ROWW and the demonstrable fee potential to ROWW and hence, in part, to its 1/3 shareholder, Rolland, evidenced by the ultimate fees to WWO that ROWW would have earned had WWO not solicited the clients away from ROWW. As noted above in Deep Water Brewing, LLC v. Fairway Resources, Inc., *supra*, once a party owed the fiduciary duty establishes a prima facie case of breach, the fiduciary bears the burden of clearly disestablishing the causal connection between the breach and the claimed loss.

The legion of cases repeatedly hold that the wrongful solicitation taints the selection by the client, and the one toward whom the fiduciary duty has been violated need not show that but for the wrongful solicitation

the client would have chosen differently, i.e., Rolland over WWO. *See* Rosenfeld, Meyer & Susman v. Cohen, 146 Cal. App. 3d 200, 194; Jewel v. Boxer, 156 Cal. App.3d 171, 203 Cal. Rptr. 13 (1984); Wenzel v. Hopper & Galliher, 779 N.E.2d. 30 (Ind. App. 2002); Gibbs .v Breed, Abbott & Morgan, 271 A.D.2d 180, 710 N.Y.S.2d 578 (2000); Frates v. Nichols, 167 So.2d 77 (Fla. App. 1964); Ellerby v. Spiezer, 138 Ill. App. 3d 77, 485 N.E.2d 413 (1985); Saltzberg v. Fishman, 123 Ill. App. 3d 477, 462 N.E.2d 901 (1984).

Again, the client's right to choose a lawyer, and the client's obligation in regard to fees, are not issues here. The rights of Mr. Rolland versus the third party interferors, WWO, Williams and Wyckoff, are at issue in this case. Our Supreme Court made it clear in Calbom, supra, that in fact a lawyer has a protectable business expectancy against third party interference in the attorney-client relationship, and furthermore that a damage award may be framed upon the gross fee the plaintiff would have received. In particular, "the tort here relates to the interruption of professional services, the uninterrupted performance of which comprehends many intangible values not wholly susceptible of proof; ... the damage here claimed is the value of the professional business expectancy interfered with, prima facie proof of which is the reasonable value of such services... ." Calbom, supra, 65 Wn.2d at 167. Under Dowd, supra, 352 Ill. App. 3d at 387, 816 N.E.2d at 772-73., a CPA's

testimony as to the economic impact of client loss is a proper measure of damages, i.e., ill-gotten gains, without the need to show that any client would have remained with the original lawyer or firm but for the solicitation. Accordingly, the Declaration of Michael Moss, CPA, submitted by Rolland in response to the Motion for Summary Judgment below which calculated the gross amount of fees generated by WWO from former ROWW clients as being \$2,947,402, plus the pension balance (CP 547-9), created the genuine issue of material fact on the issue of damages resulting from Williams' and Wyckoff's improper conduct.

C. Appellant Rolland Raised Genuine Issues of Material Fact of Respondent's Violations of the Consumer Protection Act by Their Wrongful Solicitation for Their Own Ends of ROWW Clients in Contravention of the Public's Interest in the Honorable Practice of Law and Lawyers' Dealings With Their Colleagues and Their Clients.

A violation of the Consumer Protection Act, RCW 19.86, requires a showing of five (5) elements:

1. Is the action complained of an unfair or deceptive act or practice?
2. Did the action occur in the conduct of trade or commerce?
3. Is there a sufficient showing of public interest?
4. Was there injury in the plaintiff's business or property? and
5. Was there a causal link between the unfair acts and the injury suffered:

Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 739, 733 P.2d 208 (1987), *citing with authority*, Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

As noted above, the deceptions in the March 2005 WWO letter to the clients of ROWW is found in the inferences drawn from its language that WWO is simply the same firm with a different name, that the clients' cases had simply transferred to a different partner of the firm, and that the documentation enclosed with the letter needed to be signed to satisfy the Department of Labor and Industries, all of which induced ROWW clients to fail to recognize or to ignore their true option to choose counsel, even to the extent of signing retention agreements with both Rolland and WWO.

The action occurred in the conduct of Williams' and Wyckoff's new law practice, and amounted to a repeated course of conduct to hundreds of clients, thereby establishing a pattern of behavior. From that course of conduct, it goes without saying that the practice of law affects the public interest, and these actions implicate the "entrepreneurial" aspects of the practice of law, which cast legal services into the realm of "trade or commerce" for the purposes of the Consumer Protection Act. "The entrepreneurial aspects of legal practice are those related to: how the price of legal services is determined, billed, and collected and the way a law firm obtains, retains, and dismisses clients." Eriks v. Denver, 118 Wn.2d 451, 463-64, 824 P.2d 1207 (1992), *citing*, Short v. Demopolis, 103 Wn.2d 52, 61, 691 P.2d 163 (1984). Whether a party acted for

entrepreneurial purposes is a question of fact. Eriks, supra, 118 Wn.2d at 465. Rolland has demonstrated the injury in his business or property – the deprivation of his share of fees flowing from cases which would have remained with the shareholders of ROWW had the Respondents’ solicitations not occurred. RCW 19.86.090 uses the term “injured” rather than suffering “damages.” “This distinction makes it clear that no monetary damages need be proven, and that nonquantifiable injuries, such as loss of goodwill [or, arguably, the amount of ill-gotten gains] would suffice for this element of the *Hangman Ridge* test. This is bolstered by the fact that the act allows for injunctive relief, clearly implying that injury without monetary damages will suffice.” Nordstrom, supra, 107 Wn.2d at 740.

Here, then, there are clearly issues of fact as to the existence of the elements of a CPA claim.

D. The court erred in failing to find genuine issues of material fact on Rolland’s claim for unjust enrichment arising from the retention of Williams, Wyckoff and WWO of the benefits, in the form of legal fees, from former clients of ROWW they solicited in direct competition with ROWW and in contravention of their duty to Rolland and ROWW.

The most recent Washington case concerning unjust enrichment is Dragt v. Dragt/DeTray, 139 Wn. App. 560, 161 P.3d 473 (2007). The three elements of unjust enrichment are: (1) a benefit conferred on one party by another; (2) knowledge of the benefit by the party receiving it;

and (3) acceptance or retention of the benefit under circumstances which make it unjust for the receiving party to keep the benefit conferred without paying value. Id. at 576.

The unjust enrichment in the case at bar is found in the arrogation by the respondents to themselves the cases and clients which they solicited from ROWW. Rolland and ROWW drew in the clients initially because of their longstanding practice in the community, and Rolland worked on each and every case as it was brought in, all within the knowledge of Williams and Wyckoff. Rather than maintain the clients under ROWW by simply doing a corporate name change and apportioning the fee properly among the shareholders as a corporate asset, Williams and Wyckoff took and retained all of the benefit of the clients and work of Rolland and ROWW under the masthead of their separate entity. “A person has been unjustly enriched when he has profited or enriched himself at the expense of another contrary to equity.” Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wn. App. 719, 731-32, 741 P.2d 58 (1987). Williams and Wyckoff have clearly profited at the expense of ROWW and Rolland. The measure of damages is the reasonable value of the benefit retained by WWO. Dragt, supra, 139 Wn. App. at 577.

V. CONCLUSION

The Order Granting Summary Judgment of Dismissal of Rolland's claims for damages against Respondents for tortious interference, violation of Washington's Consumer Protection Act, and unjust enrichment should be reversed and the case remanded to the court below for trial on the merits.

DATED this 24th day of September, 2009.

DAVIES PEARSON, P.C.



SUSAN L. CAULKINS, WSB #15692
Of Attorneys for Appellants



JOHN C. KOUKLIS, WSB#2976
Of Attorneys for Appellants

APPENDIX 'A'

**WILLIAMS, WYCKOFF
& OSTRANDER, PLLC**

Attorneys at Law

Formerly Rolland, O'Malley, Williams & Wyckoff, P.S.

William L. Williams
Douglas P. Wyckoff
Dane D. Ostrander

Westside Professional Plaza
1405 Harrison Avenue N.W. Suite 300
P O Box 316, Olympia, WA 98507

Telephone (360) 352-9331 Telefax (360) 943-2430
e-mail: roww@roww-lawfirm.com

March 24, 2005

Ms. Jeanne Robinson
PO Box 40
Brinnon, Washington 98320

Re: Claimant: Jeanne Robinson
Claim No: W216443

Dear Ms. Robinson:

As you can see from the new letterhead, there have been some changes at our law firm. We wanted to write and let you know what is going on and assure you that your representation will continue at the highest level.

Because of the recent departure of Jim Rolland from our firm and the death of Tom O'Malley in 2001, we believe it was important to have our firm name reflect who the members are, both for our clients and the legal community. Although the name has changed, our goal remains the same; to represent injured workers and clients in other fields at the highest most efficient level.

Our support staff remains the same, headed by our Office Manager, Julie Hatcher. In short, you should not notice any change in the way in which you are represented and how our business is conducted.

If you have been a client of Jim Rolland's, your case has already been assigned to an experienced partner who will represent you during this transition period. We expect we will be contacting you in the near future to advise you of Jim Rolland's new address and give you the option to transfer your case to him. If you have any concerns or questions, please feel free to contact us immediately.

In order to satisfy the Department of Labor and Industries' requirements, we would request that you sign the enclosed forms and return them to us, reflecting our

representation of you, under our new law firm name. We apologize for the inconvenience.
We look forward to representing you regarding your claim.

Sincerely,

WILLIAMS, WYCKOFF & OSTRANDER, PLLC

Wayne L. Williams

Douglas P. Wyckoff

Dane D. Ostrander

WILLIAMS, WYCKOFF & OSTRANDER, PLLC

1405 Harrison Avenue N.W., Suite 300
P.O. Box 316
Olympia, Washington 98507
(360) 352-9331

CONTRACT OF EMPLOYMENT AND AUTHORIZATION

I, Jeanne Robinson, the undersigned individual, hereby empowers and authorizes the law firm of Williams, Wyckoff & Ostrander, PLLC, Attorneys at Law, to exclusively represent him/her and to act on his/her behalf with respect to his/her industrial insurance claim or claims against the Department of Labor and Industries of the State of Washington, or his/her employer. The claim or claims being referred to are W216443.

I acknowledge that said law firm has not been employed to give advice about, investigate or pursue in any manner, any possible third-party remedies, claims or causes of action that may exist because of my industrial injury, unless a separate contract of employment has been signed for that purpose.

I agree that the law firm of Williams, Wyckoff & Ostrander, PLLC shall receive a fee of thirty (30) percent of any recovery, which includes, but is not limited to, payment of permanent disability, receipt of retroactive time loss or retroactive pension benefits and/or the obtaining of vocational benefits. In the event a pension is obtained, the fee shall be due, in full, when the pension is awarded, and will be equal to fifteen (15) percent of the pension value (pension reserve plus supplemental pension fund value). The foregoing fees shall apply to recoveries from the Department of Labor and Industries and/or my employer, or arising from settlements and/or hearings and decisions of the Board of Industrial Insurance Appeals and/or the courts of the State of Washington. Either the client or the law firm may apply to the Department of Labor and Industries, the Board of Industrial Insurance Appeals or the superior court to have the attorney's fee fixed, pursuant to RCW 51.52.120 or RCW 51.52.130.

Attorneys shall assume assistance and management of open and active industrial insurance claims. If client receives current time loss compensation, then attorneys shall charge an administrative fee of ten (10) percent per month, in order to assist in the handling and management of the client's claim.

In the event an appeal to the Superior Court of the State of Washington is taken, said attorneys shall receive, in addition to the aforesaid fees, any fees awarded by the Superior Court as compensation for services rendered before the Superior Court appeal or on appeal to an appellate court and payable by the Department of Labor and Industries of the State of Washington or the employer.

All expenses, including but not limited to costs for copies of medical or vocational records, court costs, travel expenses, depositions, medical and other expert testimony and medical bills, if any, are the obligation of the client. The client understands that any costs incurred will be billed monthly to the client. The client agrees, if the costs are not paid, that the law firm reserves the right to refrain from performing any further legal services until the bill is paid. If the client does not pay the bill for expenses and costs, it is understood that the law firm may, at its option, terminate this employment contract. The client agrees to pay such billings in full each month, or to make satisfactory monthly payments until paid in full. The client understands that any unpaid bill will bear interest at the rate of twelve (12) percent per annum until paid in full. In some circumstances, the law firm may agree to recover their expenses from the recovery, and, if so, these expenses shall be deducted from the recovery after the percentage fee is calculated and will be deducted from my percentage of the recovery. It is agreed that, if any provision of this agreement is to be enforced by collection, venue will be in Thurston County, Washington, and the client will be required to pay costs and reasonable attorney fees.

Attorneys shall receive no fee from me (except for reimbursement of costs, expenses, or the time loss administrative fee, as outlined above) if no recovery is secured on my behalf, after the date of this contract.

DATED this ____ day of _____, _____.

CLIENT

ATTORNEY

**WILLIAMS, WYCKOFF
& OSTRANDER, PLLC**

Attorneys at Law
Formerly Rolland, O'Malley, Williams & Wyckoff, P.S.

Wayne L. Williams
Douglas P. Wyckoff
Dane D. Ostrander

Westside Professional Plaza
1405 Harrison Avenue N.W. Suite 300
P O Box 316, Olympia, WA 98507

Telephone (360) 352-9331 Telefax (360) 943-2430
e-mail: rowww@rowww-lawfirm.com

AUTHORIZATION FOR HEALTH CARE DISCLOSURE

PATIENTS NAME: _____
SOCIAL SECURITY NO: _____ BIRTH DATE: _____
TO: _____

PROVIDE AND DISCLOSE TO: My attorneys who are representing me:

Wayne L. Williams, Douglas P. Wyckoff, or Dane D. Ostrander
Williams, Wyckoff & Ostrander, PLLC
1405 Harrison Avenue N.W., Suite 300
Olympia, Washington 98507

The purpose for this release of patient health information is: Legal Representation/Attorney

- Check here to allow provider to fax patient information to attorney's fax (if requested): (360) 943-2430

Note: We have a dedicated fax line for privacy purposes. However, it is possible a provider could dial a wrong number in attempting to fax the requested documents. In such event, most fax cover sheets indicate that the information contained therein is confidential and, if the document was received in error, the documents should be destroyed and the sender notified.

_____ (Initials) I have read the above noted and agree medical records may be faxed, if requested, to my attorney.

TYPE OF INFORMATION TO BE RELEASED:

1. GENERAL RELEASE:

This request shall allow the release of any and all records in your possession for the following period(s):

- All medical records (unlimited in time)
 The most recent _____ years of information
 Specific information (specify): _____

"Records information" as used herein shall refer to all of the following:

AUTHORIZATION TO INSPECT FILE

Supervisor of Industrial Insurance
Department of Labor and Industries
7273 Linderson Way, S.W.
Tumwater, Washington 98501

Legal ID 0524

RE: Claimant: _____

Claim No: _____

This will authorize the firm of WILLIAMS, WYCKOFF & OSTRANDER, PLLC, including any of the partners or associates of said firm, to examine the claim file under the above claim number, and I request that a copy of the file be sent to their office, at the address at the bottom of this page.

I specifically request that all documents designated as confidential (under Insurance Services Policy 1.35) be released and provided as a part of this authorization.

I personally protest and request reconsideration of any orders, decisions or determinations adverse to myself entered or mailed within the last sixty (60) days.

DATED this ____ day of _____, _____.

Claimant

WILLIAMS, WYCKOFF & OSTRANDER, PLLC
P.O. Box 316
Olympia, Washington 98507
(360) 352-9331

- ✓ All Medical Records (including protected records identified below)
- ✓ Discharge Summary(ies)
- ✓ Operative/Procedure Report(s)
- ✓ History and Physical
- ✓ Progress Notes
- ✓ Physical Therapy Notes
- ✓ Records from Other Providers/Facilities
- ✓ EKG's
- ✓ X-rays/CT scans/MRI's (diagnostic imaging)
- ✓ Laboratory Results/Pathology Reports
- ✓ Consultation Report(s)
- ✓ Emergency Room Record(s)
- ✓ Nurse's Notes
- ✓ Any and all billing information
- ✓ Any and all insurance information
- ✓ Records of other health care providers in your possession
- ✓ Other Reports (specify) _____

2. INFORMATION PROTECTED BY STATE/FEDERAL LAW:

This consent shall/will include disclosure of the following protected records UNLESS I have initialed below.

Chemical Dependency Diagnosis/Treatment Drug/Alcoholism Diagnosis/Treatment
 Mental Health Diagnosis/Treatment (includes _____ Psychiatric and psychological evaluation) Sexually Transmitted Disease Diagnosis/Treatment (includes AIDS/HIV testing)

I UNDERSTAND:

1. That this authorization for disclosure is intended to comply with both the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and/or Washington's Uniform Health Care Information Act, Chapter 70.02 RCW, and is intended to comply with the same and to allow my attorneys unfettered access to my medical records and bills and/or to obtain reports and/or schedule meetings with my health care providers, if they desire.
2. I understand that I have a right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to the health information management department. I understand that the revocation will not apply to information that has already been released in response to this authorization. I understand that the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy.
3. This authorization expires in ninety (90) days from the date of signing, and/or from the typed date appearing below.
4. I understand that once the above information is disclosed, it may be redisclosed by the recipient and the information may not be protected by federal privacy laws or regulations.
5. I understand authorizing the use or disclosure of the information identified above is voluntary. I need not sign this form to ensure healthcare treatment.

6. A copy of this authorization shall have the same force and effect as the signed original.

Signature of Patient or Legal Representative

Date

AUTHORITY TO SIGN:

Patient: _____

Patient's parent: _____

Other: _____

POWER OF ATTORNEY

RE: _____

CLAIM NO: _____

This will authorize my attorneys, WILLIAMS, WYCKOFF & OSTRANDER, PLLC, to negotiate on my behalf warrants from the Department of Labor and Industries, deduct their fees and costs, and thereupon send the balance to me.

DATED this ____ day of _____, _____.

WILLIAMS, WYCKOFF & OSTRANDER, PLLC
P.O. Box 316
Olympia, Washington 98507
(360) 352-9331

600

NOTICE OF CHANGE OF ADDRESS

Supervisor of Industrial Insurance
Department of Labor and Industries
7273 Linderson Way S.W.
Tumwater, Washington 98502

Legal ID 0524

RE: Claimant: _____

Claim No: _____

Employer: _____

The undersigned claimant hereby gives notice of change of address and directs that all further correspondence of every sort affecting the above claim be mailed to me in care of my attorneys, at the following address.

WILLIAMS, WYCKOFF & OSTRANDER, PLLC
P.O. Box 316
Olympia, Washington 98507
(360) 352-9331

DATED this _____ day of _____, _____.

601

COURT OF APPEALS
DIVISION II

09 SEP 25 AM 10:45

STATE OF WASHINGTON
BY Ca
DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION II

JAMES ROLLAND, et al.,

Appellants/Cross-Respondents
vs.

WAYNE WILLIAMS, et al.,

Respondents/Cross-Appellants

NO. 39133-3-II

**CERTIFICATE OF SERVICE BY
MAIL**

I, Susan Caulkins, the undersigned, declare as follows:

I mailed, or caused to be mailed, a copy of the **BRIEF OF APPELLANTS**, by
US mail, first class postage prepaid, on September 25, 2009 to the following counsel of
record at the following addresses:

Charles K. Wiggins
WIGGINS & MASTERS, PLLC
241 Madison Avenue N.
Bainbridge Island WA 98110

Stephen J. Bean
BEAN GENTRY WHEELER &
PETERNELL
910 Lakeridge Way SW
Olympia WA 98502-6068

I certify under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

Signed at Tacoma WA this 25th day of September, 2009.



SUSAN L. CAULKINS, WSB#15692
Of Attorneys for Appellants/Cross-Respondents