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I. INTRODUCTION

William Webster and Somdet Webster married in Thailand in December of 1994. They separated on January 29, 2007 and their divorce was finalized in 2008, with the trial court finding that Mr. Webster had engaged in abusive use of conflict.

During the divorce trial, Mr. Webster testified that he planned to bring several lawsuits in federal court and that he might file a civil lawsuit in Pierce County “for just a treat.” Mr. Webster has followed through with his pledge. Since the couple’s separation, he has filed eight lawsuits (including this case) related to the events and proceedings surrounding his separation and divorce from Ms. Webster. The targets of his series of lawsuits not only include Ms. Webster, but her friends, her attorneys, judges, and other government officials.

In this case, Mr. Webster claims (as he did during the divorce proceeding) that Ms. Webster had an affair that pre-dated their separation, that Ms. Webster’s employer, Sue Kumlue, was somehow in a conspiracy with Samuel Flower and Ms. Webster to financially ruin Mr. Webster, that the three made false charges against him that resulted in his arrest, and other claims.

Mr. Webster filed this action in September 2009 against Ms. Webster, Mr. Flower, and Ms. Kumlue raising the claims of (1) abuse of

process, (2) intentional and malicious infliction of emotional and economic distress, (3) outrage, (4) false light, (5) defamation of character, (6) loss of consortium, (7) violation of civil rights, and (8) conspiracy to commit several alleged torts. All three defendants filed dispositive motions, which the trial court granted.

All claims against Ms. Webster were properly dismissed on summary judgment because: (1) some of Mr. Webster's claims are not recognized by the law (e.g., loss of consortium when a spouse leaves), (2) other claims are barred by the statute of limitations (e.g., defamation and false light), (3) still other claims are not cognizable as a matter of law even viewing the facts in the light most favorable to Mr. Webster (e.g., tort of outrage, civil rights violations), (4) Washington's "anti-SLAPP" statute bars claims based on Ms. Webster's communications to government officials (e.g., abuse of process and conspiracy to abuse process claims), (5) the witness immunity doctrine bars claims based on Ms. Webster's statements in judicial proceedings, and (6) many of Mr. Webster's allegations are an inappropriate collateral attack on the ruling by the divorce court.

Mr. Webster has appealed the trial court's decision granting Ms. Webster's summary judgment motion. Mr. Webster, in this appeal, has not demonstrated that any of his claims had any merit but instead

resorts (as he has in prior litigation) to asserting unfounded allegations of misconduct by the trial court itself.

The trial court properly dismissed all of Mr. Webster's claims. That ruling should be affirmed. To deter Mr. Webster from continuing his pattern of frivolous and abusive litigation, Ms. Webster should also be awarded her attorney's fees on appeal.

II. JOINDER IN BRIEF OF RESPONDENT KUMLUE

In order to avoid unnecessary and duplicative briefing before the Court, Ms. Webster's Brief of Respondent will address Assignments of Error Nos. 1–7, 9-10, and 12-13. Ms. Webster hereby joins in Respondent Kumlue's Brief of Respondent regarding Assignments of Error Nos. 8 and 11, and incorporates by reference the authority and argument set forth in Respondent Kumlue's Brief as if fully set forth hererin.

III. COUNTERSTATEMENT OF ISSUES

1. Did the trial court properly hold that Washington's anti-SLAPP statute, RCW 4.24.510, precludes Mr. Webster's claims against Ms. Webster for abuse of process and conspiracy to abuse process? (Assignment of Error No. 1).

2. Did the trial court properly hold that many of Mr. Webster's allegations against Ms. Webster constituted a collateral

attack on the ruling of the divorce court? (Assignment of Error Nos. 2-3).

3. Did the trial court properly grant summary judgment in favor of Ms. Webster on Mr. Webster's claims of abuse of process, "infliction of emotional/economic distress," false light, and conspiracy, as well as other claims asserted in his complaint? (Assignment of Error No. 4).

4. By consenting to proceed before Judge Cuthbertson after the judge disclosed in open court on February 19, 2010 that he had worked ten years ago at Gordon Thomas Honeywell, did Mr. Webster waive arguments that Judge Cuthbertson should have recused himself from the case because of his prior employment at the firm? (Assignment of Error No. 5).

5. May a judge hear a case in which his former law firm is serving as counsel, where the firm's representation began many years after the judge's association with the firm ended? (Assignment of Error No. 5).

6. Are the attorneys representing Ms. Webster and Ms. Kumlue able to provide pro bono representation to whomever they choose? (Assignment of Error No. 6).

7. Has Mr. Webster failed to offer any competent evidence to support his allegations that Judge Cuthbertson is a “documented member of the Communist Party” and a convicted criminal? (Assignment of Error No. 7).

8. Should this Court decline to review Mr. Webster’s assignment of error regarding the presence of a sheriff’s deputy in the courtroom during oral argument on February 19, 2010, when Mr. Webster failed to object to the deputy’s presence before the trial court and raised this issue for the first time on appeal? (Assignment of Error No. 9).

9. Did the trial court properly admonish Mr. Webster for making statements in court about the perceived sexual orientation of opposing counsel? (Assignment of Error No. 10).

10. Did the trial court properly exercise its discretion in denying a continuance to transcribe 911 tapes when Mr. Webster did not provide a good reason for the delay in transcribing the tapes, Mr. Webster did not indicate what admissible evidence would be provided by the tapes, and the tapes would not raise a genuine issue of material fact regarding any of Mr. Webster’s claims? (Assignment of Error No. 12).

11. Did the trial court properly exercise its discretion in striking Mr. Webster's response brief and attached exhibits as untimely as to Ms. Webster's and Mr. Flower's motions for summary judgment? (Assignment of Error No. 12).

12. Should Ms. Webster be awarded attorney's fees and costs on appeal under RAP 18.1 and RAP 18.9?

IV. STATEMENT OF THE CASE

A. WILLIAM AND SOMDET WEBSTER WERE MARRIED IN 1994 AND MR. WEBSTER LATER BECAME PHYSICALLY AND VERBALLY ABUSIVE TOWARDS MS. WEBSTER.

In December of 1994, William Webster traveled to Thailand where he married Somdet Webster. They have a son, W.W. During their marriage, Mr. Webster became physically and verbally abusive towards Ms. Webster. CP 446 - 51.

On January 26, 2007, Ms. Webster obtained a temporary domestic violence protection order against Mr. Webster in Kitsap County Superior Court, which prohibited Mr. Webster from having any contact with Ms. Webster and from entering the family home in Port Orchard. On January 29, 2007, Mr. Webster was arrested for violating the temporary protection order.¹

¹ The temporary domestic violence protection order and the police records for Mr. Webster's arrest are not in the record. However, Mr. Webster alleges in his complaint that Ms. Webster obtained a temporary restraining order against him on January 26, 2007, and that he was arrested on January 29, 2007. CP 2-3. Although Mr. Webster

B. WILLIAM AND SOMDET SEPARATED AND THEN DIVORCED.

On January 29, 2007, Ms. Webster and Mr. Webster separated. CP 446.

On February 8, 2007, the Kitsap County Superior Court held a full hearing on Ms. Webster's petition for a protection order against Mr. Webster. The court granted her petition and entered a one-year protection order. In making its ruling, the court specifically found that Mr. Webster committed domestic violence, as defined in RCW 26.50.010. CP 548-53.

Ms. Webster then filed a petition for dissolution. On June 13, 2008, after contentious litigation and several days of trial, the court entered its final orders. CP 424-42. The court's orders included the following findings:

- The couple's son W.W. should reside the majority of time with Ms. Webster and Mr. Webster's "residential time with the child shall be limited" because he "has engaged in the abusive use of conflict which creates the danger of serious damage to the child's psychological development." CP 429.
- Mr. Webster's "prior attempts to interfere with the mother's immigration/citizenship status, and [to] have her deported or removed from the country, are against the child's best interests." CP 429.

argues that the order was against "William S. Webster" rather than "William D. Webster," he also alleges in his complaint that the order was "against William D. Webster" or "Mr. Webster" (CP 3 ¶ 5; 12 ¶ 27; 13 ¶ 31) and that the order was "directed at William D. Webster." (CP 7 ¶ 19).

- Ms. Webster's relationship with another man [Mr. Flower] began after Ms. Webster and Mr. Webster had separated, and this relationship had no negative impact on W.W. CP 440.

Mr. Webster appealed the ruling in the dissolution case. Among other things, he argued that the trial court judge was biased, the custody evaluator committed "gender bias," and Ms. Webster's attorneys engaged in misconduct. CP 444-55. On December 14, 2009, the Court of Appeals rejected Mr. Webster's arguments as without merit and affirmed the trial court's rulings. *Id.* On July 6, 2010, the Washington Supreme Court denied Mr. Webster's petition for review. *In re Marriage of Webster*, 169 Wn.2d 1003, 234 P.3d 1172 (2010).

C. **MR. WEBSTER HAS ENGAGED IN A PATTERN OF VEXATIOUS AND ABUSIVE LITIGATION.**

Mr. Webster's litigation activities have not been limited to the dissolution case. During the dissolution trial, Mr. Webster indicated that when he got more money, he planned to file several lawsuits in federal court, and "[m]aybe a civil one in Pierce County thrown in" that he might do "for just a treat." CP 556. Mr. Webster has been true to his word. Since the dissolution action was filed in February 2007, Mr. Webster has filed a series of lawsuits arising from his separation and divorce.

- *Webster v. Bronson*, a federal lawsuit filed on November 27, 2007 against the custody investigator Stacy Bronson and Kitsap County Juvenile Services regarding their conduct in the dissolution case (W.D. Wash. Case No. 07-5661). CP 457-61.
- *Webster v. Webster*, a petition filed by Mr. Webster in Pierce County several months after Ms. Webster filed for dissolution in Kitsap County that sought to have the Websters' marriage declared invalid (Pierce County Superior Court Case No. 07-3-01775-4). CP 463-71.
- *Webster v. Costello*, a federal lawsuit filed on April 29, 2008 against the judge who presided over the dissolution, as well as Ms. Webster's attorney and the Northwest Justice Project (W.D. Wash. Case No. 08-5266). CP 480-87.
- *Webster v. Holman*, a federal lawsuit filed on July 15, 2008 against a Kitsap County District Judge who signed an order relating to the return of property to Mr. Webster (W.D. Wash. Case No. 08-5444). CP 489-93.
- *Webster v. Webster*, a petition filed on July 23, 2008 in Kitsap County Superior Court in which Mr. Webster unsuccessfully sought a domestic violence protection order against Ms. Webster (Kitsap County Superior Court Case No. 08-2-01822-1). CP 473-78.
- *Webster v. Kitsap County Sheriff's Office*, a federal lawsuit filed on January 23, 2009 against various Kitsap County officials and entities (W.D. Wash. Case No. 09-5036). CP 495-505.
- *Webster v. State*, a federal lawsuit filed on December 18, 2009 seeking damages from the State because the State distributed half of Mr. Webster's pension to Ms. Webster as ordered by the family court (W.D. Wash. Case No. 09-5776). CP 507-15.

With the exception of *Webster v. State* (which is still pending in U.S. District Court while the court considers a motion to dismiss), every

other lawsuit filed by Mr. Webster has been dismissed. CP 517-47; *see also Webster v. Kitsap County Sheriff*, No. 37 C09-5036 (W.D. Wash. Feb. 4, 2010) (dismissing case based on Mr. Webster's failure to comply with court orders).

D. MR. WEBSTER FILED THIS ACTION AGAINST MS. WEBSTER, MR. FLOWER, AND MS. KUMLUE.

In this action, Mr. Webster is again raising issues related to events and proceedings surrounding the end of his marriage to Ms. Webster. Mr. Webster alleged:

- Ms. Webster had “an adulterous affair” with Mr. Flower, and that “due to the loss of benefits of consortium,” Mr. Webster was “held up to ridicule and suffered deep emotional trauma” CP 2.
- Ms. Webster “conspired” to have Mr. Webster arrested for violating the temporary domestic violence protection order on January 29, 2007. CP 3.
- Ms. Webster, “in conspiracy with her adulterous lover Samuel K. Flower and Mrs. Kuml[u]e,” caused Mr. Webster “complete financial ruin” and to be “falsely deprive[d]” of his parental rights and various possessions in the divorce. CP 5.
- Ms. Webster and her “co-conspirators” “vilified Mr. Webster before the Court of Kitsap County by making false and slanderous statements to the Court.” CP 5-6.

Mr. Webster concluded the section of his complaint regarding Ms. Webster by alleging:

[T]hat Somdet Webster in conspiracy with Samuel K. Flower and Mrs. Kuml[u]e,

committed false light, abuse of process and lying to a public official in obtaining and conspiring to obtain a temporary restraining order against Mr. Webster which caused Mr. Webster great distress of mind and body, that because of these acts, Mr. Webster was held up to scorn and ridicule, injured in his character and reputation, was prevented from attending his usual business and vocation, was injured in his reputation in the community, and acts aforementioned were committed in conspiracy with the aim to have Mr. Webster arrested and separated from his son and property, that for want of filthy lucre, the acts were committed in conspiracy with the aim of injuring and damaging the Plaintiff William D. Webster.

CP 6. Mr. Webster sought \$250,000 in damages. CP 15.

E. **MS. WEBSTER MOVED FOR, AND WAS GRANTED, AN ORDER DISMISSING ALL OF MR. WEBSTER'S CLAIMS ON SUMMARY JUDGMENT.**

Ms. Webster filed a motion for summary judgment on January 19, 2010 and noted the motion for February 19, 2010. CP 94-111. Under CR 56(c), Mr. Webster's opposition papers were due no later than February 8, 2010. Mr. Webster failed to meet that deadline and did not file any opposition papers until Friday, February 12, 2010. CP 140-59. Because Mr. Webster served his papers by U.S. mail, Ms. Webster did not receive his opposition papers until February 16, 2010 – three days before the hearing date. RP 6.

The opposition papers included allegations and assertions that were irrelevant to the issues before the trial court, including the following:

The Microsoft sponsored ultra-feminist, homosexual advocacy pseudo-law firm "Legal Voice," are vexatious litigants who's [sic] only aim is to vilify heterosexual males and senior citizen males.

CP 140.

Because this will be a landmark case for males and husbands who have been vilified and raped by unscrupulous, morally bankrupt, feminist law firms like the government sponsored Northwest Justice Project and the Microsoft sponsored ultra-feminist, homosexual advocacy group "Legal Voice," these law firms and groups will stop at nothing to kill this case.

CP 158.

At the February 19, 2010 hearing, Ms. Webster moved to strike the documents filed by Mr. Webster as they were not timely filed or served. RP 6. The trial court granted the motion explaining that Mr. Webster would be held to the court rules as to both procedure and evidence. RP 12. Mr. Webster was given, however, the opportunity to present oral argument.

After hearing oral argument, the trial court granted Ms. Webster's motion for summary judgment and dismissed all of Mr. Webster's claims with prejudice. RP 34; CP 250-53.

F. **MR. WEBSTER BRINGS THIS APPEAL.**

Mr. Webster is now appealing the trial court's granting of Ms. Webster's summary judgment motion. In his appeal, Mr. Webster accuses the trial judge of being a convicted felon and a communist. Mr. Webster accuses the defense attorneys of engaging in a "pro bono scam" who "have no ethics and a moral compass." He accuses the trial judge of intimidating him with armed police "clad in what any historian of military history would know as a look alike for a WWII Nazi Waffen SS Stormtroop black uniform."

The trial court properly dismissed all of Mr. Webster's claims against Ms. Webster and the ruling should be affirmed.

V. ARGUMENT

A. **THE TRIAL COURT PROPERLY DISMISSED ALL OF WILLIAM WEBSTER'S CLAIMS ON SUMMARY JUDGMENT.**

Mr. Webster asserts that the trial court erred "by dismissing Plaintiff's case of premeditated abuse of process, infliction of emotional/economic distress, false light, conspiracy, and malicious

intent.”² App. Br. at 3 (Assignment of Error No. 4). Mr. Webster does not offer argument or authorities regarding the merits of the other claims asserted in his complaint against Ms. Webster, such as his claims for loss of consortium, defamation, and violation of civil rights. As a result, it appears that Mr. Webster does not dispute that summary judgment was properly entered on those claims. However, in an abundance of caution Ms. Webster will address the propriety of summary judgment on all claims.

1. WILLIAM WEBSTER’S ABUSE OF PROCESS CLAIMS FAILED AS A MATTER OF LAW.

Mr. Webster alleged that Ms. Webster committed abuse of process, claiming in his complaint that “that on Jan. 26, 2007, Somdet Webster did abuse process by applying for a temporary restraining order by stating to the Court ‘He (Mr. Webster) poured hot water on my leg.’” CP 2. This “abuse of process” claim is without merit.

First, Ms. Webster cannot be liable to Mr. Webster for statements she made in judicial proceedings, including statements in her petition to obtain a temporary protection order against Mr.

² It should be noted that Mr. Webster’s complaint included no claim for “malicious intent.” CP 1 (listing claims asserted in complaint). He also offers no authority suggesting that a claim for “malicious intent” exists in Washington.

Webster.³ It is well-established that the common law witness immunity rule bars any claims by Mr. Webster based on Ms. Webster's testimony or statements in judicial proceedings. As the Washington Supreme Court recently noted:

The general rule is that witnesses in judicial proceedings are absolutely immune from suit founded on their testimony. The purpose of this common law rule "is to preserve the integrity of the judicial process by encouraging full and frank testimony." Absent immunity, witnesses might self-censor in two ways. They might be reluctant to come forward to testify and they might distort testimony due to fear of subsequent liability. In addition, "the rule also rests on the safeguards against false or inaccurate testimony which inhere in the judicial process itself. ... [R]eliability is ensured by [the witness's] oath, the hazard of cross examination and the threat of prosecution for perjury." These safeguards ensure truthful and accurate testimony.

Wynn v. Earin, 163 Wn.2d 361, 369-70, 181 P.3d 806 (2008)

(internal citations omitted) (emphasis added).

As a result, a person cannot bring a civil claim based on allegations that a defendant committed perjury. As the Washington Supreme Court has observed, "[p]erjury is, of course, a public offense

³ As noted earlier, the Kitsap County Superior Court specifically found that Mr. Webster committed domestic violence against Ms. Webster and granted her a one-year order for protection following a full hearing on February 8, 2007. CP 549-53.

and punishable in criminal proceedings, but from earliest times the giving of false testimony has not been treated as a wrong actionable in civil proceedings” and “[t]his same immunity applies to statements made preliminary to testifying.” *W.G. Platts, Inc. v. Charles W. Platts*, 73 Wn.2d 434, 440, 438 P.2d 867 (1968).

For the record, Ms. Webster never committed perjury. However, even assuming that a party or witness has provided false testimony, no private cause of action arises from such an occurrence.

There is also no evidence to support an abuse of process claim. The essential elements of an abuse of process claim are: (1) the existence of an ulterior purpose – to accomplish an object not within the proper scope of the process – and (2) an act in the use of legal process not proper in the regular prosecution of the proceedings. *Fite v. Lee*, 11 Wn. App. 21, 27, 521 P.2d 964 (1974). “The mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process.” *Id.* at 27-28. “Thus, there must be an act after filing suit using legal process empowered by that suit to accomplish an end not within the purview of the suit.” *Batten v. Abrams*, 28 Wn. App. 737, 748, 626 P.2d 984 (1981). Here, there is no evidence that Ms. Webster used legal process empowered by a lawsuit to accomplish an end not within the purview of the suit.

Mr. Webster appears to suggest that Ms. Webster abused process by reporting suspected violations of the temporary protection order to the police. But as the trial court recognized, Mr. Webster's abuse of process claim (as well as his conspiracy to abuse process claims) is precluded under RCW 4.24.510, Washington's "anti-SLAPP" statute.⁴ The anti-SLAPP statute provides:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

RCW 4.24.510. Within RCW 4.24, the legislature specifically expressed a policy to protect citizens who report potential wrongdoing to any government agency:

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The

⁴ "SLAPP" stands for "Strategic Litigation Against Public Participation."

legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

RCW 4.24.500. Under the statute, immunity applies when a person (1) “communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization” that is (2) based on any matter “reasonably of concern to that agency.” *Bailey v. State*, 147 Wn. App. 251, 261, 191 P.3d 1285 (2008) (quoting RCW 4.24.510).

RCW 4.24.510 does not only provide immunity in cases where a complaint to a government agency is made in “good faith.” In 2002, the Legislature specifically amended the statute to remove any “good faith” requirement. *Id.* at 262-63 (noting “[f]ormer RCW 4.24.510 contained a good faith requirement. This phrase was deleted by amendment [in 2002].”). As a result, courts have since held that immunity attaches under RCW 4.24.510 without the need to

determine whether a communication was made in good faith.⁵ *Id.*; see also *Crann v. Carver*, 2006 U.S. Dist. LEXIS 39798 at *14 (W.D. Wash. June 15, 2006) (“As amended in 2002, RCW 4.24.510 provides immunity even if communications are made in bad faith.”)

Nonetheless, Mr. Webster argues that RCW 4.24.510 does not apply to Ms. Webster’s communications to the police regarding suspected violations of the protection order because she supposedly acted in bad faith. Putting aside his lack of evidence on this point, the *Bailey* decision and the plain language of RCW 4.24.510 make it clear that Ms. Webster’s communications to the police are protected by the anti-SLAPP statute, regardless of whether they were made in good faith.⁶ RCW 4.24.510 “protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making.” *Bailey*, 147 Wn. App. at 262 (quoting Laws of 2002, ch. 232, § 1) (emphasis added).

Mr. Webster also suggests that Ms. Webster’s communications alleging violations of the protection order were not “reasonably of concern” to the police. But any communication to a police department

⁵ As the statute plainly provides, the issue of bad faith is only relevant in determining whether the defendant is entitled to statutory damages of \$10,000. Here, Ms. Webster did not seek statutory damages, making the issue of bad faith irrelevant.

that alleges violation of a domestic violence protection order is obviously of concern to law enforcement officials, particularly in light of Washington's strong public policy against domestic violence. *See, e.g., Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 208-20, 193 P.3d 128 (2008) (describing Washington's clear and forceful public policy against domestic violence).

Therefore, Mr. Webster's claim for "abuse of process" against Ms. Webster was properly dismissed.

2. WILLIAM WEBSTER'S OUTRAGE AND "INTENTIONAL AND MALICIOUS INFLICTION OF EMOTIONAL AND ECONOMIC DISTRESS" CLAIMS FAILED AS A MATTER OF LAW.

In his complaint, Mr. Webster asserted a claim for outrage. He also brought a claim for "intentional and malicious infliction of emotional and economic distress." However, such a claim does not exist under Washington law. At best, this asserted cause of action could be regarded as a claim for intentional infliction of emotional distress. But under Washington law, "outrage" and "intentional infliction of emotional distress" are synonyms for the same tort, so it is not necessary to analyze the two claims separately. *Kloepfel v. Bokor*, 149 Wn.2d 192, 193 n.1, 66 P.3d 630 (2003).

To support these claims, Mr. Webster alleged that Ms. Webster "conspired . . . to intentionally inflict[] deep emotional and economic

ruin and distress upon Mr. Webster and had previously stated to Mr. Webster that he would be ‘living in his motorhome.’” CP 5. In a similar vein, he also alleged that Ms. Webster committed “outrage by wanton cruel acts” against him, “engaged in scandalous behavior with premeditated intent to harm Mr. Webster in body and soul,” and “vilified Mr. Webster before the Court of Kitsap County by making false and slanderous statements to the Court” CP 5-6.

The elements of the tort of outrage are: (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) actual result to the plaintiff of severe emotional distress. *Dicomes v. State*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989). “The conduct in question must be ‘so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’” *Id.* (quoting *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975)). “[M]ere insults and indignities, such as causing embarrassment or humiliation, will not support imposition of liability.” *Id.* Here, there was no evidence that Ms. Webster engaged in conduct that would support a claim for outrage.

Mr. Webster also cannot base his outrage claims on allegations that Ms. Webster made “false and slanderous statements” to the

court, nor can he base such claims on Ms. Webster's communications to government agencies. As noted above, such statements are shielded from civil liability under the witness immunity doctrine and Washington's anti-SLAPP statute.

In addition, Mr. Webster cannot base his claims on allegations that he was wrongfully deprived of property or parental rights in the dissolution case. Such a claim would be an impermissible collateral attack on the findings of the trial court.

Finally, Mr. Webster cannot base an outrage claim on acts that did not occur in his presence. Under Washington law, "[a] plaintiff may not sue for outrage unless he or she was present when the conduct occurred." *Miles v. Child Protective Servs. Dep't*, 102 Wn. App. 142, 157, 6 P.3d 112 (2000).

In short, Mr. Webster had no evidence that would support a cause of action for outrage/intentional infliction of emotional distress. Therefore, this claim was properly dismissed.

3. WILLIAM WEBSTER'S DEFAMATION AND FALSE LIGHT CLAIMS FAIL AS A MATTER OF LAW.

Mr. Webster also brought defamation and "false light" claims against Ms. Webster. He alleged that Ms. Webster "defamed Mr. Webster to the Kitsap County Sheriff's Office in order to have Mr. Webster incarcerated" in January 2007. CP 3. As noted above, he

also alleged that she “vilified Mr. Webster before the Court of Kitsap County by making false and slanderous statements to the Court.” CP 6. In addition, he alleged that Ms. Webster “committed false light,” apparently by obtaining a temporary protection order against him in January 2007. *Id.* Mr. Webster’s claims for defamation and “false light” failed for several reasons.

First, even if Mr. Webster had a basis for defamation or false light claims against Ms. Webster (which he did not), the statute of limitations has expired for bringing such claims based on events that occurred in January 2007. Under Washington law, the statute of limitations for a defamation claim or a “false light” claim is two years. *See Eastwood v. Cascade Broad. Co.*, 106 Wn.2d 466, 474, 722 P.2d 1295 (1986). Here, Mr. Webster did not file his complaint until September 2009 – more than two years after the events in January 2007 that gave rise to his defamation and “false light” claims. Therefore, these claims were barred as a matter of law.

Second, as discussed above, Washington’s anti-SLAPP statute provides that one who communicates information to any branch or agency of federal, state, or local government on any matter reasonably of concern to the agency is “immune from civil liability for claims based upon the communication.” RCW 4.24.510. As a result, Mr. Webster’s

claims that Ms. Webster defamed him or committed “false light” against him by making communications to the Kitsap County Sheriff’s Office are barred by the anti-SLAPP statute.

Finally, Mr. Webster claimed that Ms. Webster defamed him in the course of judicial proceedings. However, as discussed above, Ms. Webster is immune from liability for any statements she made to the court under the witness immunity rule.

Therefore, Mr. Webster’s claims for defamation and “false light” against Ms. Webster were properly dismissed.

4. WILLIAM WEBSTER’S LOSS OF CONSORTIUM CLAIMS FAILED AS A MATTER OF LAW.

Mr. Webster alleged in his complaint that he suffered a “loss of consortium” with Ms. Webster.

Upon information, evidence and belief, that starting in December 2006, Somdet Webster and Samuel K. Flower engaged in an adulterous affair while Somdet Webster was still married to Mr. Webster, to the detriment of [Mr. Webster], that due to the loss of benefits of consortium with Somdet Webster, Mr. Webster was abused by Somdet Webster, held up to ridicule and suffered deep emotional trauma for which Mr. Webster was forced to seek medical aid and medication.

CP 2. In essence, Mr. Webster suggests that the alleged “adulterous affair” caused him a loss of consortium.

As a preliminary matter, the Kitsap County Superior Court specifically found in the dissolution case that Ms. Webster's relationship with Mr. Flower began after she and Mr. Webster had separated. CP 440. The court found that the Websters separated on January 29, 2007. CP 436. As a result, the doctrine of collateral estoppel bars Mr. Webster from attempting to re-litigate the issue of when Ms. Webster's relationship with Mr. Flower began. *See Shoemaker v. Bremerton*, 109 Wn.2d 504, 507-08, 745 P.2d 858 (1987).

Moreover, Washington law does not permit a spouse to bring a cause of action for "loss of consortium" based on allegations that the other spouse engaged in adultery. In effect, such a claim would be an action for alienation of affections, which Washington abolished many years ago. *See Lund v. Caple*, 100 Wn.2d 739, 745-48, 675 P.2d 226 (1984); *Wyman v. Wallace*, 94 Wn.2d 99, 615 P.2d 452 (1980). As a result, Mr. Webster's claim for "loss of consortium" was properly dismissed.

5. WILLIAM WEBSTER'S CIVIL RIGHTS CLAIMS FAILED AS A MATTER OF LAW.

Mr. Webster claimed that Ms. Webster denied him his First and Second Amendment rights and his constitutional right to access his son. However, there is no cause of action against private individuals

for deprivation of a constitutional right. *See, e.g., Rivera v. Green*, 775 F.2d 1381, 1384 (9th Cir. 1995) (dismissing Section 1983 claims against private parties who made reports to the police). Thus, Mr. Webster's claim failed as a matter of law and was properly dismissed.

6. WILLIAM WEBSTER'S CONSPIRACY CLAIMS FAILED AS A MATTER OF LAW.

Mr. Webster's complaint was rife with allegations of conspiracy against him, including claims for "conspiracy to abuse process," "conspiracy to inflict emotional and economic distress," and "conspiracy to violate civil rights." However, any conspiracy claims alleged by Mr. Webster failed as a matter of law.

To establish a civil conspiracy, a plaintiff "must prove by clear, cogent, and convincing evidence that (1) two or more people combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the conspiracy." *All Star Gas, Inc. of Washington v. Bechard*, 100 Wn. App. 732, 740, 998 P.2d 367 (2000). "Mere suspicion or commonality of interest is insufficient to prove a conspiracy." *Id.* (quoting *Wilson v. State*, 84 Wn. App. 32, 350-51, 929 P.2d 448 (1996)). Here, Mr. Webster's conspiracy claims were based on suspicion, rather than on evidence.

In any event, Mr. Webster cannot maintain a civil conspiracy claim against Ms. Webster because he has not brought any other actionable claims:

In Washington, as elsewhere, a civil conspiracy claim must be premised on underlying “actionable wrongs,” “overt acts,” or a “tort working damage to the plaintiffs.” A conspiracy claim fails if the underlying act or claim is not actionable.

N.W. Laborers-Employers Health & Sec. Trust Fund v. Philip Morris, Inc., 58 F. Supp.2d 1211, 1216 (W.D. Wash. 1999) (internal citations omitted). As a result, Mr. Webster cannot bring claims for “conspiracy to abuse process,” “conspiracy to inflict emotional and economic distress,” or “conspiracy to violate civil rights” unless the underlying tort claims are actionable. Here, because none of the other claims alleged by Mr. Webster are actionable, his conspiracy claims failed as well and were properly dismissed.

7. THE TRIAL COURT PROPERLY HELD THAT MANY OF MR. WEBSTER’S ALLEGATIONS CONSTITUTED AN IMPROPER COLLATERAL ATTACK ON THE RULING IN THE DISSOLUTION PROCEEDING.

Mr. Webster argues that the trial court erred when it “dismissed the case saying it is collateral estoppel/attack.” App. Br. at 3. The trial court held that “[m]any of Plaintiff’s allegations amount to a collateral attack on the ruling in the dissolution proceedings between the parties in Kitsap County Superior Court, which has been affirmed by the Court

of Appeals, Division I.” CP 251. This determination is well-supported by the record.

For example, Mr. Webster alleged in his complaint that Ms. Webster and Mr. Flower began an “adulterous relationship” in December 2006. CP 2. As noted earlier, this allegation is contrary to the express finding by the Kitsap County Superior Court, which held that Ms. Webster and Mr. Flower did not begin a relationship until after the Websters separated (CP 440) and that the date of separation was January 29, 2007. CP 436. As a result, the doctrine of collateral estoppel bars Mr. Webster from relitigating the issue here.⁷

Similarly, Mr. Webster alleged that Ms. Webster caused him to be falsely deprived of his parental rights and custody of his son. CP 5. Such allegations are an impermissible collateral attack on rulings in the dissolution proceeding, which held that Ms. Webster should be the primary residential parent and restricted Mr. Webster’s residential time due to his abusive use of conflict. CP 424-33.

⁷ The elements of collateral estoppel are: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. *Shoemaker v. Bremerton*, 109 Wn.2d at 504, 507, 745 P.2d 858 (1987).

8. MR. WEBSTER'S PURPORTED EVIDENCE COULD NOT PREVENT ENTRY OF SUMMARY JUDGMENT AS A MATTER OF LAW.

Mr. Webster suggests that he should have been granted a continuance to offer evidence in response to Ms. Webster's summary judgment motion. As discussed below, Mr. Webster failed to follow the proper procedures for requesting a continuance under CR 56(f). But in any case, he fails to demonstrate how his purported evidence would have prevented summary judgment from being entered on any of his claims.

Mr. Webster asserts that he has cell phone records and 911 tapes which would show that Ms. Webster committed crimes by making false reports to the police regarding suspected violations of the temporary protection order. However, even if he had such evidence, the anti-SLAPP statute protects Ms. Webster from civil liability for her communications to the police.⁸ As a result, the cell phone records or 911 tapes could not create a genuine issue of material fact to defeat summary judgment on any of his claims.

⁸ Of course, making false statements to the police could give rise to a criminal action. However, Ms. Webster has never been prosecuted for making false statement to the police.

B. THE TRIAL COURT'S ACTIONS AT THE SUMMARY JUDGMENT HEARING WERE PROPER.

Mr. Webster makes a number of arguments that the manner in which the summary judgment hearing was conducted somehow prejudiced him in such a manner that the entry of summary judgment dismissing all of his claims should be reversed. His arguments are without merit.

1. JUDGE CUTHBERTSON INFORMED ALL PARTIES ABOUT HIS BEING AN ATTORNEY WITH THE GORDON THOMAS HONEYWELL FIRM TEN YEARS EARLIER AND WILLIAM WEBSTER CHOSE TO HAVE JUDGE CUTHBERTSON DECIDE THE MOTION.

Mr. Webster claims that Judge Cuthbertson should have recused himself from this case because the judge had worked ten years ago at Gordon Thomas Honeywell, which is representing Ms. Webster in this matter. At the beginning of the summary judgment hearing, Judge Cuthbertson informed all parties that he had previously worked at Gordon Thomas Honeywell.

THE COURT: ... I need to let the parties know that ten years ago, before I became a judge, I actually worked at the Gordon Thomas Honeywell firm. I think that probably predated Ms. Sanders' tenure there. I've never seen you before.

MS. SANDERS: That's correct, Your Honor.

THE COURT: I wanted to raise that. I believe I can be fair and impartial, but Mr. Webster has been concerned in the past

about possible bias. So I wanted to give him an opportunity to consider that before we go further.

MR. WEBSTER: Your Honor, you're admitting this. I find that very honorable. I have no objections.

RP 5.

Mr. Webster, having been informed of Judge Cuthbertson's prior affiliation with Gordon Thomas Honeywell, and having consented to his hearing the motion, cannot now claim that Judge Cuthbertson should have recused himself. *See, e.g., Buckley v. Snapper Power Equip. Co.*, 61 Wn. App. 932, 939, 813 P.2d 125 (1991) ("A litigant who proceeds to a trial or hearing before a judge despite knowing of a reason for potential disqualification of the judge waives the objection and cannot challenge the court's qualifications on appeal.").

Nonetheless, Mr. Webster suggests that Judge Cuthbertson was obliged to recuse *sua sponte*. "Recusal lies within the sound discretion of the trial judge, whose decision will not be disturbed absent a clear showing of abuse of that discretion." *Workfill Feed & Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 840, 14 P.3d 877 (2000). Here, Judge Cuthbertson did not abuse his discretion by declining to recuse on his own initiative. The judge's association with Gordon Thomas Honeywell ended ten years ago, long before this lawsuit was filed. *See, e.g., Duffy*

v. Duffy, 78 Wn. App. 579, 580-82, 897 P.2d 1279 (1995) (judge was not disqualified from hearing an action in which his former firm served as counsel of record, where the action did not commence until several years after the trial judge ceased to be associated with counsel of record). Mr. Webster's claims that Judge Cuthbertson abused his discretion by hearing this case are without merit.

2. WILLIAM WEBSTER'S ASSERTION THAT ATTORNEYS HAVE ENGAGED IN A "PRO BONO SCAM" IS WITHOUT BASIS AND HAS NOTHING TO DO WITH THE MERITS.

Ms. Webster has been represented in this matter on a pro bono basis by Gordon Thomas Honeywell LLP and Legal Voice, while Ms. Kumlue has received pro bono representation from K&L Gates. Mr. Webster claims that Ms. Webster and Ms. Kumlue are not eligible for pro bono assistance and that there is some sort of conspiracy by the attorneys to provide pro bono assistance.

First, Gordon Thomas Honeywell, Legal Voice, and K&L Gates can provide free legal work to whomever they choose, and none of the materials cited by Mr. Webster provide otherwise. Mr. Webster does not have standing to object to those entities' choices of whom to help.

Second, as with many of Mr. Webster's claims, this has nothing to do with the merits of the issue of the trial court's decision to dismiss all of his claims.

3. WILLIAM WEBSTER'S ASSERTION THAT JUDGE CUTHBERTSON IS A MEMBER OF THE COMMUNIST PARTY AND A CONVICTED CRIMINAL IS BASELESS AND WITHOUT MERIT.

Mr. Webster asserts that Judge Cuthbertson is supposedly a communist and a convicted felon and should be disqualified as a judge. To support his claim that Judge Cuthbertson is a communist, Mr. Webster relies on some sort of document, apparently obtained from the internet, entitled "Red Tide Rising in the Carolinas."⁹ CP 319-21. This document is hearsay and should be stricken from the record.

Mr. Webster has also included a two page document, which is untitled but apparently from the internet. CP 323-24. That document is also hearsay and should be stricken from the record.

There is no competent evidence to support Mr. Webster's allegations that Judge Cuthbertson is a communist or a convicted felon. These allegations were not responsibly made and should be stricken from the record.

⁹ For the purported evidence supporting his accusations against Judge Cuthbertson, Mr. Webster does not cite to the Clerk's Papers but simply directs the Court to "see court filings with arrest/conviction/warrant record for Frank Cuthbertson from Greensboro, North Carolina and selected pages from 'Red Tide Rising in the Carolinas.'" App. Br. at 8.

4. **MR. WEBSTER'S CLAIM THAT HIS 1ST AND 14TH AMENDMENT RIGHTS WERE VIOLATED WHEN A DEPUTY SHERIFF WAS IN THE COURTROOM IS WITHOUT MERIT.**

During the trial court's hearing on dispositive motions, Mr. Webster alleges:

[Judge Cuthbertson] took the recess to bring into the courtroom and stand behind pro se 65 year old senior citizen, Webster, an armed Pierce County Sheriff clad in what any historian of military history would know as a look alike for a WWII Nazi Waffen SS Stormtroop black uniform. The only thing missing were the SS lightning flashes and the Waffen SS "Deathshead" emblem. This was done to distract and intimidate pro se Webster.

App. Br. at 24-25.

The calling into the courtroom of a deputy sheriff does not result in the violation of a party's constitutional rights. Moreover, this argument has nothing to do with the merits of the issue of the trial court's dismissal of Mr. Webster's claims.

In any case, Mr. Webster raised no objection at the hearing to the presence of a security officer, nor does anything in the record support his lurid description of events. The Court need not review this assigned error, which is raised for the first time on appeal. *See* RAP 2.5(a).

5. MR. WEBSTER'S CLAIM THAT JUDGE CUTHBERTSON VERBALLY ASSAULTED HIM IS WITHOUT MERIT.

At oral argument, Mr. Webster made reference to what he believed was the sexual orientation of the attorneys representing the various defendants, stating "Legal Voice, an ultra-feminist, homosexual, pseudo-law firm is piling whitewash on this case" and that "Defendants and homosexual attorneys say I am a vexatious litigator." RP 21-22. At the close of the hearing, Judge Cuthbertson properly admonished Mr. Webster for making statements that were completely irrelevant to the matters raised by the summary judgment motion.

THE COURT: One other thing, we don't make rulings – and I let this go, but it is really, unless you can support it and even if you can support it, it's improper, to make allegations about, you know, members of the court's sexual preferences or alleged sexual preferences or whether this is lesbian-gay conspiracy, that from what I have heard today has no merit. It's inappropriate and has no place in court and that would be, you know, were you not pro se, I would certainly impose sanctions based on that conduct. I just wanted to be clear about that.

RP 38.

Mr. Webster stating his perceptions of the opposing counsel's sexual orientation in this matter was not only irrelevant, but indeed improper. Such statements are a naked attempt to appeal to

prejudice based on sexual orientation, which would subject an attorney to sanctions for violating Rule of Professional Conduct 8.4(h). This Court should explicitly affirm Judge Cuthbertson's admonishment to Mr. Webster.

6. THE TRIAL COURT PROPERLY DENIED MR. WEBSTER'S REQUEST FOR A CONTINUANCE TO SUBMIT EVIDENCE.

Mr. Webster argues that he should have been granted a continuance of the summary judgment hearing to have 911 tapes transcribed and submitted. This argument fails on multiple grounds.

To start, Mr. Webster did not make a request at the hearing for additional time to have 911 tapes transcribed; instead, he simply made a broad statement:

MR. WEBSTER: Your Honor, if I have to – I didn't realize that I had to submit evidence at this time. If so, if they want me to submit evidence, I ask for a continuance to submit the evidence. I didn't realize I didn't have to submit evidence until the time of trial.

RP 30.

CR 56(e) is clear to anyone who reads it that a party opposing a summary judgment motion must present evidence by affidavit and cannot simply rest upon the allegations in the pleadings. And Mr. Webster's prior filings with the trial court cite the summary judgment

standards, showing that he reviewed the rules that apply at the summary judgment phase. *See* CP 142-43.

Moreover, the mechanism for requesting additional time to present affidavits to oppose a summary judgment motion is set forth in CR 56(f). Mr. Webster did not comply with that rule's requirement. As this Court has noted, "an oral request for a continuance does not appear to comply with the requirement in CR 56(f) that such a request be made by affidavit." *Burmeister v. State Farm Ins. Co.*, 92 Wn. App. 359, 368 n.6, 966 P.2d 921 (1998).

Even if Mr. Webster had complied with the requirements of CR 56(f), a trial court may in its discretion deny a continuance under the rule if "(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact." *Gross v. Sunding*, 139 Wn. App. 54, 68, 161 P.3d 380 (2007). Here, Mr. Webster's request for a continuance failed to satisfy all three prongs.

First, Mr. Webster did not offer a justification for his delay in obtaining the 911 tape transcripts. At the hearing, Mr. Webster stated that he did not realize that he was required to submit any evidence

until the time of trial. RP 30. On appeal, he also claims that he “had not had the 911 tape transcribed as it is expensive” App. Br. at 27. But this assertion is inconsistent with his complaint, in which he repeatedly alleged that “Mr. Webster is in possession of 911 and Kitsap County Sheriff tapes/transcriptions” to support his claims. CP 9 ¶ 22; CP 10 ¶¶ 23 & 24; CP 11 ¶25. (emphasis added).

In any case, neither explanation constitutes a sufficient reason to justify Mr. Webster’s delay in obtaining or submitting this alleged evidence. Mr. Webster indisputably had access to the 911 tapes and inevitably would have had to pay to transcribe them. *See Janda v. Brier Realty*, 97 Wn. App. 45, 54-55, 984 P.2d 412 (1999) (finding there was no abuse of discretion in denying a CR 56(f) motion for a continuance because movant “offered no good reason for the delay in obtaining evidence” that was supposedly “central” to movant’s damages argument). The trial court’s discretionary decision not to grant a continuance was not exercised on untenable grounds or for untenable reasons in light of Mr. Webster’s failure to provide any good reason for his delay.

Second, Mr. Webster also did not identify in his request for a continuance what evidence he sought to establish if given additional

time. RP 30. As noted above, he simply made a broad request for a continuance without specifying what evidence he sought to submit.

Third, Mr. Webster failed to show how the 911 tapes would raise a genuine issue of material fact to prevent entry of summary judgment. On appeal, he suggests that the 911 tapes would show that Ms. Webster made false statements to the police. But as noted earlier, because the anti-SLAPP statute, RCW 4.24.510, protects Ms. Webster from civil liability for her communications to government agencies and organizations, the transcripts would not raise any issue of material fact and could not have prevented entry of summary judgment.

Thus, the trial court did not abuse its discretion in denying a continuance, even if it was for the purpose of transcribing the 911 tapes.

7. THE TRIAL COURT PROPERLY STRUCK MR. WEBSTER'S UNTIMELY OPPOSITION PAPERS.

Mr. Webster is alleging that the trial court erred when it enforced the civil rules of procedure requiring that documents opposing a summary judgment motion be timely filed.

The trial court struck Mr. Webster's opposition documents as untimely. Ms. Webster filed her motion for summary judgment on January 19, 2010, and noted the motion for Friday, February 19, 2010. CP 94-111. Under CR 56(c), Mr. Webster's opposition papers

were due no later than Monday, February 8, 2010, eleven days before the hearing. Mr. Webster did not file his opposition documents until Friday, February 12, 2010 (CP 140-159) and they were not delivered to Ms. Webster's counsel until Tuesday, February 16 (RP 6) – three days before the hearing. The trial court properly struck the untimely documents. However, the trial court still allowed Mr. Webster to make his oral arguments opposing the summary judgment motion. Under these circumstances, the trial court did not abuse its discretion.

A trial court “has considerable latitude in managing its court schedule to insure the orderly and expeditious disposition of cases.” *Idahosa v. King County*, 113 Wn. App. 930, 937 55 P.3d 657 (2002); *see also Woodhead v. Disc. Waterbeds, Inc.*, 78 Wn. App. 125, 129, 896 P.2d 66 (1995); *Wagner v. McDonald*, 10 Wn. App. 213, 217, 516 P.2d 1051 (1973); RCW 2.28.010. Here, the trial court acted within its “considerable latitude” and did not abuse its discretion in striking Mr. Webster's untimely response.

Mr. Webster argues that his untimely response should not have been stricken because he is proceeding pro se. But as the trial court properly noted, Washington law provides that pro se parties are held to the same rules of procedure and substantive law as are applied to

attorneys. *See Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

In addition, Mr. Webster is not a typical pro se party. As Ms. Webster's counsel noted at the hearing, Mr. Webster is an experienced pro se litigant with an extensive litigation history. He also has a long record of bringing meritless lawsuits. Mr. Webster cannot be permitted to continue misusing the judicial system while at the same time failing to adhere to the court's rules.

As a final matter, Mr. Webster's opposition papers contained no additional admissible evidence that would have materially affected the trial court's decision regarding the dispositive motions. *See generally* CP 140-85. Thus, the outcome of the case would not have been materially different and any purported error in striking his untimely response papers would be harmless.

VI. MS. WEBSTER SHOULD BE AWARDED ATTORNEY'S FEES AND COSTS IN THIS APPEAL

Pursuant to RAP 18.1, Ms. Webster requests an award of attorney fees and costs incurred in this appeal. The anti-SLAPP statute provides a mandatory award of fees and costs to a party who prevails in establishing the defense provided by the statute. *See* RCW 4.24.510. Therefore, Ms. Webster is entitled to the attorney fees and costs reasonably incurred by establishing the anti-SLAPP defense in

this appeal and accordingly requests that those fees and costs be awarded by this Court.

Ms. Webster also requests attorney's fees and costs under RAP 18.9, which authorizes the appellate court to award compensatory damages when a party files a frivolous appeal. *Kearney v. Kearney*, 95 Wn. App. 405, 417, 974 P.2d 872 (1999). Compensatory damages may include an award of attorney fees and costs to the opposing party. *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that is so devoid of merit that there is no possibility of reversal." *Id.* at 697.

An award of attorney's fees and costs under RAP 18.9 is appropriate in this case. Mr. Webster's appeal presents no debatable issues. All of his claims plainly fail as a matter of law and he presents no reasoned argument that the trial court abused its discretion in conducting the summary judgment hearing. Instead, Mr. Webster resorts to making baseless attacks on the integrity of the trial court and Ms. Webster's attorneys.

Awarding fees and costs under RAP 18.9 would also serve to deter Mr. Webster from continuing his pattern of abusive and frivolous

litigation. As noted earlier, Mr. Webster has now brought eight lawsuits based on the events and proceedings surrounding his separation and divorce from Ms. Webster. He has not only sued Ms. Webster and her friends, but has also brought meritless lawsuits against her attorneys, the judges who have presided over his cases, and other government officials. This pattern of litigation abuse must end.

VII. CONCLUSION

The Websters' divorce action should have been the end of any litigation regarding their relationship. But it was not. Instead, in a marked pattern of abusive and meritless litigation, Mr. Webster has filed a series of lawsuits that arise from the events surrounding the couple's separation and divorce, with this lawsuit being one such action.

There was never any merit to Mr. Webster's lawsuit against Ms. Webster, Mr. Flower, and Ms. Kumlue. The trial court properly dismissed all of Mr. Webster's claims.

Mr. Webster, instead of attempting to demonstrate how his original claims were legitimate and proper (which they were not) has resorted to his familiar tactic of attacking the trial judge who presided over the hearing dismissing those claims. Mr. Webster's attacks on the trial judge are as baseless as were his claims against Ms. Webster.

Ms. Webster requests that this Court affirm the trial court's ruling, affirm the admonishment by the trial court for the remarks made by Mr. Webster about the opposing attorneys, and award attorney's fees and costs incurred in this appeal to Ms. Webster.

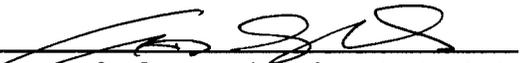
Dated this 22nd day of October, 2010.

Respectfully submitted,

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By 
Attorneys for Respondent Somdet Webster

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on October 22, 2010, I did serve via ABC Legal Messengers (or other method indicated below), true and correct copies of the foregoing by addressing and directing for delivery to the following:

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