

1 **COURT OF APPEALS OF THE STATE OF WASHINGTON,**

2 **DIVISION II**

3
4
5 **CASE No. 39670-0-II**
6 **CASE No. 40004-9-II**
7

8
9 SUPERIOR COURT OF THE STATE OF WASHINGTON
10 IN COUNTY OF CLARK

11
12 Case No.: 01-2-02693-7

13 ROSE HOWELL, Appellant,
14 V.

15 ARLIS J. PLOTNER, as the personal representative of the
16 ESTATE OF KEITH WALTER PLOTNER, DECEASED,
17 Defendant

18 **APPELLANT'S REPLY BRIEF**
19 **AND**
20 **CERTIFICATE OF SERVICE**
21

Rose Howell, Pro Se

22 Appellant

23 Rose Howell
24 Pro Se Appellant
25 9504 NE 5th Street
26 Vancouver, WA 98664
27 360-953-0798

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I. INTRODUCTION:

The courts discretion [may not] recognize the respondents *after the original filing deadline*² expired commencing this¹ action (a) without the respondents moving the court demonstrating excusable neglect, required by CR 6. Even under CR 55 and a notice of default. *Therefore*, the Court of Appeals is wasting [time] not afforded upon July 27, 2009, pursuant to CR 6, CR 50, CR 60. The Plotner have been powerless to demonstrate terms, required by CR 6 since August 7, 2001 [CP 1-2]; Miller v. Lint, supra.

The trial court *grievously erred* denying this affirmative default under CR 55(A); Miller v. Lint, supra. The courts discretion [may not] recognize the Plotner response [CP 1-2, 91] February 15, 2008 to motion for default, and therefore, must treat the reply, although filed before the hearing as another late answer [CP 1-2, 14, 20, 91]. The Plotner response to default [was not] accompanied by a motion to file out of time and [was without] demonstrating excusable neglect, required by CR 6 after the original filing deadline expired.

¶ The court has discretion to grant an extension of time for cause³ shown if the party requests the extension *before* the original² filing deadline expires.

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¹ CR 3: A civil action is commenced by service of a copy of a summons together with a copy of a complaint [CP 1].

1 ¶ Once the original filing deadline ² expired, the court *only has the*
2 *discretion* to grant an extension upon motion and ³ demonstration of
3 *excusable neglect, required by CR 6; Miller v. Lint* (1980), 62 Ohio St.2d 209,
4 214, 404 N.E.2d 752; *Davis v. Immediate Med. Serv., Inc.* (1997), 80 Ohio St.3d
5 10, 14-15, 684 N.E. 2d 292. Even under CR 55 and notice ⁴ of default.

7 *Therefore*, CR 55 [does not] control this case and the trial courts
8 discretionary limits. **CR 6 controls this case**, the courts discretion and the [time]
9 the court ⁷ [may not] afford the respondents, pursuant to CR 6, CR 50, CR 60.
10 The court abused its discretion March 7, 2008 denying this affirmative ⁶ default
11 and ⁵ default judgment affecting substantial rights to default judgment rendered
12 forthwith; *Miller v. Lint*, supra.
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17 ² CR 4: *In order to defend against a lawsuit, you must*
18 *respond to the complaint by stating your defense in*
19 *writing, and by serving a copy within 20 days after the*
20 *service of this summons or default judgment may be entered*
21 *against you without notice.* A default judgment is one where
22 plaintiff (appellant) is entitled to what he asks for
because you have not responded. *If you serve a notice of*
appearance you are entitled to notice before default
judgment may be entered.

23 ³ CR 6 When by these rules or by a *notice given* an act is
24 required to be done at or within a specified time, *the*
25 *court for cause shown* may at any time *in its discretion*,
26 (1)with or without motion or *notice*, order the period
27 enlarged *if request therefore is made before the expiration*
28 *of the period originally prescribed* or as extended by a
29 previous order or, (2)*upon motion made after the expiration*
30 of the specified period, *permit the act to be done where*
31 *the failure to act was the result of excusable neglect; but*
32 *it may not extend the time for taking any action under*
rules CR 50 (b), 52 (b), 59 (b), 59 (d), and 60 (b).

1 ¶ **Miller v. Lint, supra**; the Ohio Supreme Court held the defendant was
2 subject to default⁵ judgment pursuant to Civ.R. 55(A) when the defendant failed
3 to file his answer within the specified time, pursuant to CR 4 after service of the
4 summons and complaint and subsequently filed a late answer not “upon motion”
5 and without a demonstration that “the failure to act was the result of excusable
6 neglect, as required by Civ.R. 6(B)(2). Id. at 214. *Accord, Mc Donald v. Berry*
7 (1992), 84 Ohio App.3d 6, 9-10, 616 N.E.2d 248; *Farmers & Merchants State &*
8 *Sav. Bank v. Raymond G. Barr Ent., Inc.* (1982), 6 Ohio App.3d 43, 43-44, 452
9 N.E.2d 521. **Therefore, the Plotner are / have been since August 7, 2001**
10 **subject to an affirmative default judgment; Miller v. Lint, supra.**

11 **Because the courts discretion [may not] recognize the Plotner:** The
12 Plotner have [never *legally* appeared, pled or defended] this lawsuit; motion for
13 default; motion for judgment as a matter of law; this *as a matter of right* appeal
14 filed August 10, 2009 with an *un-determined* motion for judgment as a matter of
15 law, pursuant to CR 50. **Therefore,** the Plotner are subject to this affirmative
16 default judgment as a matter of law forthwith, pursuant to CR 50, CR 54, CR 55
17 (A), RAP 2.2, RAP 2.4, RAP 5.2, RAP 6.1, RAP 7.3; *Miller v. Lint, supra.*

18 ❖ **The courts discretion [may not] recognize the Plotner because:**

- 19 (a) The Plotner failed to meet the *original filing² deadline*;
- 20 (b) The Plotner failed to request an extension of time for³ cause shown *before*
21 the *original filing² deadline expired*;
- 22 (c) The courts discretion is limited after the *original filing deadline expired* to
23 recognize the respondents solely upon motion and demonstration of

1 excusable neglect, required by CR 6, **even under CR 55 and notice of**
2 **default. Therefore, CR 6 is the controlling law;**

3 (d) Keith Plotner subsequently filed a late answer August 7, 2001 [CP 1-2];

- 4 • The late answer [CP 1-2] August 7, 2001 [was not] accompanied by a
5 motion for leave to file out of time and was filed without demonstrating
6 excusable neglect, as required by CR 6 after the *original filing deadline*
7 *expired*, and therefore;
- 8 • The Plotner are incapable of demonstrating excusable neglect, required by
9 CR 6 upon the subsequent late answer August 7, 2001 [CP 1-2], and
10 therefore;
- 11 • The courts discretion [may not] recognize the Plotner after August 7,
12 2001, and therefore;

13 (e) **Subsequently every reply after August 7, 2001 is a late response, the**
14 **courts discretion [may not] recognize;**

15 (f) The notice of appearance filed August 10, 2001 [CP 1-2, 3] after default;

- 16 • Solely provided a notice of ⁴ default *before* default judgment is entered, it
17 was without demonstrated terms, required by CR 6;
- 18 • Notice of default was served [CP 78-80 & 95-97];

19 (g) **The Plotner are incapable of demonstrating terms, required by CR 6,**
20 **and therefore;**

- 21 • Even under CR 55 and a notice of default the Plotner are powerless to
22 *legally* respond and defend.

1 The courts discretion [may not] recognize the Plotner replies upon
2 **August 7, 2001. The controlling law is CR 6**, not CR 55. The trial judge denied
3 default “spelled out” CR 55 as the controlling law *making a grave error in law*:

4 The courts discretion is [not permitted] to recognize the respondents
5 replies without demonstrating terms, required by CR 6 after the *original filing*
6 *deadline expired, even under CR 55 and a notice of default*;

7 ❖ Because **the Plotner replies are controlled under CR 6**; because the
8 Plotner are powerless to demonstrate terms, required by CR 6 the courts
9 **discretion [may not] recognize** the Plotner replies including:

10 (a) Keith Plotner **late answer** August 7, 2001 [CP 1, 2]; Miller v. Lint, supra;

11 (b) Safeco Corporation ⁴notice of appearance accepting the terms of this
12 affirmative default and default judgment August 10, 2001 [CP 1-2, 3];

13 • Concluded both parties were in agreement; Durham v. Florida East Coast
14 Ry. Co., 385 F.2d 366, 368 (5th Cir. 1967);

15 • Solely provided a notice ⁴of default before default ⁵ judgment is entered;
16 (1) the notice of default was served [CP 78-80 & 95-97];

17 (c) **Late answer** December 4, 2003 [CP 1-2, 14] intended to waste [time] and
18 avoid this affirmative default ⁵ ⁶judgment under CR 54 (c), CR 55 (A);
19 Chrysler Credit Corp. v. Joseph L. Macino, 710 F.2d 363 (7th Cir. 1983);
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26 ⁴ Referencing footnote ², last line.

27 ⁵ CR 54 (c): A judgment by default shall not be different in
28 kind from or exceed in amount that prayed for in the demand
29 for judgment. Except as to a party against whom a judgment
30 is entered by default, every final judgment shall grant the

1 (d) **Late answer** to the complaint amended in default [CP 1-2, 20];

- 2 • Amended *without power of attorney*, removing pre-trial interest [CP 1-2,
3 17-21], the Honorable Barbara D. Johnson, *ex-parte*;
4 • The same judge denied default March 7, 2008 abusing the courts
5 discretionary limits; accepted late answers [CP 1- 2, 14, 20, 91] without
6 demonstrated terms, required by CR 6; declared the Plotner had appeared,
7 pled and defended [CP 173];
8

9
10 (e) The Plotner **late answer** February 15, 2008 [CP 1-2, 91] responding to
11 motion for default under CR 55, without demonstrated terms, required by
12 CR 6;

- 13 • The courts discretion [may not] recognize the Plotner response to motion
14 for default [CP 1-2, 91] February 15, 2008 under CR 55, it was filed
15 without demonstrating terms, required by CR 6;
16 • The courts discretion must treat the Plotner answer February 15, 2008 [CP
17 1-2, 91] as another late answer; CP 1-2, 14, 20, 91]. **Therefore**, the Plotner
18 have [never **legally** appeared, pled or defended], and
19
20 Therefore, the courts discretion [may not] recognize;
21

22 (f) The Plotner fraudulent judgment July 17, 2009;
23

24 relief to which the party in whose favor it is rendered is
25 entitled, even if the party has not demanded such relief in
26 his pleadings.

27 ⁶ CR 55 (A): When a party against whom a judgment for
28 **affirmative relief** is sought has failed to appear, plead,
29 or otherwise defend as provided by these rules and that
30 fact is made to appear by motion and affidavit, **a motion**
31 **for default may be made.**
32

1 (g) Respondents fraudulent verbatim report;

- 2 • Fraudulent is the deliberate and willful deception for unlawful gain, and
3 therefore;
- 4 • Allred Transcription deliberately produced fraud intended to waste [time];
5 charged Rose Howell in excess of over \$500.00 for the production of
6 fraud; deliberately interfered in the resolution of an eleven year affirmative
7 default and default judgment for unlawful gain. *Therefore*, Rose Howell is
8 entitled terms under RAP 18.9.
- 9 • Allred Transcription, Liberty Mutual nor the trial court judge adhered to
10 RAP 9.5 and RAP 9.9. *Therefore*, Rose Howell is entitled terms under
11 RAP 18.9.
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15 (h) Respondents late brief;

- 16 • Motion for default hasn't *legally been* responded and defended under CR
17 55 without demonstrating the **controlling law of CR 6**;
- 18 • The courts discretion [may not] recognize the respondents brief, it was
19 filed without demonstrated terms, required by CR 6. *Therefore*, the court
20 must strike the respondents brief;
21

22 (i) respondents responses to Rose Howell motion to modify the commissioners
23 rulings;

- 24 • The respondents have been filing erroneous unfounded in fact and law **late**
25 **replies**, since upon August 7, 2001 without demonstrating terms, required
26 by CR 6. Unable to demonstrate terms, required by CR 6. Wasting [time].
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1 **The relevant “facts” supported by controlling law, pursuant to CR 6:**
2 the Plotner have [never *legally* appeared, pled or defended] (a) this lawsuit; (b)
3 motion for default; (c) motion for judgment as a matter of law; (d) this *as a*
4 *matter of right* appeal filed with an *un-determined motion* for judgment as a
5 matter of law pending an appellate mandate, pursuant to CR 50, RAP 6.1. The
6 Plotner are powerless to *legally* respond and defend under CR 55 because they
7 are incapable of demonstrating terms, required by CR 6. Because **the courts**
8 **discretion [may not] recognize the Plotner frivolous replies unfounded in**
9 **fact and legal basis** upon August 7, 2001, the Plotner deliberately filed replies
10 intended to waste [time] and avoid default judgment. *Therefore*, the Court of
11 Appeals is wasting [time] not afforded under CR 6, CR 50, CR 60.

12 **The court made a grave error in the law** denying this affirmative
13 default and default judgment under CR 55 (A) without good cause shown under
14 CR 55 (c). **The courts discretion [may not] recognize the respondents; the**
15 **respondents are powerless to demonstrate terms, required by CR 6.** The
16 court safeguarded the respondent fraud, pursuant to CR 60:

17 ❖ March 7, 2008, **the trial court abused its discretion, denied this**
18 **affirmative default and default judgment** under CR 55 (A) without just
19 cause shown under CR 55 (c) [CP 104, 173] affecting substantial rights to
20 default judgment rendered forthwith. The fraud has been committed by the
21 Plotner with the courts personal and familiar relationships safeguarding
22 fraud, pursuant to CR 60.
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1 ❖ The Commissioners Ruling(s) November 10 and December 24, 2009 abused
2 the courts discretion under CR 6, CR 50 affecting substantial rights to this
3 affirmative default, default judgment and pro se lien rendered forthwith;
4 afforded [time] the court [may not] afford upon acceptance of this appeal as
5 a matter of right, pursuant to CR 1, CR 4, CR 6, CR 50, CR 54, CR 55, RAP
6 2.2 (a) (3), RAP 2.2 (a) (13), RAP 2.4, RAP 5.2, RAP 6.1, RAP 7.3.
7

8 **The court [may not] afford the respondents [time], pursuant to CR 6,**
9 **CR 50. Why hasn't default, default judgment and the pro se lien been**
10 **rendered forthwith?**
11

12 The Honorable Robert Harris pre-determined Rose Howell is entitled
13 default judgment; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The burden
14 of proof met; Adickes v. Kress., 398 U.S. 144, 157 (1970). Even after the trial
15 courts personal and familiar prejudice exceeded far beyond looking at this
16 affirmative default in the light most favorable to the Plotner; Anderson, 477 U.S.
17 at 255; USX Corp v. Liberty Mut. Ins. Co., Nos. 04-1277 & 04-1300, 2006 U.S.
18 App. LEXIS 8702, at *12-13 (3d Cir. Apr. 10, 2006) the court pre-determined
19 Rose Howell is entitled to default judgment. Then the trial judge rendered a
20 fraudulent judgment safeguarding fraud, pursuant to CR 60; setting Motion for
21 Judgment as a Matter of Law over on appeal affording [time].
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25 It's doubtful the court of appeals accepted this appeal as a matter of
26 right, pursuant to CR 50, RAP 6.1 *un-knowlegeable* the courts discretion [may
27 not] recognize the respondents under CR 6; the respondents are powerless to
28 demonstrate terms, required by CR 6 after the *original filing deadline expired*,
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1 even under CR 55 and a notice of default. CR 6 provides the controlling law, the
2 trial court denied default citing CR 55 as the controlling law, and therefore, the
3 **trial court erred denying default; abusing the courts discretionary limits**
4 **under CR 6:**

- 5 • This is an affirmative default and default judgment under CR 55 (A); Miller
6 v. Lint, supra.
- 7 • Motion for default was filed February 12, 2008 *promptly upon pro se*
8 *representation* and preparation of supporting documentation. Rose Howell is
9 **not responsible** for the **lack of intellect** proven by four different bar licensed
10 law firms incapable of executing a motion for default under *alternatives to*
11 *litigation*. Four law firms, none that possessed power attorney, acted without
12 power of attorney preserving fraud, and therefore, must be disbarred.
- 13 • Motion for judgment *as a matter of law* was filed July 27, 2009, pursuant to
14 CR 50. The court [is taking all action] ⁷under CR 50 upon July 27, 2009, and
15 therefore, [may not] afford the respondents [time] under CR 6, CR 50, CR
16 60. The courts discretion [is not permitted] to recognize the respondents
17 *after the original filing deadline expired*; Miller v. Lint, supra. **Why hasn't**
18 **the Court of Appeals rendered default, default judgment and pro se**
19 **lien?**

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25 The trial **court erred denying** this affirmative default and default
26 judgment; the trial court failed to assert CR 6 is the controlling law. CR 55

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29 ⁷ Referencing footnote ³, last line.

1 merely provided the respondents the opportunity to respond and defend *provided*
2 the respondents were capable of demonstrating terms required by CR 6:

3 (a) the courts discretion is limited to demonstration of terms, required by CR 6
4 after the *original filing deadline expired*;

5
6 (b) the Plotner are incapable of demonstrating terms, required by CR 6.

7 ***Therefore, the sole legal action as a matter of law the court [may]***
8 **render** is default, default judgment and pro se lien forthwith, and;

9 ***Therefore, the Court of Appeals must modify the Commissioner***
10 **ruling(s); reverse the trial courts *grievous errors and decisions deliberately***
11 ***intended to manifest injustice*; render this affirmative default, default judgment**
12 **and the pro se lien as a matter of law forthwith.**
13

14
15 **II. RESPONSE TO ASSIGNMENTS OF ERROR:**

16 ❖ Rose Howell, appellant contends the trial court *grievously erred*:

17 (a) In denying this affirmative motion for default and subsequent default
18 judgment as a matter of law; Miller v. Lint, supra;

19
20 (b) In the trial courts GAL game, stalled [time] in a “civil” litigation in default
21 upon August 7, 2001; Miller v. Lint, supra, and therefore;

22 (c) In denying the affidavit of prejudice under SEC 144 abusing the courts
23 discretion, safeguarding fraud, deliberately ⁸stalling [time]; and
24

25
26 ⁸ ***Code of Conduct for United States Judges***; A JUDGE SHOULD
27 PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND
28 DILIGENTLY. “*In disposing of matters promptly, efficiently*
29 *and fairly, a judge must demonstrate due regard for the*
rights of the parties to be heard and to have issues
resolved without unnecessary cost or delay”
30

1 (d) In denying the pro se lien, protected by the Sixth and Fourteenth
2 Amendment⁹ constitutional rights to¹⁰ self-representation in “civil”
3 litigations, pursuant to CR 55 (b) (1) and RCW 60.40.010;

4 ❖ The Plotner contentions are meritless. The court should modify the
5 commissioners ruling(s) reversing the trial court’s decisions, and
6 therefore, render this affirmative default, default judgment and pro se
7 lien forthwith because:
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9
10 (a) Although the Plotner answer to motion for default was filed before the
11 default hearing under CR 55, the courts discretion [may not] recognize the
12 Plotner answer [CP 1-2, 91] February 15, 2008 under CR 6. *Therefore*, the
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15 ⁹ U.S. Law has historically protected the individual’s right
16 to choose whether he chooses to proceed in a legal action
17 with or without counsel. Chambers v. Baltimore & Ohio Ry.
18 Co., the court commented “The right to sue and defend in
19 the courts is the alternative force. In an organized
20 society it is the right conservative of all rights and lies
21 at the foundation of an orderly government. It is one of
22 the highest and most essential privileges of citizenship,
23 and must be allowed by each state to the citizens of all
24 other states to the precise extent that it is allowed to
25 its own citizens. Equality of treatment in this respect is
26 not left to depend upon comity between the states, but is
27 granted and protected by the Federal Constitution”. [41]

28 ¹⁰ Self-Representation in America traced to Revolutionary
29 Times. “The Founders believed that self-representation was
30 a “basic right of free people”. Underlying belief not only
31 anti-lawyer sentiment of the populace, but also the
32 “natural law” Thomas Paine support of the 1997 Pennsylvania
Declaration of Rights “either party has a natural right to
plead his own case, this right is consistent with “safety”,
therefore, it is retained, the civil right to pleading by
proxy is an appendage to the *natural right to self-*
representation.

1 trial court grievously erred denying this affirmative default and subsequent
2 default judgment abusing the courts discretionary limits controlled by CR 6;

3 (b) The courts GAL is reversible, the trial court reversed its GAL “game” after
4 stalling [time] because:

- 5 ■ GAL are appropriate in criminal cases, this is a “civil” litigation, “civil”
6 meaning litigated of, for, by the people; and
7
- 8 ■ Rose Howell was harmed by the appointment of the GAL, and therefore,
9 sanctions should be awarded;

10 (c) The denial of the affidavit of prejudice [was] a reversible error, and should
11 have been reversed because:

- 12 • The record supports the trial judge manifesting injustice November 15,
13 2001 ¹¹ex-parte; and
14
- 15 • Under Sec 144, the record supports the trial judge demonstrated personal
16 bias that manifested eleven years of criminal injustice. The judge is
17 responsible under the Code of Judicial Conduct and Sec 144 to reused
18 himself, whether the “free” affidavit of prejudice has been exhausted or
19 not;
20
21

22 (d) Plaintiff cited numerous arguments and authorities to the constitutional right
23 to self-representation¹² in “civil” litigations supporting the validity of the pro
24

25
26 ¹¹ Misconduct; “Rules of Professional Conduct”. [59]
27 Published rules and prohibit practices that are seen as
28 subverting justice including ex-parte conferences.

29 ¹² Appellant contends the defense attorney *superior*
30 *intellect* is rehashing issues argued, cited legal authority
31

1 se lien, the personal deciphering of “attorney” under RCW 60.40.010 and
 2 the case law CR 55 (b) (1) and RAP 18.1.

3
 4 **III. STATEMENT OF THE CASE:**

5

Date	Event	Citation
3/3/1999	Affirmative liability rear-end accident caused by Keith Plotner	CP 1
7/10/2001	Summons and Complaint served	CP 1
8/7/2001	Keith Plotner filed a <i>Late Answer w/o CR 6</i>	CP 1-2
8/7/2001	Keith Plotner in default; <i>Miller v. Lint, supra.</i>	CP 1-2
8/10/2001	Safeco Corporation Notice of Appearance w/o CR 6	CP 1, 2, 3
11/15/2001	Judge Harris Ex-Parte	CP 5-8
10/1/2002	Steven Busick represents in default acts w/o power of attorney	CP 9
8/21/2003	Notice for Trial after default w/o CR 6	CP 11
12/4/2003	<i>Late Answer w/o CR 6</i>	CP 1-2, 14-15
3/25/2004	Assignment of Trial Date in default/ Judge Johnson	CP 16
6/24/2004	Amended complaint in default w/o power of attorney-Judge Johnson	CP 17, 18
6/24/2004	Order Striking Trial Date - EX-PARTE- Judge Johnson	CP 19
7/14/2004	<i>Late Answer w/o CR 6</i>	CP 1-2, 20-21
7/25/2005	Motion substituting Estate	CP 25-26
8/26/2005	Order Substituting Estate for the person Keith Plotner	CP 27-29
6/19/2007	Rose Howell - Notice Pro Se	CP 36-38
2/12/2008	Motion for Default	CP 78-80 & 95-97
2/15/2008	Answer to Motion for Default w/o CR 6	CP 1-2, 91
3/7/2008	Motion default hearing/ Judge Johnson ordered trial	CP 104
4/11/2008	Order Denying Default- CR 55/ CR 6 controls <i>Interlocutory order</i>	CP 173
4/17/2008	Case reassigned Dept 6 to 5 Judge Harris	CP 174
7/8/2008	Affidavit of Prejudice- Ex-Parte 11/15/2001	CP 196-197

26
 27 [CP 267-268] between September 17, 2008 and December 5,
 28 2008, the trial court appointed the GAL to stall [time]
 29 through the SEC hold implemented upon Liberty Mutual
 purchase of this default, purchasing Safeco Corporation
 September 18, 2008.

1	12/5/2008	Memorandum RE: Default- CR 55/ CR 6 controls <i>Interlocutory order</i>	CP 286
2	2/17/2009	Motion Summary Judgment CR 56	CP 304-305 & 321-322
3	4/10/2009	Order Granting Summary Judgment CR 56, CR 50 – ordered Rose Howell entitled default judgment CR 56(c) w/ requested [EX 9] CR 56 (e) <i>Interlocutory order</i>	CP 343
4	4/13/2009	Perpetual Testimony- deposition pre-scheduled before trial	CP 344-347
5	5/1/2009	Order Granting defense motion w/o CR 6 Plotner [never <i>legally</i> appeared, pled or defended]	CP 372
6	5/26/2009	Trial	CP 397-403
7	5/27/2009	Trial	CP 397-403
8	6/8/2009	Memorandum Decision-accepted [EX 9] CR 56(e), CR 50 <i>Interlocutory order</i>	CP 406
9	7/17/2009	Plotner fraudulent judgment- Plotner [never <i>legally</i> appeared, pled or defended]-trial court safeguarded fraudulent monetary gain of Keith & Arlis Plotner; fraudulent holding company	CP 422
10	7/22/2009	Motion Amend	CP 423, 427-428
11	7/27/2009	Motion for Judgment as a Matter of Law CR 50	CP 429-431, 439-442
12	8/7/2009	Motion hearing/ motion judg matr' law set over on appeal – CR 6, CR 50, CR 60 [time] not afforded	CP 443-446
13	8/10/2009	Notice of Appeal RAP 5.2, RAP 6.1	CP 447-449

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17 **IV. ARGUMENT:**

18 **A. Because the defendants answer prior to the default hearing was not**
19 **properly filed, the courts discretion grievously erred denying this**
20 **affirmative default and subsequent default judgment:**

21 Motion for Default was filed February 12, 2008 [CP 78-80, 95-97]
22 promptly upon *pro se representation* and **supporting documents** prepared
23 **providing computations made certain** under CR 55 (b) (1). Four different law
24 firms *lack of superior intellect* proven incapable of filing motion for default as a
25 matter of law upon August 7, 2001; Miller v. Lint, supra; under *alternatives to*
26 *litigation unlawful political aspirations*.
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1 Rose Howell is not responsible for the *lack of intellect* demonstrated by
2 bar licensed attorneys under *alternatives to litigation* or the unlawful acts
3 performed *without power of attorney* using Rose Howell personal identity and
4 life altering injuries *pardoned unlawfully*. The Plotner family enlisted organized
5 crime intended to produce the death of Rose Howell and an array of fraud,
6 pursuant to CR 60, and therefore, under jurisdiction the DOJ.
7

8 **In plain language:** Rose Howell was extremely clear in the original
9 brief; **the Plotner have [never legally appeared, pled or defended]** this lawsuit;
10 motion for default; motion for judgment as a matter of law; *this as a matter of*
11 *right* appeal. The key word, *legally*.
12

13 The Plotner can respond and defend under CR 55 until they are blue in
14 the face filing frivolous replies intended to waste [time] not afforded under CR 6,
15 CR 50. Because the first answer filed August 7, 2001 [CP 1-2] was filed late after
16 the *original filing deadline expired* without demonstrating terms, required by CR
17 **6 legally the courts discretion [may not] recognize the Plotner** upon August 7,
18 2001 [CP 1-2] and **every reply subsequently thereafter** under CR 6; Miller v.
19 Lint, supra. **Therefore**, under CR 6 **the courts discretion [may not] and [never**
20 **will be able] to recognize the Plotner** frivolous replies under CR 55 or other.
21 The courts discretionary limits are the Plotner legal issue under CR 6. CR 6
22 controls this default.
23

24 **Therefore**, the Court of Appeals is manifesting injustice and wasting
25 [time] not afforded under CR 6, CR 50, CR 60. There is no *legal* way on God's
26 green earth the Plotner [will ever be able] to *legally* respond and defend this
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1 lawsuit; the Plotner are unable to provide the courts discretion the necessary
2 excusable neglect and terms, required by CR 6. **The courts discretion [may not]**
3 **acknowledgeable the Plotner replies attempting to respond and defend,**
4 **pursuant to CR 6.** Even under CR 55 and a notice of default.

5
6 CR 55 (a) (2) provided upon notice of default the Plotner could respond
7 and defend *before* the default hearing March 7, 2008. The Plotner filed a late
8 answer February 15, 2008 [CP 1-2, 91] responding to motion for default without
9 demonstrating terms, required by CR 6, and therefore, **the courts discretion**
10 **[may not] recognize the Plotner reply to default** under CR 55 filed after the
11 original filing ² deadline expired. **CR 6 controls this case and the courts** ³
12 **discretionary limits.**

13
14 *Therefore*, the trial court and the Court of Appeals Commissioner abused
15 the courts discretionary limits controlled under CR 6; Miller v. Lint (1980), 62
16 Ohio St.2d 209, 214, 404 N.E.2d 752; Davis v. Immediate Med. Serv., Inc.
17 (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292. The trial courts abuse of
18 discretion is reversible on appellate review; Perry v. Hamilton, 51 Wn. App. 936,
19 938, 756 P.2d 150 (1988); Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474
20 (1989).

21
22
23 The Plotner are powerless after filing a late answer [CP 1-2] August 7,
24 2001 to move the court and demonstrate the terms, required by CR 6, even under
25 CR 55 and a notice of default, and therefore, **the courts discretion [may not]**
26 **recognize the Plotner replies. CR 6 controls** this eleven year affirmative
27 default, default judgment and pro se lien. **CR 6 controls the courts**
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1 **discretionary limits after the original filing deadline expired commencing** ¹

2 **this lawsuit.** The Plotner failed to; (a) meet the original filing deadline; (b) move
3 the court for an extension of time for cause shown *before* the original filing
4 deadline expired; and (c) subsequently filed a late answer August 7, 2001 [CP 1-
5 2] [not] accompanied by a motion for leave to file out of time and without
6 demonstration of excusable neglect, required by CR 6 ***after the original filing***
7 ***deadline expired.***
8

9
10 (a) **The courts discretion [may not] recognize the respondents, even under**
11 **CR 55 and a notice of default, and therefore;**

12 (b) **Every frivolous reply the Plotner have provided** eleven years intended to
13 **avoid default and default judgment is a deliberate waste of [time] the**
14 **courts discretion [may not] recognize, including;**

- 15 • Keith Plotner late answer August 7, 2001 [CP 1-2];
- 16 • Late answer December 4, 2003 [CP 1-2, 14];
- 17 • Notice to Set for Trial July 30, 2003 and August 21, 2003 [CP 10-11];
- 18 • Judge Johnson ordered trial March 7, 2008 referencing the Plotner
19 setting for trial. The Plotner have never ***legally*** defended this defaulted
20 lawsuit;
21 • Late answer [CP 1-2, 20] to defaulted complaint amended ***without power of***
22 ***attorney***, Judge Johnson ex-parte;
23 • Answer [CP 1-2, 91] replying to motion for default under CR 55 February
24 15, 2008;
25 • Fraudulent verbatim report;

- 1 • Respondents brief.

2 *Therefore*, the Plotner upon notice of default under CR 55 (a) (2) can
3 respond and defend until the Plotner turn blue, continuing daily to create further
4 liability and medical injury. But, *legally* the Plotner [may not] and [never will be
5 capable] of *legally* responding and defending because:
6

- 7 (a) **The courts discretion [may not] nor [will it ever be capable] of**
8 **recognizing the Plotner replies** upon August 7, 2001 [CP 1-2].
9

10 The Plotner were provided a notice of default [CP 1-2, 78-80, 95-97]
11 providing an opportunity to respond and defend *before* the default hearing under
12 CR 55 (a) (2). **In plain language**, the Plotner cannot demonstrate the excusable
13 neglect, required by CR 6 to provide the courts discretionary limits the latitude to
14 recognize the Plotner replies after the original filing deadline expired. **The courts**
15 **discretion hasn't had the discretion to recognize the Plotner replies since**
16 **August 7, 2001** and Keith Plotner subsequent late answer [CP 1-2] under CR 6;
17 Miller v. Lint, supra. CR 6 controls this default, **not CR 55. Therefore, the**
18 **courts discretion [may not] recognize the Plotner reply to default. The court**
19 ***grievously erred*** denying this affirmative default and default judgment forthwith.
20
21

22 The court denied motion for default recognizing the Plotner answer filed
23 prior to the default hearing under CR 55 without demonstrated terms, required by
24 CR 6 after the original filing deadline expired. **The court denied default**
25 **abusing the courts discretionary limits under CR 6.** The courts discretion
26 [may not] recognize the Plotner under CR 6 [CP 1-2]. **Therefore, the court**
27 **improperly denied Rose Howell motion for default, and therefore;**
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1 The Court of Appeals must render this affirmative default, default
2 judgment and pro se lien forthwith.

3 **B. The trial court's appointment of a GAL was reversed after damages:**

4 The trial court demonstrated personal bias after denying an affidavit of
5 prejudice under Sec 144; deliberately stalled [time] through the SEC hold on
6 Liberty Mutual September 18, 2008; ordered a GAL September 17, 2008
7 violating fourth, sixth and fourteenth amendment rights of Rose Howell.
8

9 A GAL is only appointed in criminal cases, never civil cases. Civil cases
10 are litigated of, for, by the citizen¹⁰ and protected by the constitutional⁹ right to
11 self-representation under the [Sixth and Fourteenth Amendment] rights. This
12 matter was argued until the trial judge rendered Rose Howell the pro se attorney
13 of record December 5, 2008 [in open court]. Rose Howell was injured:
14

- 15 • Rose Howell was harassed at the private residence by this GAL;.
- 16 • A very bizarre letter was filed in the court by the GAL, declared a private
17 phone conversation on another lawsuit, in another state, declaring a relatives
18 medical issues and medications to be Rose Howell. Violating fourth
19 amendment rights. The unlawful phone issues began December 4, 2003 [CP
20 1-2, 14] under jurisdiction the DOJ and the *constitutional administration*,
21 and therefore;
- 22 • This stalling [time] created the pro se lien, pursuant to RAP 18.1, CR 55(b)
23 (1), RCW 60.40.010 and the Sixth and Fourteenth Amendments;
- 24 • Rose Howell has been seriously injured, heinously violating fourth, sixth
25 and fourteenth amendment rights, and therefore;
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- 1 • The court must award terms under CR 11, RAP 18.9;

2 **C. The trial court erred denying the plaintiff affidavit of prejudice:**

3 Under Sec 144 Judge Harris proved his personal prejudice during ex-
4 parte November 15, 2001 [CP 5-7], and therefore, regardless the “free” affidavit
5 of prejudice is required by the ⁸ Code of Judicial Conduct to reuse himself;
6 United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16
7 L.Ed.2d 778 (1966); Shaw v. Martin, 733 F.2d 304, 308 (4th Cir.1984).

8
9 When the affidavit of prejudice [CP 196-197] under Sec 144 was filed;
10
11 (a) Judge Harris hadn’t rendered any rulings, hadn’t been moved for any
12 decisions, and therefore, should have been awarded; (b) Judge Harris shouldn’t
13 have been given this default, it was deliberate violating the Code ⁸¹¹of Judicial
14 Conduct and Sec.144 intended to preserve *alternatives to litigation* unlawful
15 political deals safeguarding fraud, pursuant to CR 60.

16
17 Judge Harris permitted the defense conduct the bench violating Article
18 VI, Supremacy Clause. Judge Harris proved prejudice; (a) November 15, 2001
19 ex-parte after default [CP1-2] failed render default and default judgment; (b)
20 ordered a GAL in a “civil” litigation, this isn’t a criminal case; (c) recognized the
21 Plotner, the courts discretion is [not permitted] to recognize the Plotner [CP 1-2]
22 unable to demonstrate terms, required by CR 6; (d) acknowledged Rose Howell
23 is entitled default and default judgment as a matter of law, the burden of proof
24 met, entered the Plotner fraudulent judgment. The Plotner have [never *legally*
25 appeared, pled or defended], and therefore, the fraudulent judgment fails legal
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1 authority; (e) denied the pro se lien protected by the ⁹¹⁰United States
2 Constitution, RCW 60.40.010 and CR 55 (b) (1).

3 **D. The defendant fails to accept this affirmative default cost money, the**
4 **pro se lien is protected by the United States Constitution:**

5 The defendant tendered the full amount of the Plotner **fraudulent**
6 **judgment, protecting the Plotner family fraudulent monetary gain** and the
7 **fraudulent holding company** into court. The defense attorney was forewarned
8 [in open court] the Plotner will be held accountable for all “**pro se attorney**”
9 litigation costs incurred, forewarned the excessive expenditures. Apparently, the
10 defense attorney thinks if the **attorney of record** isn’t bar licensed you couldn’t
11 possibly incur litigation expenses. The defense attorney would be delusional. The
12 defense argument has no merit, lacks intellect. Who does the defense think is
13 going to pay the excessive bills created by litigating a **default Judge Harris**
14 **should have rendered November 15, 2001?** Keith and Arlis Plotner and **are the**
15 **responsible parties.** You can’t be the *cover up queen* without paying the price
16 eventually.

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20 The pro se lien is *superior to all other liens* bringing forth the sole
21 valuable service under special agreement *pro se (self-represented) attorney costs*
22 incurred, litigation expenses in an eleven year default under RAP 18.1, CR 55 (b)
23 (1) and RCW 60.40.0101. The pro se lien is protected by the [Sixth and
24 Fourteenth Amendment Rights] to⁹¹⁰ self-representation. RCW 60.40.010
25 doesn’t declare you must possess a bar license to file a valid attorney lien, pro se
26 attorney or other. The United States Constitution protects the right to litigate civil
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1 disputes “**pro se attorney**”, the United States Constitution is superseded to state
2 law. CR 55 (b) (1) and RAP 18.1 awards reasonable attorneys fees and expenses.
3 **Therefore**, the commissioner ruling must be modified rendering default, default
4 judgment and pro se lien forthwith. Those litigation expenses under RAP 18.1 are
5 accruing interest rapidly and unnecessarily. This default should have been
6 ordered August 7, 2001.
7

8 Judge Harris personal prejudice can’t determine the validity of anything
9 rendering the judicial bench at the defense attorney’s requests violating Article
10 V/I, Supremacy Clause. Judge Harris awarded funds to parties; (a) not having
11 valid liens; (b) producing fraudulent monetary gain using Rose Howell identity
12 without power of attorney; (c) violating contractual agreements, and therefore;
13
14

15 **Rose Howell represented as the attorney. Bore the costs of the**
16 **attorney. Therefore, as the pro se attorney of record Rose Howell is entitled**
17 **to be reimbursed for all litigation expenses; the pro se lien, pursuant to RAP**
18 **18.1, CR 55 (b) (1), RCW 60.40.010 and the [Sixth and Fourteenth**
19 **Amendments]. That lien was created by the Plotner reckless inability to assure**
20 **Safeco Corporation paid default demand August 7, 2001.**
21

22 **E. Rose Howell is entitled to terms:**
23

24 The respondents have filed frivolous erroneous pleadings and replies
25 eleven years deliberately intended to waste [time] and avoid default judgment
26 [CP 1-2]. The defense has barged Rose Howell with pleadings and replies that
27 lack fact and legal argument, most incomprehensible and completely inaccurate
28 to the case file. The defense has at times provided such incomprehensible un-
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1 factual documents, if not for the title it would have been impossible to reply. The
2 respondents brief is one example.

3 Under RAP 18.9 and CR 11 Rose Howell should be awarded terms. This
4 default never should have been forced to appeal, it should have been ordered
5 August 7, 2001 [CP 1-2]. The respondents un-factual erroneous replies were
6 deliberately intended to avoid default judgment August 7, 2001 [CP 1-2]; Miller
7 v. Lint, supra. The respondents are powerless to demonstrate terms, required by
8 CR 6 to permit the courts discretion recognize the Plotner and their frivolous
9 replies wasting [time] not afforded under CR 6, CR 50, CR 60. *Therefore*, terms
10 should be awarded Rose Howell.
11
12

13 **V. CONCLUSION:**

14 Appellant, Rose Howell has proven the trial court committed reversible
15 errors, proving the trial court abused its discretion. The respondents are incapable
16 of raising any legal arguments. The courts discretion [is not] permitted to
17 recognize the Plotner without demonstrating terms, required by CR 6; Miller v.
18 Lint, supra. The Plotner are incapable of demonstrating terms, required by CR 6.
19 This court should modify the commissioner rulings, reversing the trial courts
20 decisions, award terms against the defendants and render this affirmative default,
21 default judgment and pro se lien forthwith.
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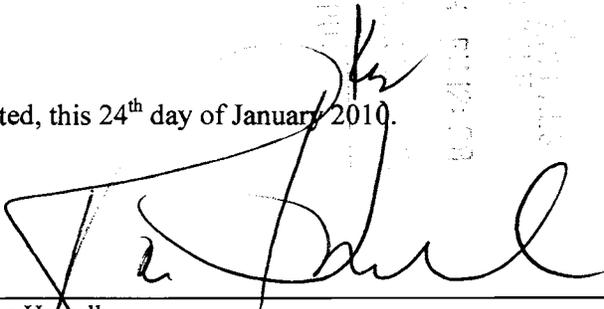
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CERTIFICATE OF SERVICE

I certify that on the 24th day of January, 2010, I caused a true and correct copy of the **Appellant's Reply Brief and Certificate of Service** to be served on the following in the manner indicated below:

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