

No. 40828-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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JODY BROWN and JERI BROWN,

Respondents,

v.

NORTH THURSTON SCHOOL DISTRICT,

Appellant.

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FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY *[Signature]*  
JERITY

APPELLANT'S OPENING BRIEF

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## **I. INTRODUCTION**

Appellant, North Thurston School District (“District”), respectfully requests that the Court of Appeals reverse the superior court’s decision, denying the District’s Motion for Summary Judgment for Failure to Comply with RCW 4.96, and dismiss Respondents’, Jodi and Jeri Brown (“the Browns”), claims in their entirety. Reversal of the superior court’s decision is appropriate as it is in direct conflict with the plain language of RCW 4.96 and well-settled Washington case law requiring strict compliance with the procedural requirements of the notice of claim statute, including specifically the requirement that a claimant must serve the notice of claim upon the local governmental entity’s designated agent.

Furthermore, the Court of Appeals should reverse the superior court’s decision because it is directly contradicted by well-settled Washington case law and the common law principle of estoppel. Allowing the superior court’s decision to stand in this matter would turn Washington case law and the principle of estoppel on its head, as attorneys would be permitted to shift to local government employees the burden of providing legal advice and instruction in matters of statutory interpretation. More specifically, attorneys would be permitted to shift the burden to local government employees to provide legal advice and instruction as how to

comply with, and satisfy, the notice of claim statute's procedural requirements.

As a result, there can be no doubt that both Washington case law and the common law principle of estoppel directly contradict the superior court's decision where reliance was permitted despite the fact that the identity of the District's designated agent was properly recorded with the county auditor's office and readily available to the Browns' attorneys had they simply made the effort to obtain said information as the Legislature had intended. The District therefore respectfully requests that the Court of Appeals reverse the superior court's decision and dismiss the Browns' claims in their entirety.

## **II. ASSIGNMENTS OF ERROR**

1. Did the superior court commit error in holding that the Browns were not required to strictly comply with the notice of claim statute, RCW 4.96, requiring service of the notice of claim upon the District's designated agent?

2. Did the superior court commit error in holding that the Browns' attorney was entitled to justifiably rely upon the alleged statements of a District employee in order to interpret and comply with the notice of claim statute's procedural requirements thereby permitting attorneys to shift the

burden to local government employees to provide legal advice and instruction in matters of statutory interpretation?

### **III. STATEMENT OF THE CASE**

#### **A. Statement of Facts.**

The Browns claim that on October 27, 2006 their minor daughter, Jenaya Brown, sustained bodily injuries when a glass flask shattered during her eighth grade science class as a result of the negligence of the District. CP 4-7.

On or about September 29, 2008, the Browns delivered a document entitled Verified Notice of Tort Claims to Carmen Barriga the Confidential Secretary for the District's Human Resource Office. CP 26-29. The document stated that it was "For Service ONLY Upon: Carmen Barriga, Risk Manager." CP 26. It should be noted that Carmen Barriga was not the District's Risk Manager but, as stated previously, was the Confidential Secretary for the District's Human Resource Office. The document also stated that the Browns presented a claim for damages for past special damages in the amount of \$54,786.74 and \$325,000.00 for each claimant in general damages. CP 27-28.

In compliance with RCW 4.96, the District had designated the District Superintendent, Dr. Jim Koval, as the District's agent to receive notice of tort claims. CP 31.

B. Procedural History.

On October 16, 2009, the Browns filed this lawsuit. The Browns stated in their complaint that they sought monetary damages thereby necessitating compliance with the notice of claim statute. CP 4-7. It should be noted that the only claims before the superior court in this matter were those of Jenaya Brown's parents, Jodi and Jeri Brown. As of this date, the Browns have not filed a lawsuit on behalf of Jenaya Brown.

The District filed an answer to the Browns' complaint on November 4, 2009. CP 8-13. In its answer, the District raised an affirmative defense asserting that the Browns had failed to comply with the notice of claim statute, RCW 4.96.

On January 15, 2010, the District moved for summary judgment on the basis that the Browns had not properly complied with the notice of claim statute, RCW 4.96. CP 14-20. The District's argument was based upon the fact that the Browns had failed to properly serve the District's designated agent, the District Superintendent. In their response, the Browns claimed that they had substantially complied with the notice of claim statute's procedural requirements by serving Carmen Barriga, the District's confidential secretary for the District's Human Resource Office. CP 32-40. Furthermore, the Browns claimed that the District had waived or was estopped from asserting the defense because their attorney had

relied upon the alleged statements of a District employee in determining who to serve the notice of claim upon.

On May 4, 2010, the superior court entered an order denying the District's motion for summary judgment. CP 124-125. On May 20, 2010, the superior court denied the District's motion to reconsider and entered an order certifying this matter for immediate appeal pursuant to RAP 2.3(b)(4). CP 101-102.

The District filed a notice of discretionary review with the superior court on June 4, 2010. CP 141-147.

#### **IV. ARGUMENT**

A. The Standard Of Review Of The Superior Court's Denial Of A Motion For Summary Judgment.

The Court of Appeals reviews the superior court's denial of summary judgment de novo, viewing the facts and the reasonable inferences in the light most favorable to the non-moving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982). However, if reasonable minds can draw but one conclusion from the facts, then summary judgment is appropriate. *Reynolds v. Hicks*, 134 Wn.2d 491, 495, 951 P.2d 761 (1998). When reviewing a summary judgment order, the Court of Appeals engages in the same inquiry as the superior court and only considers the evidence and issues raised below. *Douglas v. Jepson*, 88

Wn. App. 342, 945 P.2d 244 (1997), *rev. denied*, 134 Wn.2d 1026, 958 P.2d 313 (1998).

B. The Superior Court's Decision Is In Direct Conflict With Well-Settled Washington Case Law Requiring Strict Compliance With RCW 4.96.

The District respectfully requests that the Court of Appeals reverse the superior court's decision, as it is in direct conflict with Washington case law requiring strict compliance with the procedural requirements for the filing of a notice of claim. The undisputed evidence before the superior court established that the Browns failed to properly serve a notice of claim upon the District's designated agent, the District's Superintendent. Instead, the Browns conceded that they served the District's Confidential Secretary for the District's Human Resource Office. CP 26-29, 36. Washington courts have consistently held that failure to serve the designated agent results in dismissal of a plaintiff's claims, regardless of the potentially harsh outcome. Thus, the superior court's failure to grant the District's motion for summary judgment is directly contradicted by Washington case law and constitutes obvious error requiring reversal and dismissal of the Browns' claims.

Washington law requires the filing of a notice of claim, prior to the filing of a lawsuit, if the defendant is a local governmental entity and the plaintiff is seeking damages arising out of tortious conduct. In this

case, both of these conditions are satisfied as there is no dispute that the District is a local governmental entity and no question that the Browns seek damages arising out of a tort claim. The relevant portions of the statute read as follows:

All local governmental entities . . . shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their . . . employees . . . while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages.

RCW 4.96.010(1) (emphasis added).

The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

RCW 4.96.020(2) (emphasis added).<sup>1</sup>

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<sup>1</sup> The Legislature amended RCW 4.96.020, effective July 26, 2009. S.H.B. No. 1553, Ch. 433. However, in the case at hand the previous version, cited above, is applicable because the Browns' notice of claim was filed on September 29, 2008.

The content of a claim for damage under the statute has specific requirements:

All claims for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which the claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

RCW 4.96.020(3) (emphasis added).

No action shall be commenced against any local governmental entity for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof.

RCW 4.96.020(4).

In short, RCW 4.96.020 requires that before a plaintiff may file a lawsuit against a local governmental entity or its employees, the plaintiff must file a claim. A claimant may substantially comply with the claim content requirements. *Medina v. Pub. Util. Dist. No. 1*, 147 Wn.2d 303, 316, 53 P.3d 993 (2002). But a claimant must strictly comply with the claim filing procedures. *Medina*, 147 Wn.2d at 316; see also, *Hintz v.*

*Kitsap County*, 92 Wn. App. 10, 14, 960 P.2d 946 (1998). Strict compliance with procedural filing requirements is mandatory, even if the requirements seem “harsh and technical.” *Shannon v. Department of Corrections*, 110 Wn. App. 366, 369, 40 P.3d 1200 (2002), quoting, *Levy v. State*, 91 Wn. App. 934, 957 P.2d 1272 (1998). A failure to strictly comply with the claim filing requirements requires dismissal of the action. *Sievers v. City of Mountlake Terrace*, 97 Wn. App. 181, 183, 983 P.2d 1127(1999).

The superior court’s decision excusing the Browns’ failure to serve the District’s designated agent is contradicted by precedent requiring strict compliance with procedural filing requirements, including the *Shannon* and *Levy* cases cited above. Washington courts have consistently held that serving the District’s designated agent is a filing requirement therefore dismissal is required when a plaintiff fails to comply with the service requirements of RCW 4.96.020. *Kleyer v. Harborview Med. Ctr. of Univ. of Wash.*, 76 Wn. App. 542, 548-549, 887 P.2d 468 (1995); *Burnett v. Tacoma City Light*, 124 Wn. App. 550, 558-559, 104 P.3d 1241 677 (2005). Thus, reversal of the superior court’s decision is appropriate, as it is contradicted by long-standing precedent.

The superior court’s decision is directly at odds with the plain language of RCW 4.96.020 and Washington case law holding that service

of the notice of claim upon the incorrect person requires dismissal. In fact, dismissal is required even if that individual is also an employee of the local governmental entity. Washington courts have repeatedly held that service of the incorrect person, or someone other than the designated agent, requires dismissal. *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 513, 84 P.3d 1241 (2004) (court upheld dismissal because plaintiff served the mayor's secretary rather than the city clerk/treasurer); *Burnett*, at 559-60 (court upheld dismissal of the plaintiffs' suit because they served the Tacoma City Attorney's Office and the Tacoma Public Utilities Department instead of the city clerk's office). The plain language of RCW 4.96.020 also requires service of the notice of claim only upon the governmental entity's designated agent:

...All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced...

RCW 4.96.020(2) (emphasis added). The Browns' failure to properly serve the notice of claim upon the designated agent is in direct conflict with the statutory requirements and Washington case law. Thus, the superior court's denial of the District's motion for summary judgment was in error and the Browns' claims should be dismissed.

In the case at hand, the uncontroverted evidence before the superior court established that the Browns did not serve the District's designated agent, District Superintendent Dr. Jim Koval, with a personally verified claim, but instead served the Confidential Secretary for the District's Human Resource Office, Carmen Barriga. CP 26-29. The Browns failed to offer any evidence that the District's designated agent was even aware of the tort claim, let alone received actual service. Regardless, constructive notice is insufficient, as Washington courts have gone so far as to reject similar claims "even when officials knew of the claim." *Burnett*, at 682. As a result, the Browns failed to strictly comply with the claim filing process, a prerequisite to filing this lawsuit, and the District was entitled to judgment in its favor.

C. The Court Of Appeals Should Reverse The Superior Court's Decision Because It Is In Direct Conflict With Well-Settled Washington Case Law And The Principle Of Estoppel.

The superior court's decision is contradicted by Washington case law setting forth the elements of estoppel, as the Browns' attorney was not entitled to justifiably rely upon a District employee to determine how to interpret and comply with the notice of claim statute. Allowing the superior court's decision to stand would turn this well-settled Washington case law relating to estoppel on its head, as it would for the first time permit attorneys to shift the burden of providing legal advice and

instruction to the employees of local governmental entities. Consistent with the superior court's decision, attorneys would no longer have to read and interpret statutes, codes, ordinances and regulations and then advise plaintiffs how to comply with the requirements set forth therein. Instead, local governmental employees would bear the burden of providing that legal advice and instruction and, more specific to the case at hand, bear the burden of advising plaintiffs and their attorneys how to interpret and comply with the notice of claim statute.

Washington case law setting forth the principle and elements of estoppel establishes that the burden does not rest with the District's employees to advise the Browns and their attorneys how to comply with the notice of claim statute. Equitable estoppel is based upon the following principle:

[A] party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon.

*Davidheiser v. Pierce County*, 92 Wn.App. 146, 153, 960 P.2d 998 (1998), *citing*, *Kramarevcky v. Dept. of Social and Health Servs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993), *quoting*, *Wilson v. Westinghouse Elec. Corp.*, 85 Wn.2d 78, 81, 530 P.2d 298 (1975) (emphasis added). Consistent with this principle, Washington courts have set forth the

following elements for a party to establish estoppel:

- (1) an act or admission by the first party that is inconsistent with a later assertion;
- (2) an act by another party in reliance upon the first party's act or assertion; and
- (3) an injury would result to the relying party if the first party were not estopped from repudiating the original act.

*Id.* Furthermore, the party asserting estoppel must show both lack of knowledge of the facts and the absence of any convenient and available means of acquiring such knowledge. *Id.* The Browns' claim that the District Risk Manager's advice to serve Ms. Barriga was arguably inconsistent with the District's previous designation of the District Superintendent as the agent to receive claims. However, the Browns were unable to offer any evidence sufficient to satisfy the second element of estoppel as they failed to offer any reasonable basis upon which their attorney was entitled to justifiably rely upon the District's Risk Manager for legal advice regarding compliance with the notice of claim statute.

The uncontroverted evidence established that the identity of the District's designated agent was readily available to the Browns' attorney. This evidence included the fact that the District enacted Resolution #602 designating the District's Superintendent to receive notices of claim on behalf of the District. CP 31. As a result, the identity of the District's designated agent was readily available to anyone as a public record filed

with the Thurston County Auditor's Office on November 2, 2001. Therefore, the Browns' attorney could not justifiably rely upon a District employee for this information and the superior court's decision should be reversed.

This case is in fact illustrative of the basic premise behind requiring local governmental entities to identify their designated agent in a public record. As a result of this requirement, claimants are prevented from having to rely upon the local governmental entity to determine the identity and address of the designated agent. Instead, the Legislature has set up a framework in which claimants can obtain the information for themselves in order to comply with the notice of claim statute. In fact, any claimant or attorney who reads the notice of claim statute is able to determine that the identity of the designated agent is available through public record:

The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located.

RCW 4.96.020(2) (emphasis added). Thus, the Browns' attorney was not entitled to justifiably rely upon a District employee to determine who to properly serve and the District should not be estopped from asserting the

notice of claim defense.

The Washington courts have also specifically held that a plaintiff's reliance is not justifiable and that equitable estoppel does not apply to representations of law or statutory interpretation similar to the case at hand. *Chemical Bank v. Washington Public Power Supply Sys.*, 102 Wn.2d 874, 905, 691 P.2d 524 (1984) (Estoppel is inapplicable to questions of law, as opposed to questions of fact. Furthermore, even if the representations are factual, the doctrine of equitable estoppel will not be applied where both parties have the same opportunity to determine the truth of those facts). Thus, the Browns' attorney was not entitled to rely upon the District for legal advice as to how to interpret and comply with the notice of claim statute.

Furthermore, Washington courts have specifically held that estoppel is inappropriate in cases identical to the one at hand where the plaintiff claims to have relied upon statements or actions of government employees in attempting to determine who to serve a notice of claim upon. *King ex. rel. King v. Snohomish County*, 105 Wn. App. 857, 21 P.3d 1151, *review granted*, 145 Wn.2d 1001, 35 P.3d 380, *reversed*, 146 Wn.2d 420, 47 P.3d 563 (2001) (County was not equitably estopped from raising claim that parents failed to file claim with clerk of council in connection with minor's injury, even if actions by county officials could have been

construed as a recommendation not to file the claim with the clerk of the council, as the county code was explicit that claims against the county “shall be filed with the clerk of the council.”); see also; *Renner v. City of Marysville*, 145 Wn. App. 443, 187 P.3d 283 (2008) (City did not waive right to assert claim filing defense; while claim filing form provided by city was arguably misleading, employee was under no obligation to use it and equally as able as the city to read the statute). These cases are identical to the situation at hand and in direct conflict with the superior court’s decision. As a result, the superior court’s decision should be reversed and the Browns’ claims dismissed, as there can be no doubt that the superior court incorrectly applied the principle of estoppel to the case at hand.

The Browns offered absolutely no rebuttal to this well-settled case law and instead continue to rely on unsupported assertions that they were entitled to rely upon the District’s employee to advise them who should be served the notice of claim in this matter. However, these claims are in complete contradiction with the basic principles of estoppel requiring that each party is responsible for determining their own compliance with the statutory requirements necessary to initiate and prosecute a lawsuit. The fact that the Browns’ attorney chose to contact a lay person at the District, rather than read the notice of claim statute and obtain the necessary public

records identifying the District's designated agent, is not the fault of the District and more importantly does not constitute justifiable reliance.

The superior court's decision is also directly contradicted by Washington case law holding that equitable estoppel is inappropriate even when an employee of the governmental entity made a misrepresentation or provided incorrect information as to which individual should receive service of process. *Davidheiser*, at 153-54 (county was not estopped from asserting insufficiency of process despite statement of plaintiff counsel's legal secretary that an unidentified employee of the Risk Management Department told her to serve the summons and complaint with that department); *Landreville v. Shoreline Comm. College Dist. No. 7*, 53 Wn. App. 330, 332, 766 P.2d 1107 (1986) (defendant was not estopped from asserting insufficiency of process despite statement of administrative assistant to attorney general that she had authority to accept service). Thus, Washington law is quite clear in establishing that the Browns, and more specifically the Browns' attorneys, were not entitled to rely upon the statements of a District employee when determining how to comply with the notice of claim statute. The superior court's decision should therefore be reversed and the Browns' claims should be dismissed.

D. The Browns' Claim That The District Failed To Comply With The Notice Of Claim Statute Is Without Merit.

In response to the District's motion for summary judgment and the District's motion for discretionary review, the Browns claimed that they were excused from complying with the notice of claim statute because a District employee allegedly advised their attorneys to serve the incorrect person. CP 36. However, the Browns' argument is unsupported by any legal authority and contradicted by a plain reading of RCW 4.96. This is because the only affirmative requirement placed on local governmental entities by RCW 4.96 is that they appoint an agent to receive claims.

The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter...

RCW 4.96.020(2). See also, *Pirtle v. Spokane Public Schools Dist. 81*, 83 Wn. App. 304, 310, 921 P.2d 1084 (1996) ("The District had no affirmative obligations under the statute and was not required to make sure Ms. Pirtle complied with the filing requirements."). Thus, despite the Browns' unsupported claims to the contrary, the undisputed evidence established that the District fulfilled its only obligation by filing the required document designating the District Superintendent as the agent to receive claims. CP 31.<sup>2</sup>

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<sup>2</sup> The Browns in fact included the public record, designating the District's Superintendent as the District's agent to receive claims, in their response to the

The Browns failed to identify for the superior court any specific provision of the notice of claim statute that the District supposedly failed to comply with in this case. Instead, to date the question still remains – what provision of RCW 4.96 did the District fail to comply with? Instead of identifying a specific provision of RCW 4.96, the Browns have only offered the unsupported claim that the District somehow failed to comply with RCW 4.96 because a District employee allegedly advised the Browns’ attorney to serve the notice on the incorrect person. CP 36. However, the Browns offered absolutely no legal authority in support of this argument. More importantly, there is no reasonable reading of RCW 4.96 that supports this nonsensical argument.

E. The Browns’ Claims That The District’s Motion For Summary Judgment Should Have Been Denied Because Substantial Compliance Was Sufficient, Because The District Sought To Misuse The Notice of Claim Statute Or To Prevent A Manifest Injustice Were Without Merit And Insufficient To Serve As A Basis For Denial Of The District’s Motion.

In addition to the previously discussed claims, the Browns also presented a variety of additional claims to the superior court in opposition to the District’s motion for summary judgment, including the following: 1) that substantial compliance was sufficient in this case; 2) that the District had an opportunity to investigate the Browns’ claims and

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District’s motion for summary judgment demonstrating that the information was readily available. CP 49.

compliance with RCW 4.96 was therefore unnecessary; 3) the District was just seeking to misuse the notice of claim statute and compliance was therefore unnecessary; and 4) that a manifest injustice would otherwise be permitted. CP 35-38. It is uncertain what impact each of these claims had on the superior court in regards to its decision to deny the District's motion, as the superior court did not specify the reasoning for denial of the District's motion. CP 124-125. Nevertheless, there can be no doubt that each and every one of these claims was without merit and at odds with Washington case law and the plain language of RCW 4.96. Despite the Browns' claims otherwise, the District was merely requesting enforcement of the notice of claim statute consistent with well-settled Washington case law requiring strict compliance with procedural filing requirements. *Shannon v. Department of Corrections*, 110 Wn. App. 366, 369, 40 P.3d 1200 (2002); *Levy v. State*, 91 Wn. App. 934, 957 P.2d 1272 (1998).

First, as stated previously, failure to strictly comply with the claim filing requirements compels dismissal of the action. *Sievers v. City of Mountlake Terrace*, 97 Wn. App. 181, 183, 983 P.2d 1127(1999). This case law plainly establishes that substantial compliance is insufficient in regards to the procedural requirements of the notice of claim statute. Thus, the Browns' claim before the superior court that they had

“complied with the intent and purpose of chapter 4.96 RCW” was irrelevant to the superior court’s analysis and failed to establish a basis for denial of the District’s motion. Plaintiffs’ Opposition to MSJ, p. 6, lines 21-22; CP 37. Washington courts have never permitted substantial compliance as sufficient to satisfy the procedural requirements of the notice of claim statute. However, the superior court’s decision would, for the first time, lower this standard, in contradiction to well-settled Washington case law, and should therefore be reversed.

Second, the Browns’ claim that the notice of claim statute was satisfied because the District had time and the opportunity to investigate the Browns’ claim was plainly contradicted by the case law and insufficient to establish a basis for denial of the District’s motion for summary judgment. Whether the District did or did not have time to investigate this incident was completely irrelevant in determining whether the Browns complied with RCW 4.96 and should not have been considered as a factor by the superior court. Washington courts have consistently required strict compliance and dismissed cases where only substantial compliance was achieved even when the defendant was made aware of the claim and thereby had time to investigate or attempt to settle the matter. *Burnett*, at 682. Thus, the Browns’ claims of substantial compliance were without merit and should not have been considered by

the superior court.

Third, the Browns repeatedly asserted before the superior court that the District was somehow attempting to misuse or take advantage of the notice of claim statute's provisions. However, it is abundantly clear that the District, through its motion for summary judgment, was simply requesting that the superior court require the Browns to strictly comply with the notice of claim statute consistent with the long-standing Washington case law and precedential authority cited throughout the briefing before the superior court. *Hintz v. Kitsap County*, 92 Wn. App. 10, 14, 960 P.2d 946 (1998). While this would no doubt have resulted in an outcome unfavorable to the Browns, that harsh result did not establish any misuse or deceit on the part of the District and did not require any "hyper-technical" reading of the statute as claimed by the Browns. Plaintiffs' Opposition to MSJ, p. 7, line 5; CP 38. Furthermore, any concern by the superior court regarding a "hyper-technical" reading was insufficient to establish a basis for denial of the District's summary judgment motion.

The Browns also incorrectly raised the claim before the superior court that the District somehow set this scenario up by waiting "until after the expiration of the statute of limitations." Plaintiffs' Opposition to MSJ, p. 7, line 8; CP 38. However, such a claim was without merit and in fact

contradicted by the basic chronology of events and the facts before the superior court. CP 83-84. There was ultimately no question that the Browns, not the District, chose to file the summons and complaint in this matter on October 16, 2009 and serve it upon the District on October 20, 2009, approximately seven days before the statute of limitations expired. Obviously such a timeline offered little or no opportunity to raise the issue before the statute of limitations had expired and no evidence of game playing on the part of the District existed. As previously established, the record before the superior court left no doubt that the District was requesting a simple, straightforward reading and application of RCW 4.96 and requested nothing more than strict compliance, as required by Washington case law.

Lastly, the Browns requested that the superior court ignore the well-settled case law and plain language of the notice of claim statute to avoid a “harsh and technical” result or a manifest injustice. CP 37-38. However, as the District argued to the superior court, the Browns’ claim was directly contradicted by the evidence and well-settled Washington case law requiring strict compliance regardless of the potentially harsh results. *Shannon v. Department of Corrections*, 110 Wn. App. 366, 369, 40 P.3d 1200 (2002), *quoting*, *Levy v. State*, 91 Wn. App. 934, 957 P.2d 1272 (1998). Washington courts have consistently dismissed claims for

failure to strictly comply with the notice of claim statute, as evidenced by the cited case law. The dismissal of the claims in each of the cited cases was no doubt just as significant to each of those plaintiffs as dismissal would no doubt be in this matter. Nevertheless, strict compliance is required and should be enforced in this case as well. Thus, the superior court's decision denying the District's motion for summary judgment should be reversed and the Browns' claims should be dismissed in their entirety.

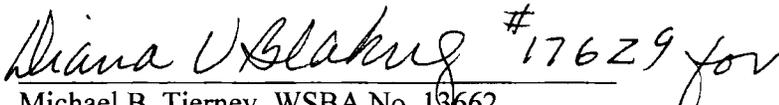
## **V. CONCLUSION**

The District respectfully requests that the Court of Appeals reverse the superior court's order denying the District's Motion for Summary Judgment for Failure to Comply with RCW 4.96 and dismiss the Browns' claims in their entirety. The superior court's decision is contradicted by the plain language of RCW 4.96.020 requiring that the Browns' serve their notice of claim upon the District's designated agent. Furthermore, the Browns' failure to comply with that requirement should result in dismissal, as Washington courts have consistently held that failure to strictly comply with the procedural requirements of the notice of claim statute, including service of the local governmental entity's designated agent, results in dismissal.

The superior court's decision should also be reversed because it is in direct conflict with well-settled Washington case law setting forth the elements of estoppel. Pursuant to the superior court's decision, attorneys would be permitted to shift to local government employees the burden of providing legal advice and instruction. Furthermore, the superior court's decision is in direct conflict with Washington case law holding that a party seeking to establish estoppel must prove both lack of knowledge of the facts and the absence of any convenient and available means of acquiring such knowledge. The Browns were unable to do so, as the uncontroverted evidence established that the identity of the District's designated agent was readily available to the Browns and their attorneys. Furthermore, Washington case law is clear in holding that the responsibility for determining how to interpret and comply with the notice of claim statute rested solely upon the Browns and their attorneys. Thus, the superior court's decision should be reversed and the Browns' claims dismissed in their entirety.

Dated this 15<sup>th</sup> day of November 2010.

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I, Kari Rusinko, certify under penalty of perjury under the laws of the State of Washington that on November 15, 2010, I caused the following documents:

1. Appellant's Brief; and
2. Declaration of Service.

to be sent via electronic mail and U.S. Mail to the following:

Rob Meyers  
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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II  
10 NOV 15 PM 3:35  
BY \_\_\_\_\_  
DEPUTY

DATED at Mercer Island, Washington this 15th day of November, 2010.

  
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Kari Rusinko