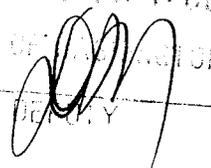


No. 41289-6-II  
COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION II  
FILED 10 FEB 11:00  
STATE OF WASHINGTON  
BY 

---

DEE ANN STILES, Appellant

v.

GERALD KEARNEY, Respondent

---

REPLY BRIEF OF APPELLANT

---

Arleta E. Young and M. Patrice Kent  
Attorneys for Appellant

Arleta E. Young, WSBA # 41411  
PO Box 1263  
Kingston, WA 98346  
(360) 265-9552

M. Patrice Kent, WSBA # 42460  
PO Box 17798  
Seattle, WA 98127  
(206) 915-1529

## Table of Contents

Table of Authorities .....	ii
I. Argument .....	1
A. Procedural Errors .....	1
a. RAP 10.3(g) .....	2
b. RAP 10.4(g) .....	4
c. RAP 10.4(c) .....	5
B. Substantive Response.....	5
a. The trial court erred when it accepted and considered Mr. Kearney’s late-filed Rebuttal .....	5
b. Acceptance and consideration of the late-filed Rebuttal was not harmless and resulted in prejudice to Ms. Stiles.....	7
c. CR 11 Sanctions.....	8
i. Well grounded in fact or warranted by existing law.....	8
1. Evidence was presented to show Mr. Kearney’s statements were capable of defamatory meaning.....	10
2. Mr. Kearney did not have, or lost through abuse, a qualified privilege .....	12
3. Ms. Stiles presented evidence of libel per se ..	13
ii. Reasonable inquiry.....	15
d. RCW 4.84.185 Sanctions.....	18
e. Attorney Fees .....	20
i. Statutory attorney’s fees under RCW 4.84.010 .....	20
ii. There is no established Washington law allowing pro se attorneys to collect attorney fees for violations of CR 11 .....	20
C. RAP Attorney Fees .....	22
a. Mr. Kearney is not entitled to Attorney Fees under 18.1, 18.9, RCW 4.84.185, and CR 11 .....	22
b. Ms. Stiles is entitled to attorney fees if she prevails in this appeal .....	24
II. Conclusion .....	24
Appendices	

## Table of Authorities

### Cases

<u>Beasley v. Peters</u> , 870 S.W.2d 191 (Tex.App. Amarillo 1994) .....	22
<u>Bender v. City of Seattle</u> , 99 Wn.2d 582, 600, 664 P.2d 492 (Wash. 1983) .....	12
<u>Bryant v. Joseph Tree, Inc.</u> , 119 Wn.2d 210, 829 P.2d 1099 (Wash. 1992).....	9, 15, 17
<u>Caruso v. Local Union No. 690</u> , 107 Wash.2d 524, 730 P.2d 1299 (Wash. 1987).....	13
<u>Cooperstein v. Van Natter</u> , 26 Wn.App.91, 611 P.2d 1332 (Wash.App. Div. 1 1980),.....	18
<u>Demopolis v. Peoples Nat. Bank of Washington</u> , 59 Wn.App. 105, 796 P.2d 426 (Wash.App. Div. 1 1990).....	18
<u>DiPaolo v. Moran</u> , 277 F.Supp.2d 528 (E.D.Pa. 2003).....	22
<u>Doe v. Gonzaga University</u> , 143 Wn.2d 687, 703, 24 P.3d 398 (Wash. 2001). .....	12, 13
<u>Doe v. Spokane &amp; Inland Empire Blood Bank</u> , 55 Wash.App. 106, 80 P.2d 853 (1989).....	9
<u>Dunlap v. Wayne</u> , 105 Wn.2d 529, 716 P.2d 842 (Wash. 1986); ...	10, 15
<u>FMB-First Mich. Bank v. Bailey</u> , 591 N.W.2d 676, (Mich.App. 1999) .	22
<u>Habitat Watch v. Skagit County</u> , 155 Wn.2d 397, 416, 120 P.3d 56 (Wash. 2005) .....	1
<u>Havlina v. Washington State Dept. of Trans.</u> , 142 Wn.App. 510, 178 P.3d 354 (Wash.App. Div 2 2007) .....	2
<u>Herron v. King Broad. Co.</u> , 109 Wash.2d 514, 523, 746 P.2d 295 (1987). .....	13
<u>Housing Authority of the City of Everett v. Kirby</u> , 154 Wn.App. 842, 226 P.3d 222 (2010).....	18
<u>In re Recall of Feetham</u> , 149 Wn.2d 860, 72 P.3d 741 (Wash. 2003) ...	23

<u><i>In re Yagman</i></u> , 796 F.2d 1165 (9 <sup>th</sup> Cir. 1986), amended, 803 F.2d 1085 (1986) .....	19
<u><i>In re: Matter of Estate of Lint</i></u> , 135 Wn.2d 518, 957 P.2d 755 (Wash. 1998) .....	4
<u><i>In re: Recall Charges Against Seattle School Dist. No. 1 Directors</i></u> , 162 Wn.2d 501, 173 P.3d 265 (Wash. 2007) ( <i>en banc</i> ) .....	1, 2
<u><i>Jankelson v. Lynn Const., Inc.</i></u> , 72 Wn.App. 232, 237, 864 P.2d 9 (Wash.App. Div. 2 1993), .....	21
<u><i>Kay v. Ehrler</i></u> , 499 U.S. 432, 111 S.Ct. 1435 (1991) .....	21
<u><i>Leen v. Demopolis</i></u> , 62 Wn.App. 473, 815 P.2d 269 (Wash.App. Div. 1 1991). .....	21
<u><i>Maison de France v. Mais Oui!</i></u> , 126 Wn.App. 34, 108 P.3d 787 (2005).....	14
<u><i>Marassi v. Lau</i></u> , 71 Wn.App. 912, 920, 859 P.2d 605 (Wash.App. Div. 1 1993). .....	21
<u><i>Massengale v. Ray</i></u> , 267 F.3d 1298 (11th Cir. 2001) .....	22
<u><i>McDonald v. Korum Ford</i></u> , 80 Wn.App. 877, 912 P.2d 1052 (Wash.App. Div. 2 1996) .....	9
<u><i>Moe v. Wise</i></u> , 97 Wn.App.950, 963, 989 P.2d 1148 (Wash.App. Div. 2 1999). .....	12
<u><i>Musaelian v. Adams</i></u> , 198 P.3d 560 (Cal. 2009).....	22
<u><i>Owens v. Scott Publishing Co.</i></u> , 46 Wn.2d 666, 673, 284 P.2d 296 (Wash.1955). .....	14
<u><i>Rachel v. Banana Republic, Inc.</i></u> 831 F.2d 1503, 1508 (9 <sup>th</sup> Cir. 1987)...	17
<u><i>Skimming v. Boxer</i></u> , 119 Wn.App. 748, 82 P.3d 707 (Wash.App. Div. 3 2004) .....	18, 19
<u><i>Skinner v. Holgate</i></u> , 141 Wn.App. 840, 173 P.3d 300 (Wash. App. Div. 2 2007) .....	23
<u><i>State ex rel. Quick-Ruben v. Verharen</i></u> , 136 Wn.2d 888, 969 P.2d 64 (1998).....	18, 19

<u>State v. Breitung</u> , 155 Wn.App.606, 619, 130 P.3d 614 (Wash App. Div.2 2010 .....	2
<u>State v. Elkins</u> , 152 Wn.App. 871, 879, 220P.3d 211 (2009). .....	4
<u>State v. Kirwin</u> , 137 Wn.App.387, 153 P.3d 883 (Wash.App. Div. 2 2007).....	1
<u>State v. Olson</u> , 126 Wn.2d 315, 323, 893 P.2d 629 (Wash. 1995).....	2, 3
<u>Timson v. Pierce County Fire Dist. 15</u> , 136 Wn.App. 376, 149 P.3d 427 (Wash.App. Div. 2 2006.....	18
<u>Twelker v. Shannon &amp; Wilson, Inc.</u> , 88 Wn.2d 473, 478, 564 P.2d 1131 (Wash. 1977).....	13
<u>United States v. Hinkson</u> , 585 F.3d 1247, (9 <sup>th</sup> Cir. 2009) (en banc.) .....	24
<u>Young v. Midwest Family Mut. Ins. Co.</u> , 753 N.W.2d 778, 276 Neb. 206 (Neb. 2008), .....	22
<b>Statutes</b>	
<u>RCW 4.84.010</u> .....	24
<u>RCW 4.84.185</u> .....	18, 24
<b>Other Authorities</b>	
<u>Division II General Order 1998-2 “In RE The Matter of Assignments of Error”</u> .....	2, 5
<b>Rules</b>	
<u>Civil Rule 11</u> .....	passim
<u>Evidence Rule 103</u> .....	8
<u>Kitsap County Local Rule 5</u> .....	7
<u>Kitsap County Local Rule 40</u> .....	7
<u>Rule of Appellate Procedure 1.2</u> .....	1, 3
<u>Rule of Appellate Procedure 10.3</u> .....	1, 2, 3, 4, 23, 24
<u>Rule of Appellate Procedure 10.4</u> .....	2, 4, 5, 23, 24
<u>Rule of Appellate Procedure 18.1</u> .....	23
<u>Rule of Appellate Procedure 18.9</u> .....	23

## I) ARGUMENT

Mr. Kearney failed to dispute Assignments of Error 5 and 6.<sup>1</sup> Mr. Kearney's Response violates the letter and intent of RAP 10.3(b)<sup>2</sup> and he should be prohibited from arguing the Assignments at oral argument.<sup>3</sup>

### A. PROCEDURAL ERRORS

Mr. Kearney remarks Appellant's Brief was in technical violation of two (or three) format-related RAP so the Findings of Fact should be "verities on appeal". (Resp. Br. at 3-6). We contend the issues are clear from the appeal, any technical violation has not prejudiced Mr. Kearney, and the detailed cites to the record do not greatly inconvenience the court.

We provide in this reply Appendices ("Appx")<sup>4</sup> to cure technical violation of RAPs, following *In re: Recall Charges Against Seattle School Dist. No. 1 Directors*, 162 Wn.2d 501, 513, 173 P.3d 265 (Wash. 2007) (*en banc*). For reasons below, and under the discretion of RAP 1.2, we ask this court to consider Ms. Stiles' appeal on its merits.

---

<sup>1</sup> Specifically: award of attorney fees to associate/employee attorney of pro se attorney-litigant and award of attorney fees prior to the entered Notice of Appearance for the associate/employee attorney).

<sup>2</sup> RAP 10.3(b), in relevant part: "The brief of the respondent should ... answer the brief of appellant or petitioner..."

<sup>3</sup> See e.g., *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 416, 120 P.3d 56 (Wash. 2005) (failure to adequately brief a conclusion); and *State v. Kirwin*, 137 Wn.App.387, 153 P.3d 883 (Wash.App. Div. 2 2007) (issue raised for first time at oral argument).

<sup>4</sup> Appendix 1: Verbatim Report of Proceedings: Excluded Evidence; Appendix 2: Memorandum Opinion, Appendix 3: Findings of Fact and Conclusions of Law.

In so requesting, we note Mr. Kearney has also been in technical violation of procedural rules. For example, Mr. Kearney raises questions of interpretation in the trial court's decision to admit his Rebuttal. (Resp. Br. at 6-7) As did Ms. Stiles, he cited to the record rather than provide this court with verbatim text of the relevant portion of the hearing, implicating RAP 10.4(c), discussed *infra*.<sup>5</sup>

**a. RAP 10.3(g)**

Mr. Kearney asserts Ms. Stiles did not designate Findings of Fact to which errors are assigned in violation of RAP 10.3(g) (Resp. Br. at 3). We submit the Assignments of Error are to Conclusions of Law entered by the trial court. (App. Br. at 1) Findings of Fact are clearly identified throughout the opening brief, and referenced by cites to the Clerk's Paper's (CP) throughout. Detailed citation to CP was found to relieve questions of convenience to the court in State v. Olson, 126 Wn.2d 315, 323, 893 P.2d 629 (Wash. 1995) and in cases following.<sup>6</sup>

Division II General Order 1998-2 "In RE The Matter of Assignments of Error" (Appx 4) explicitly waives the requirement to *separately* assign error, and a single assignment may identify more than

---

<sup>5</sup> Relevant text is at Appendix 1.

<sup>6</sup> See e.g., In re: Recall Charges Against Seattle School Dist. No. 1 Directors, 162 Wn.2d 501, 173 P.3d 265 (Wash. 2007) (at 513 citing *Olson*); Havlina v. Washington State Dept. of Trans., 142 Wn.App. 510, 178 P.3d 354 (Wash.App. Div 2 2007), State v. Breitung, 155 Wn.App.606, 619, 130 P.3d 614 (Wash App. Div.2 2010).

one finding *or* conclusion. Ms. Stiles is in substantial compliance with RAP 10.3(g).<sup>7</sup>

This court may waive any technical violation of the rules under RAP 1.2(c), in relevant part, “[t]hese rules will be liberally interpreted to promote justice and facilitate the decision of the cases on the merits. *Cases and issues will not be determined on the basis of compliance or noncompliance with these rules ...*” RAP 1.2(a) (emphasis added).

Olson encourages the court to review a case on its merits despite a technical violation of RAP to “promote justice and facilitate the decision” and that in fact a “technical violation ... *should normally be overlooked*” (*Id.*, at 318- 319) (emphasis added) if: 1) there is no compelling reason NOT to do so; 2) nature of the appeal is clear; 3) relevant issues are argued in the body of the brief; 4) there is no prejudice to the other party; and 5) there is no more than minimal inconvenience to the court (*Id.*, at 323).<sup>8</sup>

Here, questions under appeal are clear and have been briefed by both parties. Mr. Kearney did not claim prejudice by the technical violation of RAP 10.3(g), and briefed responses to Ms. Stiles’

---

<sup>7</sup> “The appellate court will only review a claimed error which is included in an assignment of error *or clearly disclosed in the associated issue pertaining thereto.*” RAP 10.3(g)(emphasis added).

<sup>8</sup> Olson, while a criminal case, noted that criminal and civil cases are not treated differently in the exercise of this discretion. Olson, supra, at fn 3.

assignments of error regarding 1) consideration of the Rebuttal Documents (Resp. Br. at 1-2,6-9), 2) imposition of CR 11 sanctions (Resp. Br. at 9-25), 3) imposition of RCW 4.84.185 sanctions (Resp. Br. at 25-30), and 4) imposition of attorney fees (Resp. Br. at 31-36).

Mr. Kearney submitted *In re: Matter of Estate of Lint*, 135 Wn.2d 518, 957 P.2d 755 (Wash. 1998) to support failure of Appellants' brief (Resp. Br. at 4). In that case, and others,<sup>9</sup> there was substantially no factual or other citation in support of parties' contentions. *Lint.*, at 531-532<sup>10</sup>. In contrast, Ms. Stiles' opening brief cited extensively to the record; this case is readily distinguishable from *Lint* and its progeny.

Mr. Kearney contends this technical violation results in the Findings of Fact as verities on appeal (Resp.Br. at 3). He appears to rely entirely on *State v. Elkins*, 152 Wn.App. 871, 879, 220P.3d 211 (2009). At 879, the *Elkins* opinion explicitly has "no precedential value." (*Id.*)

**b. RAP 10.4(g)**

RAP 10.4(g) was noted as Procedural Argument in both Mr. Kearney's Table of Contents and Argument Section (Resp. Br. at i., 4).

---

<sup>9</sup> See e.g., *In re Estate of Palmer*, 145 Wn.App. 249, 265, 187 P.3d 758 (Wash.App. Div. 2 2008), *In re Disciplinary Proceeding against Whitney*, 155 Wn.2d 451,467, 120 P.3d 550 (Wash. 2005), *Matter of Disciplinary Proceeding Against Haskell*, 136 Wn.2d 300,311, 962 P.2d 813 (Wash. 1998).

<sup>10</sup> See also *Olson, supra*, at 321, "... when an appellant fails to raise an issue in the assignments of error, in violation of RAP 10.3(a)(3), and fails to present any argument on the issue or provide any legal citation, an appellate court will not consider the merits of that issue." (emphasis added).

Since the issue argued is a technical violation of RAP 10.4(c), we assume “10.4(g)” to be scrivener's error. We submit Ms. Stiles' Brief was in compliance with citation requirements of RAP 10.4(g). (Appx 5)

**c. RAP 10.4(c)**

Ms. Stiles recognizes Div. II Gen. Ord. 1998-2 (Appx 4) is not intended to relieve the duty imposed by RAP 10.4(c) to provide verbatim text of relevant portions of the record or laws cited. Ms. Stiles' submission of CP includes a verbatim report of the CR11/ RCW 4.84.185 hearing and the trial court's Findings of Fact/ Conclusions of Law and Memorandum. Her Brief cited extensively to the record. As noted *supra*, we herein submit the relevant Appendices to cure technical violations noted (Resp. Br. at 4-5).

Finally, Mr. Kearney contends “Ms. Stiles has failed to include any argument... [regarding] the “common interest” privilege and...damages.” (Resp.Br. at 5). Both issues were, in fact, raised in the Opening Brief (App. Br. at 15-16), with expansion *infra*.

**B. SUBSTANTIVE RESPONSE**

**a. The trial court accepted and considered Mr. Kearney's late-filed Rebuttal.**

Mr. Kearney's response states there “is no indication that the trial court ‘accepted or considered’ the late filed declaration.” (Resp. Br. at 6)

This is non-responsive to the Assignment of Error 1.<sup>11</sup> The trial court properly excluded filings of September 2, 2010.<sup>12</sup>

The hearing was September 3, 2010 (CP 288). Mr. Kearney's Rebuttal (CP 263-268) and Declaration (CP 269-275) were filed on September 2, 2010. The trial court indicated it did not receive those documents, and would not consider them. (RP 13-14; Appx 1). Then Findings of Fact and Conclusions of Law of the trial court (CP 263-275; Appx 3) explicitly consider *both* the Rebuttal and Declaration. The Memorandum in Support (Appx 2) reiterates consideration of both filings, as well as after-filed documents<sup>13</sup>.

The record reflects Mr. Kearney filed three Declarations in September, two on September 2, (CP 276-280, 269-275) and one on September 3 after the hearing (CP 281-287). Even considering solely the Memorandum, the trial court *still* considered the Rebuttal and a Declaration<sup>14</sup> *after* the hearing and *after* having specifically excluding them. (CP 288, Appx 1). Since the court had not received "anything" filed the day before the hearing (Appx 1), consideration of that material *after* the hearing was error.

---

<sup>11</sup> Appellant's Brief at 8.

<sup>12</sup> RP at 15 "I am not going to consider whatever it was that was filed yesterday."

<sup>13</sup> CP at 288 "The Declarations...Gerald A. Kearney dated *September 22, 2010*" (sic)(emphasis added).

<sup>14</sup> The specific date of the Declaration noted is in question, and it is not clear which of the Declarations was considered.

Ms. Stiles' attorney, Ms. Kent, stated, "Ms. Young was served a copy at her – properly served a copy at her home sometime between 11 and two p.m. yesterday; those letters referenced by Ms. Rasmussen are not included in her copy, as well" (Appx 1). Mr. Kearney states this is an admission of proper service. (Resp. Br. at 7) The phrase "not included in her copy" indicates an incomplete document, not that a document was properly served. Kitsap County Local Rule 5 (KCLR) requires *complete* documents be served and filed no later than 12:00 noon the date before the hearing (Appx 6). That some documents were delivered to Ms. Young's property "between 11 and 2:00 p.m." (Appx 1) is not an admission of proper service.

Mr. Kearney quotes the Jefferson County Local Rules. (Resp. Br. at 8). The Complaint was filed in Kitsap County (CP 1-6). KCLR 40(1)(b)(B) requires a visiting judge if "an attorney practicing in Kitsap County is a party or a witness in any matter before the court..." KCLR 40(1)(b)(B). That the visiting judge is *from* Jefferson County does not operate to change applicable rules of the court.

**b. Acceptance and consideration of the late-filed Rebuttal was not harmless and resulted in prejudice to Ms. Stiles.**

Ms. Stiles was deprived of the ability to respond to Mr. Kearney's Rebuttal and Declaration, having not received evidence in that Declaration

(Appx 1). She was *precluded* from responding to the rebuttal based on the judge's exclusion (*Id.*).

In awarding sanctions, the court went beyond findings of the trial court and contradicted its ruling. At Summary Judgment, the court did not find on fault, and explicitly *refused* to find on privilege (see *infra* at (B)(c)(i)(2)). There is no indication what evidence the court relied upon to decide there was no reasonable argument on these issues (Findings of Fact 3). Because it is unknown what the court rested on, consideration of the Rebuttal and Declaration cannot be determined to be harmless error.

Mr. Kearney cites Evidence Rule 103 to support his position that consideration of the rebuttal and declaration was harmless error. ER 103 concerns whether or not *the ruling on the evidence* was erroneous and precludes reversal *on that basis*.<sup>15</sup> Ms. Stiles stated the documents were *properly* excluded (App. Br. at 8). The error asserted is not the ruling, but failure of the court and Mr. Kearney<sup>16</sup> to follow that ruling.

**c. CR11 Sanctions**

**i. Well-grounded in fact or warranted in existing law**

---

<sup>15</sup> ER 103(a) states, in pertinent part “Error may not be predicated *upon a ruling* which admits or excludes evidence...” (emphasis added).

<sup>16</sup> Mr. Kearney resubmitted a portion of the excluded documents on September 3, 2010 after the hearing (CP 281-287).

The issues pertaining to the facts and law in this case are whether: 1) there was a reasonable argument for each of the elements, and 2) the court identified the correct legal standard.

That the trial court found a portion of the statement at issue to be statement of opinion does not require finding the claim baseless, as Mr. Kearney suggests (Resp. Br. at 11-12) and the trial court indicates (CP 291, Findings #2, Conclusions #1). “The fact that a complaint does not prevail on its merits is by no means dispositive of the question of CR 11 sanctions.” *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220, 829 P.2d 1099 (Wash. 1992).<sup>17</sup>

Mr. Kearney relies on *McDonald v. Korum Ford*, 80 Wn.App. 877, 912 P.2d 1052 (Wash.App. Div. 2 1996) for the proposition that if *one element* of a claim lacks evidence, *the entire claim* is baseless (Resp. Br. at 11) (emphasis added). *MacDonald*, however, does not sweep so broadly. There, over a year after the initial claim was filed and during his client’s deposition testimony, the attorney learned there were no factual bases for *all three of the claims*. Despite this, he continued to prosecute the case, including vigorous discovery and moving to amend pleadings and join additional parties. *Id.*, at 881. Each claim failed in multiple respects. The

---

<sup>17</sup> See also *Doe v. Spokane & Inland Empire Blood Bank*, 55 Wash.App. 106, 111, 80 P.2d 853 (1989) (“CR 11 does not provide for sanctions, however, merely because an action’s factual basis proves deficient or a party’s view of the law proves incorrect.”).

first failed on one element (*Id.*, at 886), the second failed *entirely*, and the third failed on two of four required elements (*Id.*, at 888-890).

**1. Evidence was presented to show Mr. Kearney's statements were capable of defamatory meaning**

Mr. Kearney argues the statements made in his e-mail were not provably false *because* they are statements of opinion. His cite of *Dunlap v. Wayne*, 105 Wn.2d 529, 716 P.2d 842 (1986) (Respondent's Br. at 13-14), is that an expression of opinion *not based on undisclosed facts* is not defamatory. He does not provide the three *Dunlap* factors to determine whether a statement expresses opinion or a statement of fact.<sup>18</sup>

Regarding medium, context, and audience; the listserv distributing Mr. Kearney's e-mail was "created *so that the Shore Woods Maintenance Commission, Inc. Board could disseminate information to the Shore Woods community ...*" (CP 63, 87) (emphasis added). Shore Woods members who subscribed to the listserv would reasonably expect factual information provided by the Board through that medium. At the time of the offending e-mail, Mr. Kearney was not a member of the Board.

Regarding implied undisclosed facts, the minutes show, and Mr. Kearney does not deny, he was present at the meeting in question (CP 64). Ms. Stiles contended a reader would believe Mr. Kearney, having attended

---

<sup>18</sup> "(1) the medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement *implies undisclosed facts.*" *Dunlap*, 105 Wn.2d at 539. (emphasis added).

the meeting, had knowledge of undisclosed facts in accusing Ms. Stiles of inaccuracy in her minutes.

Meetings of the Board were audio recorded, and minutes transcribed from those recordings (CP 64, 122). Any implication of inaccuracy is *capable of being disproved* by comparing written meeting minutes with the audio recording. Ms. Stiles' position is the *paragraph as a whole*<sup>19</sup> implied purposeful inaccuracy in the written minutes.

The trial court did not address implication, looking at only three words of the email. Mr. Kearney suggests the entirety of the statement was addressed, based on the Memorandum quote of the offending paragraph (Respondent's Br. at 15). The portion referenced (CP 289) is in the "Facts" section, a recitation of the claim made by Ms. Stiles.

In its Analysis, the court misstates findings in the underlying action as "[t]he court found that *the e-mail paragraph* at issue was a statement of opinion not a provable statement of fact." (CP 291) The court states the finding was not the underpinning of the CR11 sanction; but notes that *since the paragraph at issue was not a "factual statement capable of being proved or disproved" the complaint was "not factually or legally justified."* (*Id.*) The court never addressed Ms. Stile's

---

<sup>19</sup> Reading: "*Finally, the last set of minutes by our secretary are written from the point of view of someone with an axe to grind. Again, this is divisive (us against them) and not helpful. DeeAnne (sic): Do your job even-handedly or step down*" (CP 111)

contention the statement implied undisclosed facts, a necessary part of her claim.

**2. Mr. Kearney did not have, or lost through abuse, a qualified privilege**

Mr. Kearney maintains he has a common interest privilege in the underlying defamation action, and that it is an absolute privilege. (Resp. Br. at 17). This is a clear misstatement of Washington law. A common interest privilege is a *qualified* privilege and may be lost if that privilege is abused. <sup>20</sup>

In the underlying action, Ms. Stiles contended Mr. Kearney did not have a privilege or he had lost it through abuse. (CP 6, 69). Discussing Assignments of Error 2 and 3, Ms. Stiles pointed out the trial court *refused* to make a finding on privilege, stating “I don’t think I can even decide it” (App. Br. at 15 (citing CP 245)). To rule, the court would have had to address issues of fact/veracity raised in response to Mr. Kearney’s Declaration in support of his claim of privilege. (CP 65)

Ms. Stiles reasons that if a common interest exists, it would lie in minutes accurately reporting decisions and subsequent actions of the

---

<sup>20</sup> See *Moe v. Wise*, 97 Wn.App.950, 963, 989 P.2d 1148 (Wash.App. Div. 2 1999). See also *Bender v. City of Seattle*, 99 Wn.2d 582, 600, 664 P.2d 492 (Wash. 1983), *Doe v. Gonzaga University*, 143 Wn.2d 687, 703, 24 P.3d 398 (Wash. 2001).

Board as required in the by-laws of Shore Woods (CP 93).<sup>21</sup> Mr. Kearney's e-mail did not further any protection under a qualified "common interest" and was therefore not privileged.<sup>22</sup> His publication of statements about Ms. Stiles' minutes to parties outside the Shore Woods Community, with whom he *could not* share common interest, is clearly beyond the reach of the privilege. (CP 87)

A qualified privilege may be lost if the statements are made with actual malice.<sup>23</sup> Actual malice occurs if statements are made "with knowledge of its falsity or with reckless disregard of its truth or falsity." *Doe*, 143 Wn.2d at 703.<sup>24</sup> As witness to events and discussions of the meeting, Mr. Kearney would know the minutes were accurate.

Finally, finding that a common interest privilege is "an absolute defense to defamation" (CP 298, Findings 3) is clear error of law. Since Ms. Stiles presented documentary evidence and Washington case law in support of her position, a conclusion that she had no reasonable argument for privilege (CP 298, Findings 3) is also in error.

### **3. Ms. Stiles presented evidence of libel per se**

---

<sup>21</sup> The by-laws of Shore Woods state "Minutes shall contain results of any election and verbatim wording of all actions taken at meetings." (CP 93).

<sup>22</sup> See *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 478, 564 P.2d 1131 (Wash. 1977).

<sup>23</sup> *Doe v. Gonzaga University*, 143 Wn.2d 687, 703, 24 P.3d 398 (Wash. 2001). Referencing *Caruso v. Local Union No. 690*, 107 Wash.2d 524, 530-31, 730 P.2d 1299 (1987).

<sup>24</sup> Quoting *Herron v. King Broad. Co.*, 109 Wash.2d 514, 523, 746 P.2d 295 (1987).

In the underlying action, Ms. Stiles asserted Mr. Kearney had exposed her to contempt, ridicule, loss of public confidence and public humiliation and injured her in her office, the definition of libel *per se* (CP 6,11-17, ).<sup>25</sup> However:

"[W]here no matters of public concern are involved, presumed damages to a private plaintiff for defamation without proof of actual malice may be available."<sup>26</sup>

Ms. Stiles was Secretary of the Board. Her duties included: give notice of meetings, record and post those minutes, and keep copies of documents on file (CP 93). Mr. Kearney admits that "whether or not Ms. Stiles was recording minutes in a fair and unbiased manner *directly corresponds to whether she fairly performed her secretarial duties.*" (CP 26) (emphasis added).

The statements by Mr. Kearney were published to 97 of 237 members (over one-third) of the Shore Woods community (CP 87). His e-mail could reasonably lead community members to question Ms. Stiles' motives and character.<sup>27</sup> A loss of confidence and the accompanying exposure to possible ridicule were created by Mr. Kearney's statements. Mr. Kearney conflates failure to convince the trial court of this, with lack of evidence or support. (Resp. Br. at 19)

---

<sup>25</sup> See *Owens v. Scott Publishing Co.*, 46 Wn.2d 666, 673, 284 P.2d 296 (Wash.1955).

<sup>26</sup> *Maison de France v. Mais Oui!*, 126 Wn.App. 34, 54, 108 P.3d 787 (2005).

<sup>27</sup> Supported by Declarations of members of the community (CP 252 – 256).

## ii. Reasonable inquiry

The five-part objective assessment of the reasonableness of an inquiry is: amount of time available to investigate; reliance on the client for factual support; whether the case was brought from another attorney; complexity of legal and factual issues; and, the need for discovery<sup>28</sup>

Mr. Kearney states it was unreasonable for Ms. Stiles' attorney to *proceed* "regardless of the amount of research" she did, because he disagrees with the *interpretation of the results* of that research. (Resp. Br. at 24) Prior to filing the Complaint, Ms. Stiles' attorney read the email string which included the offending email, compared the audio recorded minutes to the written record, did extensive research into defamation law, and sought advice from other attorneys (CP 257-258). She also investigated the reaction of the "the audience to whom it was published".<sup>29</sup>

Ms. Stiles contends the trial court did not apply the objective test to identify whether a reasonable inquiry was conducted. (App. Br. 16-18). Mr. Kearney responds with spirit and some detail that Ms. Stiles' did not conduct a reasonable inquiry (Resp. Br. at 20-25) but fails to show whether *the court* applied the test, and did not apply it in his Response.

---

<sup>28</sup> *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992).

<sup>29</sup> *Dunlap v. Wayne*, 105 Wn.2d 529, 539, 716 P.2d 842 (1986); One of the three factors for determining whether or not a statement is actionable. The factors are "(1) the medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement implies undisclosed facts." *Dunlap* at 539.

He asserts “Ms. Young *relied solely* on her client’s statements” (Resp. Br. at 23) (emphasis added), apparently ignoring Ms. Young’s submissions to trial courts for both the underlying action and for the action under appeal, which he refers to as “irrelevant.” (Resp. Br. at 24)

In addressing the complexity of defamation law in Washington, Mr. Kearney notes “a quick glance at defamation case law would have revealed ... a high bar to prove defamation” and that a legal research site identified over 300 hits for defamation case law (Resp. Br. at 21, 22 fn 6).

Defamation law is complex, and difficult to pursue. However, a reasonable inquiry is not expected to guarantee a successful outcome but to identify a sound legal and factual basis for filing. Noting that the legal bases may include the “extension, modification, or reversal of existing law”<sup>30</sup> CR-11, on its face, recognizes failure of a claim does not negate the validity of that claim.

The court in Bryant noted a complaint need merely set forth the basis for the claim for relief and it is *expected* that more information will be found in discovery to *either* support or refute the claim.

“The notice pleading rule contemplates that discovery will provide parties with the opportunity to learn more detailed information about the nature of a complaint. A court should thus be reluctant to impose sanctions for factual errors or deficiencies in a complaint

---

<sup>30</sup> CR-11.

before there has been an opportunity for discovery.” *Bryant*, 119 Wn.2d at 222.<sup>31</sup>

At the time Mr. Kearney filed his Motion for Summary Judgment, Ms. Stiles had not yet requested a trial date. She was investigating defenses listed in Mr. Kearney’s Answer and Affirmative Defenses (CP 7-10). Ms. Stiles’ only filings until receiving Mr. Kearney’s Motion for Summary Judgment were the Complaint (CP 1-6) and a Subpoena issued against Shore Woods (CP 11-14).

Mr. Kearney’s statement that Ms. Stiles had five months between the filing of the Complaint and the filing of the Summary Judgment Motion to conduct discovery (Resp. Br. at 21) is misleading.<sup>32</sup> The Complaint was filed December 21, 2009 (CP 1-6), Mr. Kearney’s Answer and Affirmative Defenses (CP 7-10) was not filed until February 11, 2010. Until Mr. Kearney’s defenses were known there was no direction for further discovery, given the detailed inquiry already conducted.

Mr. Kearney states Ms. Stiles’ Complaint confused attorney privilege with other privileges available in a defamation suit (Resp. Br. at 24). In fact, the Complaint attempts to differentiate the two *types* of privilege available: 1) absolute privilege; and 2) qualified privilege. As

---

<sup>31</sup> Citing *Rachel v. Banana Republic, Inc.* 831 F.2d 1503, 1508 (9<sup>th</sup> Cir. 1987)

<sup>32</sup> Mr. Kearney’s statement that the Complaint was filed on May 11, 2010 and the Summary Judgment Motion was filed on December 21, 2011 (Respondent’s Br. at 21) is clearly a scrivener’s error.

this court is aware an absolute privilege exists, for example, for an attorney advising a client concerning a judicial proceeding<sup>33</sup>; on the other hand, a qualified privilege may be found in a variety of circumstances and listing all of them is neither necessary nor desirable in an initial pleading. The Complaint may be inelegant in failing to portray the two types of privilege more concisely, that failure is not evidence of legal deficiency.

**d. RCW 4.84.185 Sanctions**

RCW 4.84.185 sanctions *may* be appropriate where a claim is “frivolous and advanced without reasonable cause.” RCW 4.84.185.<sup>34</sup> “If an action can be supported by *any rational argument*, then the trial court properly exercised its discretion in not finding an action to be frivolous...”<sup>35</sup> Discussed *supra*, Ms. Stiles made *several* cogent arguments supporting her position. That the trial court did not agree with those arguments is not dispositive.<sup>36</sup>

Mr. Kearney cites *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 969 P.2d 64 (1998) in support of RCW 4.84.185 sanctions

---

<sup>33</sup> See e.g., *Demopolis v. Peoples Nat. Bank of Washington*, 59 Wn.App. 105, 796 P.2d 426 (Wash.App. Div. 1 1990), *Cooperstein v. Van Natter*, 26 Wn.App.91, 611 P.2d 1332 (Wash.App. Div. 1 1980), *et al.*

<sup>34</sup> “In any civil action, the court ... may, upon written findings ... that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party reasonable expenses, including reasonable fees of attorneys...” RCW 4.84.185.

<sup>35</sup> *Timson v. Pierce County Fire Dist. 15*, 136 Wn.App. 376, 149 P.3d 427 (Wash.App. Div. 2 2006) (internal cites omitted) (emphasis added).

<sup>36</sup> *Housing Authority of the City of Everett v. Kirby*, 154 Wn.App. 842, 859, 226 P.3d 222 (2010) *Citing Skimmer v. Boxer*, 119 W.App. 748 (Wash.App. Div. 3 2004).

without an improper purpose. (Resp. Br. at 26-27). Ms. Stiles' Brief did not present that precise argument, but is near enough to appear responsive.<sup>37</sup>

*Quick-Ruben* involved a private *quo warranto* action brought when Quick-Ruben lost election for office. The court found Quick-Ruben both lacked standing *and* persisted in filing a case prematurely after proper notification.<sup>38</sup> The case was so utterly lacking in *any* reasonable argument that bad faith could be presumed. (*Id.*, at 904)

In *Skimming v. Boxer*, 119 Wn.App. 748, 752, 82 P.3d 707 (Wash.App. Div. 3 2004), after Boxer was acquitted of criminal charges, the appellant stated, "We are disappointed with the results." This is "falsely accus[ing] the respondent of committing a felony" (Resp. Br. at 29) *only if* a statement of opinion can *also* be a false statement.

That the statement "an axe (sic) to grind" was found to be opinion does not render Ms. Stiles' claim "irrational" (Resp. Br. at 30). In *In re Yagman*, 796 F.2d 1165 (9<sup>th</sup> Cir.), amended, 803 F.2d 1085 (1986), the U.S. Supreme Court upheld a finding that statements were non-actionable opinion but *reversed* sanctions, holding "...we do not consider the

---

<sup>37</sup> Appellant's Brief at 20 states "Where RCW 4.84.185 sanctions have been awarded without a specific showing of improper purpose, the claim has been so lacking in any reasonable argument that bad faith or improper purpose could be presumed."

<sup>38</sup> "Quick-Ruben was advised of this problem by opposing counsel and given the opportunity to dismiss the action, refile it after Verharen's term commenced, and serve process on opposing counsel. He declined." *Quick-Ruben*, 136 Wn.2d at 901.

distinction between fact and opinion to be so clear that merely filing a complaint in these circumstances permits a finding of subjective bad faith.” Yagman, 796 F.2d at 1187.

**e. Attorney Fees**

**i. Statutory attorney’s fees under RCW 4.84.010**

Mr. Kearney mischaracterizes Ms. Stiles Brief at 21-22 concerning the discrepancy between the underlying ruling at Summary Judgment and the CR 11 court’s award of sanctions. The trial court found statutory attorney’s fees in the amount of \$200.00 “appropriate” (CP 247), whereas the CR 11 court awarded sanctions of almost 20 times that amount. Ms. Stiles does not argue that an award of statutory attorney’s fees precludes the award of CR 11 and RCW 4.84.185 sanctions, she argues that the trial court’s rulings are inconsistent.

**ii. There is no established Washington law allowing *pro se* attorneys to collect attorney fees for violations of CR 11**

Ms. Stiles reasserts and maintains that whether a *pro se* litigant may receive an award of attorney’s fees by virtue of being himself an attorney is a matter of first impression for this court.

Mr. Kearney mistakenly states it is well-established Washington law that *pro se* attorney’s fees are available under CR 11, citing a single

case, *Leen v. Demopolis*, 62 Wn.App. 473, 815 P.2d 269 (Wash.App. Div. 1 1991). (Resp.Br. at 32-33). *Leen*, however, did not so hold.

The *Leen* case stemmed from a default judgment for professional fees and costs. The court was asked to decide five issues<sup>39</sup>, the fourth of which was whether the court's grant of post-judgment motions, including a CR 11 motion, modified or changed the decision being appealed (*Leen*, at 484). The fifth issue decided by the court was whether Leen was entitled to attorney's fees and costs, including for his own time, *in defending against the appeal*. *Leen*, supra, at 485.

The court found no error and awarded Leen attorney fees for the appeal, stating, "Because Leen is entitled to attorney fees and costs pursuant to the contract, this court need not award those amounts under RAP 18.9(a)." *Leen*, supra, at 485. It was unclear under which rule the court awarded fees; later decisions clarify the attorney fee award portion of *Leen* stands for the proposition that "a contractual provision authorizing attorney fees is authority for granting fees incurred on appeal."<sup>40</sup>

Ms. Stiles cited *Kay v. Ehrler*, 499 U.S. 432, 111 S.Ct. 1435 (1991) holding that *pro se* litigants, whether or not attorneys, were not entitled to attorney's fees. (App's.Br. at 24-25). A review of cases

---

<sup>39</sup> *Leen*, supra, at 477, 481, 483, 484, 485.

<sup>40</sup> *Jankelson v. Lynn Const., Inc.*, 72 Wn.App. 232, 237, 864 P.2d 9 (Wash.App. Div. 2 1993), See also *Marassi v. Lau*, 71 Wn.App. 912, 920, 859 P.2d 605 (Wash.App. Div. 1 1993).

considering the Kay holding shows 43 state and circuit courts finding attorney's fees unavailable to *pro se* attorney litigants, while 13 state and circuit courts have held that attorney's fees are available in certain circumstances (Appx 9). Five cases specifically considered, and rejected, allowing attorney's fees sanctions to *pro se* attorneys, relying on analysis in Kay and statutory interpretation.<sup>41</sup>

One court noted, "Allowing a *pro se* attorney litigant to recover fees while barring nonlawyer litigants from collecting fees would "create disparate treatment of *pro se* litigants on the basis of their occupations."<sup>42</sup>

Mr. Kearney raises the issue of *stare decisis* and argues that, as Ms. Stiles did not previously raise it, she is precluded from responding now. As explained *supra*, Mr. Kearney's belief that there is a well-established law is mistaken and therefore *stare decisis* is not implicated.

### **C. RAP Attorney Fees**

#### **a. Mr. Kearney is not entitled to Attorney Fees under 18.1, 18.9, RCW 4.84.185, and CR 11**

---

<sup>41</sup> See Musaelian v. Adams, 198 P.3d 560 (Cal. 2009) (fees for *pro se* attorney litigants not available under Cal. Civ. Pro. § 127.8 (modeled after Fed.R.Civ.Proc. 11 (28 U.S.C.))), FMB-First Mich. Bank v. Bailey, 591 N.W.2d 676, (Mich.App. 1999) (fees not available to *pro se* attorneys in frivolous lawsuit/signature rules statutes MCR 2.114(E), M.C.L. § 600.2591(2) and MSA 27A.2591(2)), DiPaolo v. Moran, 277 F.Supp.2d 528 (E.D.Pa. 2003) (Rule 11 fees not available for time spent defending himself; Beasley v. Peters, 870 S.W.2d 191 (Tex.App. Amarillo 1994) (no attorney's fees for *pro se* attorney for Tex.R.Civ.P. 215(2)(b)(8)) sanctions, Massengale v. Ray, 267 F.3d 1298 (11th Cir. 2001) (attorneys fees not available to *pro se* attorney litigants under Fed. R. Civ. Proc. 11).  
<sup>42</sup> Young v. Midwest Family Mut. Ins. Co., 753 N.W.2d 778, 783, 276 Neb. 206 (Neb. 2008), (internal cites omitted).

Mr. Kearney requests attorney's fees under RAP 18.1(a), RAP 18.9, CR 11, and RCW 4.84.185 for the current appeal (Resp. Br. at 36) as a "frivolous" filing.

This Court recently considered award of fees under RAP 18.9 (*Skinner v. Holgate*, 141 Wn.App. 840, 173 P.3d 300 (Wash. App. Div. 2 2007)), and noted, "...[to determine] whether an appeal is frivolous, we consider the record as a whole and *resolve all doubt in favor of the appellant.*" *Skinner*, at 858 (internal citations omitted) (emphasis added).

Ms. Stiles raised issues here on which "reasonable minds may differ,"<sup>43</sup> including three issues of first impression (two of which were not disputed by Mr. Kearney). Even looking solely to attorney fee awards to *pro se* attorney litigants, Ms. Stiles has raised important issues of law that should be addressed by this court.

Mr. Kearney first asserts technical violations of RAP 10.3 and 10.4. These have been fully briefed *supra*.

He then states Ms. Stiles failed to "refute" the trial courts findings, conclusions, and memorandum. To prevail in an appeal of sanctions, the appellant must show that the trial court abused its discretion; she is not

---

<sup>43</sup> Mr. Kearney cites *In re Recall of Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003), stating "An appeal is frivolous if there are 'no debatable issues upon which reasonable minds might differ...'" (Resp. Br. at 36-37) (additional cites omitted).

required to “refute” the trial court’s findings, only to show those findings were made on untenable grounds or for untenable reasons.<sup>44</sup>

His final assertion of frivolity is Ms. Stiles was “unaware of the state of the law” concerning attorney fees to *pro se* attorney litigants. Since his understanding of the law in this area is mistaken, briefed *supra*, this reasoning also fails.

**b. Ms. Stiles is entitled to attorney fees if she prevails in this appeal.**

Recovery under RCW 4.84.010 is not so limited as Mr. Kearney suggests. The statute allows for fees and costs “upon the judgment.” Mr. Kearney did prevail at Summary Judgment, and costs awarded under that judgment have been satisfied (CP 206). Ms. Stiles contends that this is a separate “judgment” for purposes of the statute and by prevailing in *this CR 11/4.84.185 judgment*, she will be entitled to fees and costs. Further, this court has authority to award fees and costs to a prevailing party, particularly where the respondent’s arguments are baseless or untenable.

**II. CONCLUSION**

Due to his failure to dispute Assignments of Error 5 and 6, Mr. Kearney should be precluded from arguing those at oral argument. Any technical violations of RAP 10.3 or 10.4 by Ms. Stiles have not prejudiced

---

<sup>44</sup> United States v. Hinkson, 585 F.3d 1247, 1251 (9<sup>th</sup> Cir. 2009) (en banc.)

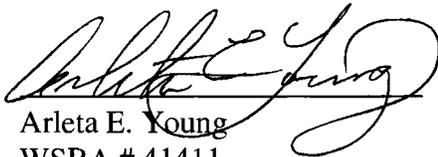
Mr. Kearney, nor greatly inconvenienced the court; Ms. Stiles has also affected cure through this Reply. This court should hear the appeal on its merits.

CR-11 and RCW 4.84.185 sanctions were improperly applied. The trial court's acceptance and consideration of Mr. Kearney's late-filed documents prejudiced Ms. Stiles' case and deprived her of due process. She presented arguable points of law supported by undisputed facts, and advanced a legal theory not addressed by the court in its Conclusions of Law. The court's conclusion appears to improperly apply the outcome of the underlying case to its determination of sanctions.

Award of attorney fees for *pro se* attorneys in strictly CR-11 actions is a matter of first impression for this court. Other courts have ruled on the question, with the majority appearing to find it is not favored.

Therefore, we respectfully request this court grant the relief requested in our appeal.

**Respectfully submitted February 10, 2011.**



Arleta E. Young  
WSBA # 41411  
Arleta E. Young, Esq.  
P.O. Box 1263  
Kingston, WA 98346  
360-265-9552



M. Patrice Kent  
WSBA # 42460  
MPK Law Office  
P.O. Box 17798  
Seattle, WA 98127  
206-915-1529

# **Appendix 1**

Verbatim Report of Proceedings

RE: Excluded Evidence

1 Housing Authority have also found the intent to be valuable in  
2 determining the improper purpose.

3 While there is no- There is- has been no intent shown in  
4 the initial claim. In addition, the letters that Ms.  
5 Rasmussen discusses were presumably attached in rebuttal.  
6 When I was served a hard copy of that rebuttal yesterday  
7 afternoon at 4:30, those letters were not attached to mine, so  
8 I do not have the ability to respond to the content of that  
9 letter. I was also emailed a copy of the rebuttal documents  
10 from Mr. Kearney- Mr. Kearney and Ms. Rasmussen's office. I  
11 do not have a copy- They were not attached in that email.  
12 Similarly, Ms. Young was served a copy at her- properly served  
13 a copy at her home sometime between 11 and two p.m. yesterday;  
14 those letters referenced by Ms. Rasmussen are not included in  
15 her copy, as well. I have a co- I have her copy of service  
16 documents, if you'd like to see that, sir.'

17 THE COURT: That's alright.

18 MS. KENT: Thank you.

19 THE COURT: Would you like some more time to  
20 respond to the stuff? I can hear your argument and give you  
21 some time to provide something in writing. If you just got  
22 it, you didn't have a chance to -

23 MS. KENT: I've- I've still not seen the letters,  
24 Your Honor.

1 THE COURT: What letters are we talking about?

2 MS. RASMUSSEN: I believe that what she's talking  
3 about are the letters that were written by- It was a letter  
4 that was written by Ms. Stiles opposing Mr. Kearney's running  
5 for the Board.

6 THE COURT: Oh.

7 MS. KENT: At this point, his characterization is-  
8 is hearsay, since we cannot see those letters. They were not  
9 attached as exhibits to Mr. Kearney's declarations.

10 THE COURT: Well, let me try to find them. What  
11 are they attached to?

12 MS. RASMUSSEN: The declaration submitted yesterday  
13 in Mr.- in Mr. Kearney's -

14 THE COURT: I didn't- I haven't seen that either.  
15 Was there a bench copy of that? Maybe it's sitting in there.  
16 I don't why it's- Okay.

17 MS. RASMUSSEN: Yes, Your Honor, I believe that  
18 there was a -

19 THE COURT: It's not made it to the file. Oh, this  
20 is- Of course it didn't. It's sitting in the Kitsap County  
21 court is where it is.

22 MS. RASMUSSEN: Most likely.

23 THE COURT: I did not- I didn't see that, either.  
24 It might have been emailed or faxed or something up to me, or

1 maybe even served up here, but I haven't considered that,  
2 either. When she mentioned letters and- I was going what's  
3 she talking about? I haven't seen that, either.

4 UNIDENTIFIED SPEAKER: Your Honor, if I may, I did  
5 email them yesterday to Ms. Moore.

6 THE COURT: Well, they -

7 UNIDENTIFIED SPEAKER: Bench copies.

8 THE COURT: - may well be sitting in- I usually  
9 don't look at stuff after noon on Thursday. I just- That's  
10 my own personal cut-off to look at all the stuff that I've got  
11 to do Friday. If it comes in after noon on Thursday, I don't  
12 see it. What are these letters? These are letters -

13 MS. RASMUSSEN: Your Honor, it's one -

14 THE COURT: - of debate between Mr. Kearney and Ms.  
15 Stiles?

16 MS. RASMUSSEN: It's one letter from Ms. Stiles to  
17 the Homeowners Association members voicing her disagreement  
18 with Mr. Kearney's running for a Homeowners Association Board.  
19 The letters were simply introduced to show that they were  
20 written. There's nothing in the letter that would be  
21 necessary for the Plaintiff's argument, as the purpose of the  
22 letter is stated in our response and in Mr. Kearney's  
23 declaration. The letters themselves don't contain anything  
24 that would be necessary -

1 THE COURT: They just show there's bad feelings  
2 between Ms. Stiles and Mr. Kearney?

3 MS. RASMUSSEN: Exactly. And that was stated in  
4 Mr. Kearney's declaration. The letter is simply evidence that  
5 it was written.

6 MS. KENT: Your Honor, we don't know when- when  
7 these were written.

8 THE COURT: I don't know anything about it, because  
9 I haven't -

10 MS. KENT: Okay.

11 THE COURT: - seen them, either. And they weren't  
12 going to be a- play a part in my decision. But I'm thinking -

13 MS. KENT: Thank you.

14 THE COURT: - if you want me to consider them and-  
15 and you want to have an opportunity to respond, I could delay  
16 my decision, give you a week or something that -

17 MS. RASMUSSEN: We would prefer to just have the  
18 letters not considered.

19 THE COURT: Alright. Let's go ahead, then. I'm  
20 not going to consider whatever it was that came in yesterday.

21 MS. KENT: Thank you, Your Honor. And, which case,  
22 moving on to the CR 11 sanctions which, as you know, is for  
23 filings not based in fact or law, and to which reasonable  
24 inquiry was not provided.

## **Appendix 2:**

### Memorandum Opinion

1 SUPERIOR COURT OF THE STATE OF WASHINGTON  
2 IN AND FOR THE COUNTY OF KITSAP  
3  
4

5  
6 DEE ANN STILES,

7  
8 Plaintiff,

9  
10 vs.

11  
12 GERALD KEARNEY,

13  
14 Defendant.  
15

Case No.: 09-2-03163-2

MEMORANDUM OPINION AND ORDER  
RE: SANCTIONS

16  
17 This matter came on for hearing on September 3, 2010 to consider  
18 defendant's motion for sanctions pursuant to CR 11 and RCW 4.84.185. Mr.  
19 Kearney appeared and was represented by Natalie K. Rasmussen. Plaintiff  
20 Dee Ann Stiles appeared through her attorneys M. Patrice Kent and Arleta E.  
21 Young.  
22

23 The court considered the arguments of counsel, the Motion for CR 11  
24 and RCW 4.84.195 Sanctions, The Declarations of Steven Olsen, John  
25 Wiegenstein, Gerald A. Kearney regarding attorney fees, Gerald A. Kearney  
26 dated September 22, 2010, Defendant's Rebuttal to Plaintiff's Response to  
27 the motion, Plaintiff's Response to the Motion, and the Declarations of  
28 Arleta E. Young, Wayne Aldrich, Dee Ann Stiles, and Sally Gruger. The court  
29 also considered the arguments of counsel.  
30

31 FACTS  
32

33 This is a defamation action. Ms. Stiles was the secretary of the  
34 Shore Woods homeowners association and Mr. Kearney was a member. Ms.  
35 Stiles' complaint alleges that the following closing paragraph contained in  
36  
37

38 CRADDOCK D. VERSER  
39 JUDGE

40 Jefferson County Superior Court  
41 P.O. Box 1220  
42 Port Townsend, WA 98368

1 an e-mail sent by Mr. Kearney on October 31, 2009 to members of the Shore  
2 Woods homeowner's association and others constitutes defamation entitling  
3 her to damages:

4  
5 Finally, the last set of minutes by our secretary are written  
6 from the point of view of someone with an axe to grind.  
7 Again, this is divisive (us against them) and not helpful.  
8 Dee Anne: do your job even-handedly or step down.  
9

10 On June 25, 2010 the Court granted Mr. Kearney's Motion for Summary  
11 Judgment dismissing Ms. Stiles' complaint. On July 16, 2010 Mr. Kearney  
12 filed this motion for CR 11 and RCW 4.84.185 sanctions.

13  
14 ISSUES

15  
16 ISSUE NO: 1: Did Ms. Young, Ms. Stiles' attorney, file the complaint in  
17 violation of the requirements of Cr 11(a)?

18  
19 ISSUE NO: 2: Is the complaint frivolous as that term is used in RCW  
20 4.84.185?

21  
22 ANALYSIS

23  
24 ISSUE NO. 1: CR 11 Violation

25  
26 SUMMARY OF LAW REGARDING CR 11

27  
28 Both counsel in this matter have provided well written memoranda  
29 demonstrating their comprehensive understanding of the law related to CR 11  
30 attorney's fees. The following principles guide this court in making the  
31 determination in this case.

32  
33 CR 11 addresses two types of problems relating to pleadings,  
34 motions and legal memoranda: filings which are "not well  
35 rounded in fact and warranted by law" and filings interposed  
36 for "any improper purpose". At issue in this case is CR 11's  
37 not "well grounded in fact and warranted by law" provision.

38  
39 CR 11 requires attorneys to "stop, think and investigate more  
40 carefully before serving and filing papers. [Cite omitted].  
41 Rule 11 has raised the consciousness of lawyers to the need  
42 for a careful prefiling investigation of the facts and inquiry  
43 into the law. [Cite omitted].

44  
45 Our interpretation of CR 11 ...requires consideration of CR 11's  
46 purpose of deterring baseless claims as well as the potential  
47  
48

49  
50 CRADDOCK D. VERSER  
JUDGE

Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

1 chilling effect CR 11 may have on those seeking to advance  
2 meritorious claims.

3  
4 Bryant v. Joseph Tree, Inc., 119 Wn. 2d 210, 217, 219, 829  
5 P.2d 1099 (1992).  
6

7 There are three conditions which must be met for a plaintiff's  
8 complaint to subject an attorney to CR 11 sanctions: (1) the action is not  
9 well grounded in fact; (2) it is not warranted by the existing law; and (3)  
10 the attorney signing the pleading has failed to conduct reasonable inquiry  
11 into the factual or legal basis of the action. CR 11, Doe v. Blood Bank, 55  
12 Wn. App. 106, 110, 780 P.2d 853 (Div. I, 1989).  
13

14 In determining whether CR 11 attorney's fees should be awarded the  
15 court should review the prefiling investigation to determine "...what was  
16 reasonable for the attorney to have believed at the time of filing the  
17 complaint." Manteufel v. Safeco Ins. Co. of America, 117 Wn. App. 168, 176,  
18 (Div. II, 2003) citing Biggs v. Vail, 124 Wn. 2d 193, 197, 876 P.2d 448  
19 (1994). If the court determines that CR 11 sanctions are appropriate then  
20 those fees "...must be limited to the amount reasonably expended in response  
21 to the sanctionable claims." 117 Wn. App. 177.  
22

23 A CR 11 award is not a "fee shifting" mechanism but a deterrent to  
24 frivolous pleadings. MacDonald V. Korum Ford, 80 Wn. App. 877, 891 912 P.2d  
25 1052 (Div. II, 1996). As quoted in MacDonald, the court in Miller v.  
26 Badgley, 51 Wn. App. 285, 303-304, 753 P.2d 530, rev. denied, 111 Wn. 2d  
27 1007 (1988) guides this court as follows:  
28

29 In fashioning an appropriate sanction, the trial judge  
30 must of necessity determine priorities in light of the  
31 deterrent, punitive, compensatory, and educational aspects of  
32 sanctions as required by the particular circumstances. "The  
33 basic principal governing the choice of sanctions is that the  
34 least severe sanction adequate to serve the purpose should be  
35 imposed."  
36

37 CR 11 imposes upon the party seeking attorney's fees a duty to  
38 "...notify the offending party as soon as it becomes aware of sanctionable  
39 activity, thereby providing the offending party with an opportunity to  
40 mitigate the sanction **by withdrawing** [emphasis added] or amending the  
41 offending paper... CR 11 does not impose an affirmative duty to dismiss an  
42 action once it has become unreasonable to pursue its prosecution.  
43 MacDonald, at 80 Wn. App. 891- 892, citing Doe, supra., at 55 Wn. App. 114.  
44 Mr. Kearney notified Ms. Young that he would be seeking CR 11 and RCW  
45 4.84.185 attorney's fees in his answer filed February 11, 2010, but he did  
46 not informally contact Ms. Wood regarding possible sanctions after including  
47 the request in his formal answer and prayer for relief.  
48

49 CRADDOCK D. VERSER  
50 JUDGE

Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

1  
2 Ms. Stiles does not argue that there is a good faith argument to  
3 change Washington law regarding defamation. The court finds that the  
4 complaint was not interposed for any improper purpose, and that Ms. Stiles,  
5 in good faith was offended by the e-mail and believed that she was entitled  
6 to damages for defamation as a result of the e-mail.  
7

8 Therefore Mr. Kearney bears the burden of proving that the complaint  
9 at issue was not well grounded in fact and not warranted by existing law.  
10

11 The court found that the e-mail paragraph at issue was a statement of  
12 opinion not a provable statement of fact. The fact that the court made this  
13 finding in granting summary judgment does not result in the imposition of CR  
14 11 sanctions.  
15

16 In determining whether sanctions are warranted the court applies an  
17 objective standard of "...whether a reasonable attorney in a like circumstance  
18 could believe his or her action to be factually and legally justified."  
19 Skimming v. Boxer, 119 Wn. App. 748, 754, 82 P.3d 707 (2004) citing Bryant  
20 v. Joseph Tree, Inc., 119 Wn. 2d 210, 220, 829 P.2d 1099 (1992).  
21

22 In this case the complaint is not factually or legally justified.  
23 There is no reasonable attorney, after a review of the law of defamation in  
24 the State of Washington, who could believe that the paragraph in the e-mail  
25 at issue is a factual statement capable of being proved or disproved. Nor  
26 did Ms. Stiles have a reasonable argument regarding the other three  
27 requirements for a defamation action, lack of privilege, fault and damages.  
28 In this case it is patently clear that Ms. Stiles' claim had absolutely no  
29 chance of success. In re Cooke, 93 Wn. App. 526, 529, 969 PL.2d 127 (1997).  
30 There is simply no possibility that Ms. Stiles could ever prove that the  
31 statement that the minutes were "...written from the point of view of someone  
32 with an axe to grind." is anything other than the author's opinion. That  
33 statement is not capable of being proven to be true or false. Ms. Young  
34 should have realized that fact before filing the complaint. A reasonable  
35 attorney in a like circumstance, no matter how hurt the client was by the  
36 statement, would have realized that the statement is not actionable.  
37

38 The sanctionable conduct is the filling of the compliant in this  
39 matter.  
40

41 The court will award some attorneys fees pursuant to CR 11.  
42

43 ISSUE NO. 2: Fees under RCW 4.84.185  
44

45 A lawsuit is frivolous for purposes of an award of attorney's fees  
46 under RCW 4.84.185 when considering all of the pleadings in their entirety  
47 the lawsuit cannot be supported by any rational argument on the law or  
48

49 CRADDOCK D. VERSER  
50 JUDGE

Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

1 facts. Tiger Oil v. Department of Licensing, 88 Wn. App. 925, 938, 946 P.2d  
2 1235 (1997).

3  
4 The court finds that the complaint in this case meets this definition  
5 of frivolous. There is no possible interpretation of the facts or rational  
6 argument which could convert the facts here into an actionable defamation  
7 case given the law in Washington requiring the statement at issue to be  
8 capable of being proven to be false.

9  
10 The court will award attorney's fees as allowed by RCW 4.84.185.

11  
12 AMOUNT OF FEES TO BE AWARDED

13  
14 In determining an award of attorney's fees Washington courts use the  
15 lodestar method. That method requires the court to determine both the  
16 reasonable number of hours expended on the case and multiply those hours by  
17 what the court determines to be a reasonable hourly rate. The party seeking  
18 fees has the burden of proving that the hours expended are reasonable and  
19 that the hourly rate is reasonable. The court must exclude any wasteful or  
20 duplicative hours and hours pertaining to unsuccessful theories or claims.  
21 Scott Fetzer Co. v. Weeks, 122 Wn. 2d 141, 151, 859 P.2d 1210 (1993); Mahler  
22 v. Szucs, 135 Wn. 2d 398, 433-34, 957 P.2d 632 (1998). The attorney's usual  
23 hourly rate is not conclusively a reasonable rate. Other factors include  
24 "...the level of skill required by the litigation, time limitations imposed on  
25 the litigation, the amount of the potential recovery, the attorney's  
26 reputation, and the undesirability of the case." Bowers v. Transamerica  
27 Title Ins. 100 Wn. 2d 581, 597, 675 P.2d 193 (1983). Likewise the number  
28 of hours billed by the prevailing attorney is not dispositive as to the  
29 reasonableness of the hours necessary for the case even though those hours  
30 are documented as they are in this case. Fetzer, supra., at 122 Wn. 2d 151.  
31 The court may also consider "any duplicative or unnecessary effort; the  
32 terms of the fee agreement between the attorney and client; the fees  
33 customarily charged for similar services; the amount at stake; the result  
34 obtained; and any other relevant factors." Brand v. Department of Labor &  
35 Industries, 91 Wn. App. 280, 293-94, 959 P.2d 133 (1998). In addition the  
36 court may use the factors set forth in RPC 1.5(a) which include "the fee  
37 customarily charged in the locality for similar legal services." RPC  
38 1.5(a)(3). In making this determination the court may consider opposing  
39 counsel's hourly rate but may not arbitrarily accept the prevailing local  
40 billing rate as the reasonable hourly rate. Absher Constr. Co. v. Kent  
41 School District No. 415, 79 Wn. App. 841, 847, 917 P.2d 1086 (1995); Crest  
42 Inc., v. Costco Wholesale Corp., 128 Wn. App. 760773-74, 115 P.3d. 349  
43 (2005).

44  
45 Keeping in mind the principle that CR 11 sanctions are not a "fee  
46 shifting mechanism" the amount of attorneys fees must be limited  
47 specifically to the filing of pleadings, motions and legal memoranda in  
48

49 CRADDOCK D. VERSER

50 JUDGE

Jefferson County Superior Court

P.O. Box 1220

Port Townsend, WA 98368

1 responding to the sanctionable conduct. The court does not award CR 11 fees  
2 for hours expended in reviewing and organizing the file for travel time,  
3 for attorney conferences, or in preparation and argument of the motion for  
4 CR 11 sanctions. In addition the attorney seeking the sanctions should give  
5 the opposing party informal notice through a letter or phone call of the  
6 intent to seek CR 11 sanctions. Here had Mr. Kearney notified Ms. Wood that  
7 he considered continued pursuit of the case sanctionable prior to filing the  
8 motion for summary judgment, Ms. Wood may have reconsidered her position and  
9 dismissed the matter. MacDonald v. Korum Ford, 80 Wn. App. 877, 892-893,  
10 912 P.2d 1052 (1996); citing Briggs v. Vail, 124 Wn.2d193, 876 P.2d 448  
11 (1994).

12  
13 The court finds that the billing rates of \$210 to \$240 for Mr.  
14 Kearney and \$180 an hour for Ms. Rasmussen are reasonable. The court has  
15 attempted to apply the foregoing considerations to the requested fees in  
16 this case. Attached hereto is a copy of the billing submitted with the  
17 request for fees. The court has marked out the hours which are not included  
18 in the attorney fee award, after applying the foregoing principles. The  
19 result is an award of attorney's fees in the amount of \$3,912.00.

20  
21 The court also finds that the same principles used in determining the  
22 amount of CR 11 sanctions, at least in this case, are applicable to  
23 determining the reasonableness of the attorney's fees to be awarded under  
24 RCW 4.84.185.

25  
26 The CR 11 sanctions are awarded against Ms. Wood and the RCW 4.84.185  
27 attorney fees are awarded against Ms. Stiles. The judgment of \$3,912.00 is  
28 thus joint and several against Ms. Wood and Ms. Stiles.

29  
30 The court has entered the Findings of Fact and Conclusions of Law and  
31 Judgment, a copy of which are forwarded to the attorneys with this opinion.

32  
33  
34 Dated this 14<sup>th</sup> day of September, 2010.

35  
36  
37  
38  
39  
40   
41 CRADDOCK D. VERSER, JUDGE

42  
43  
44  
45  
46  
47  
48  
49 CRADDOCK D. VERSER  
50 JUDGE  
Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368

**Appendix 3:**

Findings of Fact

And

Conclusions of Law



- 1
- 2 g) Plaintiff's Response to Defendant's Motion for CR 11 & RCW 4.84.185 Sanctions
- 3 and supporting declarations;
- 4 h) Defendant's Rebuttal to Plaintiff's Response to Defendant's Motion for CR 11 &
- 5 RCW 4.84.185 Sanctions and supporting declarations; and
- 6 i) Oral argument on September 3<sup>rd</sup>, 2010.
- 7

8 **II. FINDINGS OF FACT**

9 1 Plaintiff complaint alleged that Mr. Kearney had defamed her.

10 2 Plaintiff failed to present any credible or cognizable evidence that defendant's

11 statement was provably false, an essential element of a defamation claim.

12 3 Plaintiff failed to present any credible evidence that defendant's statement was

13 not protected by the "common interest" privilege, an absolute defense to a claim of defamation.

14 4. Plaintiff failed to present any credible evidence that defendant's statement caused

15 her any damages, an essential element of a defamation claim.

16 5. Defendant's writings were non-actionable statements of his opinion.

17

18 **III. CONCLUSIONS OF LAW**

19 1. Based on the above findings, plaintiff's complaint and lawsuit is frivolous and

20 advanced without reasonable cause.

21 2. An award of attorney fees to defendant against plaintiff for the filing of a

22 frivolous lawsuit is appropriate.

23 3. Based on the above findings, the action at issue was not well grounded in fact or

24 warranted by existing law.

25 4. Based on the above findings, the attorney signing the pleading has failed to

26 conduct a reasonable inquiry into the factual and legal basis of the action.

27

28



1  
2  
3  
4  
5  
6 **IN THE SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY**

8 DEE ANN STILES,

9 Plaintiff,

11 v.

12 GERALD KEARNEY,

13 Defendant.

NO. 09-2-03163-2

**JUDGMENT**

14  
15  
16 **I. JUDGMENT SUMMARY**

17 Judgment Creditor: Gerald A. Kearney

18 Judgment Debtors: Dee Ann Stiles

Arleta E.J. Young

19 Principal Judgment Amount: n/a

20 Interest to Date of Judgment: n/a

21 Interest After Date of Judgment: n/a

Attorney Fees: ~~\$12,768.00~~

*CA 9/14/10 \$3,912.00*

22 Costs: n/a

23 Interest on Attorney fees and costs: 12% per annum

Other Recovery Amounts: n/a

24 Attorney for Judgment Creditor: Natalie K. Rasmussen

Attorney for Judgment Debtor: Arleta E.J. Young

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**II. JUDGMENT**

THIS MATTER having come before the Court for hearing this day, the Court having reviewed the records and files herein; all parties being represented by counsel; the Court having entered findings pursuant to RCW 4.84.185; the Court now deems itself fully advised.

NOW THEREFORE,

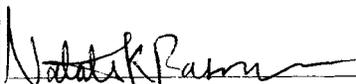
IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff is granted Judgment for attorney fees pursuant to RCW 4.84.185 against plaintiff Dee Ann Stiles and pursuant to CR 11 against attorney Arleta E.J. Young for CR 11 sanctions in the amount of ~~\$10,824.00~~ <sup>\$ 3,913.00 per 9/14/10</sup> against plaintiff DeeAnn Stiles. Said judgment shall be enforceable jointly and severally Against Dee Ann Stiles and Arleta E.J. Young.

DONE IN OPEN COURT this <sup>14<sup>th</sup></sup> ~~3<sup>rd</sup>~~ day of September, 2010.

  
\_\_\_\_\_  
Honorable Craddock D. Verser

PRESENTED BY:

APPROVED FOR ENTRY/  
NOTICE OF PRESENTATION WAIVED

  
\_\_\_\_\_  
Natalie K. Rasmussen  
WSBA #42250  
Attorney for Defendant

\_\_\_\_\_  
Arleta E.J. Young  
WSBA # 41411  
Attorney for Plaintiff

## **Appendix 4:**

General Order Division 2

# 1998-2

# **General Orders of Division II**

## **1998-2 In RE The Matter of Assignments of Error**

### **GENERAL ORDER 98-2 IN RE THE MATTER OF ASSIGNMENTS OF ERROR**

At the request of certain appellate practitioners, the judges of this Division of the Court of Appeals have determined to waive the requirement in RAP 10.3(g) that an appellant's brief must separately assign error to each challenged jury instruction, finding of fact, or conclusion of law.

Henceforth, in Division Two, an appellant's or cross-appellant's brief may use a single assignment of error to identify more than one challenged jury instruction, finding of fact, or conclusion of law.

This waiver is not intended, however, to relieve an appellant or cross-appellant of the duty to provide the verbatim text of any challenged jury instruction or finding of fact, as required by RAP 10.4(c).

## **Appendix 5:**

### **Citation Format Requirements**

**RAP 10.4(g) and Following**

**RULE 10.4: PREPARATION AND FILING OF BRIEF BY PARTY**

(g) Citation Format. Citations should conform with the format prescribed by the Reporter of Decisions pursuant to GR 14(d). The format requirements of GR 14(a) - (b) do not apply to briefs filed in an appellate court.

---

**GR 14: FORMAT FOR PLEADINGS AND OTHER PAPERS**

(a) Format Requirements. All pleadings, motions, and other papers filed with the court shall be legibly written or printed. The use of letter-size paper (8-1/2 by 11 inches) is mandatory. The writing or printing shall appear on only one side of the page. The top margin of the first page shall be a minimum of three inches, the bottom margin shall be a minimum of one inch and the side margins shall be a minimum of one inch. All subsequent pages shall have a minimum of one inch margins. Papers filed shall not include any colored pages, highlighting or other colored markings. This rule applies to attachments unless the nature of the attachment makes compliance impractical.

(b) Exception for Trial or Hearing Exhibits. This rule is not mandatory for trial or hearing exhibits, but the use of trial or hearing exhibits that comply with this rule is encouraged if it does not impair legibility.

(c) Application of Rule. This rule shall apply to all proceedings in all courts of the State of Washington unless otherwise specifically indicated by court rule.

(d) Citation Format. Citations shall conform with the format prescribed by the Reporter of Decisions. (See Appendix 1.)

[Adopted effective September 1, 1990; amended effective April 1, 2001; September 1, 2003; September 1, 2008.]



Courts Home | Courts



Search | Site Map | eService Center

## Office of Reporter of Decisions

### STYLE SHEET

Effective December 28, 2010, and Subject to Revision

#### GENERAL PRINCIPLES

1. The Nineteenth Edition of *The Bluebook: A Uniform System of Citation* is the basic citation resource for Washington appellate court opinions except as noted below.
2. The latest edition of *The Chicago Manual of Style* is the authority for punctuation and style matters.
3. *Webster's Third New International Dictionary of the English Language* is the authority for spelling, including spacing and hyphens between nouns (e.g., boyfriend, girl friend, day care, baby-sitter). Where two or more spellings are listed, use *Webster's* preferred spelling rather than the variant.
4. For matters not covered by the *Bluebook*, *The Chicago Manual of Style*, or *Webster's*, the Office of Reporter of Decisions applies formal, traditional, noncolloquial English.
5. Use and cite to official sources, which in most instances are printed publications. Do not cite to an unofficial source unless the official source is unavailable.

#### ABBREVIATIONS

The following abbreviations are used for citing to primary Washington legal materials. The list replaces the list of abbreviations for Washington materials found in *Bluebook* table T1.3, at 272.

TITLE	ABBREVIATION
Washington Constitution	Const. art. VI, § 1
Revised Code of Washington (Official)	RCW
Revised Code of Washington Annotated (West)	RCWA
Annotated Revised Code of Washington (LEXIS)	ARCW
Session Laws	Laws of 2002, ch. 107, § 3
special sessions	Laws of 1995, 2d Spec. Sess., ch. 14, § 21
extraordinary sessions	Laws of 1963, 1st Ex. Sess., ch. 26
Washington Reports, 1st & 2d Series	Wash.; Wn.2d
Washington Territory Reports	Wash. Terr.
Washington Appellate Reports	Wn. App.
Washington Administrative Code	WAC
Washington State Register	Wash. St. Reg.

#### Early Statutes

Ballinger Code	Bal. Code
Code of 1881	Code of 1881
Hill's Code of Procedure	Hill's Code of Proc.
Hill's General Statutes	Hill's Gen. Stat.
Pierce's Code	Pierce's Code
Remington's Revised Statutes	Rem. Rev. Stat.
Remington's 1915 Code	Rem. 1915 Code

Note: In citations, "Const.," "Laws of," and the names of codes and statutes (e.g., "Code of 1881," "Rem. Rev.

Stat.") are printed in the official reports in large and small caps, but ordinary typeface is acceptable in manuscript opinions. In text, both the official reports and manuscript opinions use ordinary typeface.

#### EXCEPTIONS TO *BLUEBOOK*

1. Exception to *Bluebook* rules 2.1 & 2.2, at 62-65: Ignore rules about using roman type for case names. Case names should be in italics no matter where or how they are used.
2. Exception to *Bluebook* rule 5.3(b)(iv) at 79: The deletion of matter after the final punctuation of a sentence may be indicated by a three-dot ellipsis.
3. Exception to *Bluebook* rule 6.1(b) at 81: Do not use abbreviations for entities with widely recognized initials in text (unless previously set out in a parenthetical), in case citations (unless abbreviated in source) (this is also an exception to *Bluebook* rule 10.2.1(c) at 91), or as institutional authors.
4. Exceptions to *Bluebook* rule 6.2(a) at 81-82: In text, spell out numbers zero to nine. Use arabic numerals for higher numbers. Use commas in numbers 1,000 and higher (e.g., 9,876) except when citing a page number in a case or court document.
5. Exception to *Bluebook* rule 6.2(d) at 82: In text, always write out "percent" rather than using a percentage sign (%).
6. Exception to *Bluebook* rule 8, at 84-86: Ignore this section. The Reporter's Office generally follows *The Chicago Manual of Style* to resolve capitalization issues although, other than capitalizing proper nouns and maintaining consistency throughout the opinion, the judicial author's preference governs.
7. Exception to *Bluebook* rule 9(a) at 87: When a judge is named in text, the use of the judge's first and middle names/initials is discretionary with the author.
8. Exception to *Bluebook* rule 10.2.1(a) at 90: When a case has both an adversary and a nonadversary name, cite to only the first case name in the official reports caption.
9. Exception to *Bluebook* rule 10.3.1, at 95 and Table T1: Cite official reports and regional reporters for all cases for which official reports are published. Include public domain citations when available. For California, Illinois, and New York, include the state specific reporter (Cal. Rptr. 3d, Ill. Dec., N.Y.S.2d) in addition to the official reports and regional reporters. For Washington cases, pinpoint citations are made to Wn.2d or Wn. App. pages, paragraph numbers, or both; pinpoint citations to P., P.2d, or P.3d pages are optional; pinpoint citations should not be made to P.3d paragraph numbers. For non-Washington cases, pinpoint citations are made to the official report or the unofficial report. Maintain consistency throughout the opinion.
10. Exception to *Bluebook* rule 10.7, at 101-03: *Review denied* and *review granted*: for Washington cases, cite to Wash. or Wn.2d; citing P., P.2d, or P.3d in addition to Wash. or Wn.2d is optional; for non-Washington cases: cite to the regional reporter; citing the official reporter in addition to the regional reporter is optional. *Cert. granted* or *cert. denied* in the United States Supreme Court: cite only to U.S. if therein; otherwise, cite to one of the following: S. Ct., L. Ed. or L. Ed. 2d, or U.S.L.W. in that order of preference. When subsequent history results in an opinion (such as *aff'd*, *rev'd*, *vacated*, *overruled by*, and *abrogated by*), use a full case citation.
11. Exception to *Bluebook* rule 10.7.1(c) at 102-03: "*Overruled by*" (or "*abrogated by*") is appropriate when a case explicitly repudiates (or effectively overrules or departs from) an earlier decision of a lower court as well as an earlier decision of the same court. Do not use "*superseded by statute*" or "*superseded by constitutional amendment*" subsequent history.
12. Exception to *Bluebook* rule 12.3.1(d) at 115: When citing to a current or former, official or unofficial, version of a statute that is published by a private publisher, do not add the name of the publisher and year of publication, e.g., "(West)" or "(LexisNexis 2003)," unless the volume is being cited for something other than the text of the statute, in which case include the publisher name and year.
13. Exception to *Bluebook* rule 12.3.2, at 115-16: Do not add the year in parentheses after a citation to a presently effective version of a statute or code.
14. Exception to *Bluebook* rule 12.9.2, at 120-21: Do not add "Wash." for codes and ordinances of

Washington local governments. Do not add the year in parentheses after a citation to a presently effective version of a local code or ordinance.

15. Exception to *Bluebook* rule 12.10(c) at 125: "Section" may be spelled out in text when referring to U.S.C. sections.
16. Exception to *Bluebook* table T1.1, at 215: Cite United States Supreme Court cases as follows: \_\_ U.S. \_\_, \_\_ S. Ct. \_\_, \_\_ L. Ed. or L. Ed. 2d \_\_ (year).
17. Exception to *Bluebook* table T1.3, at 263: For Pennsylvania Superior Court cases, omit the public domain citation after the A.2d citation becomes available.

**[Courts](#) | [Organizations](#) | [News](#) | [Opinions](#) | [Rules](#) | [Forms](#) | [Directory](#) | [Library](#)  
[Back to Top](#) | [Privacy and Disclaimer Notices](#)**

## **Appendix 6:**

### **Kitsap County Local Court Rules**

**\*\*Service\*\***

Kitsap County LCR 5 - Service and Filing of Pleadings and Other Papers

(a) Service - When Required. Counsel, or parties appearing without counsel, desiring to submit a brief, Memorandum of Authorities, and any supporting affidavits or other documents on a motion, hearing or trial to be heard shall serve and file the same with the Clerk by 12:00 noon of the day prior to the time set for the hearing or trial with a copy of said documents simultaneously provided to the Superior Court office with a notation of trial or hearing date. No documents shall be submitted to the court unless opposing counsel has been timely provided with copies.

(e) Filing with the Court Defined - Bench Copies.

(1) When original pleadings referenced in (a) above are filed with the Clerk's office, counsel, or parties appearing without counsel, shall be responsible for the filing of bench copies simultaneously with the Superior Court office with a notation of trial or hearing date. Bench copies are mandatory for all hearings for which pleadings have been filed. If a hearing is confirmed but not held, the bench copy will be available in the assigned department until the end of the calendar and then discarded.

If a hearing is not confirmed and a bench copy has been filed, counsel, or a party appearing without counsel, can retrieve it from Superior Court on, or before, the date originally set for hearing, redate it, and refile it. If bench copies have not been retrieved and refiled for a new hearing date, another set of bench copies must be filed for the new hearing.

Washington State CR 5: SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

(b) Service--How Made.

(1) On Attorney or Party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, filing with the clerk of the court an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service on an attorney is subject to the restrictions in subsections (b)(4) and (5) of this rule and in rule 71, Withdrawal by Attorneys.

(2) Service by Mail.

(A) How made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

(B) Proof of service by mail. Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. The certificate of an attorney may be in form substantially as follows:

CERTIFICATE

I certify that I mailed a copy of the foregoing \_\_\_\_\_ to (John Smith), (plaintiff's) attorney, at (office address or residence), and to (Joseph Doe), an additional (defendant's) attorney (or attorneys) at (office address or residence), postage prepaid, on (date).

---

(John Brown)

Attorney for (Defendant) William Noe

(3) Service on Nonresidents. Where a plaintiff or defendant who has appeared resides outside the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk of the court for him. Where a party, whether resident or nonresident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. If the attorney does not have an office within the state or has removed his residence from the state, the service may be upon him personally either within or without the state, or by mail to him at either his place of residence or his office, if either is known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. If the residence of neither the party nor his attorney, nor the office address of the attorney is known, an affidavit of the attempt to serve shall be filed with the clerk of the court.

(4) Service on Attorney Restricted After Final Judgment. A party, rather than the party's attorney, must be served if the final judgment or decree has been entered and the time for filing an appeal has expired, or if an appeal has been taken (i) after the final judgment or decree upon remand has been entered or (ii) after the mandate has been issued affirming the judgment or decree or disposing of the case in a manner calling for no further action by the trial court. This rule is subject to the exceptions defined in subsection (b)(6).

(5) Required Notice to Party. If a party is served under circumstances described in subsection (b)(4), the paper shall (i) include a notice to the party of the right to file written opposition or a response, the time within which such opposition or response must be filed, and the place where it must be filed; (ii) state that failure to respond may result in the requested relief being granted; and (iii) state that the paper has not been served on that party's lawyer.

(6) Exceptions. An attorney may be served notwithstanding subsection (b)(4) of this rule if (i) fewer than 63 days have elapsed since the filing of any paper or the issuance of any process in the action or proceeding or (ii) if the attorney has filed a notice of continuing representation.

(7) Service by Other Means. Service under this rule may be made by delivering a copy by any other means, including facsimile or electronic means, consented to in writing by the person served. Service by facsimile or electronic means is complete on transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, holiday or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter; Service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service under this subsection is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Service--Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and

that any cross claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing.

(1) Time. Complaints shall be filed as provided in rule 3(a). Except as provided for discovery materials in section (i) of this rule and for documents accompanying a notice under ER 904(b), all pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or promptly thereafter.

(2) Sanctions. The effect of failing to file a complaint is governed by rule 3. If a party fails to file any other pleading or paper under this rule, the court upon 5 days' notice of motion for sanctions may dismiss the action or strike the pleading or other paper and grant judgment against the defaulting party for costs and terms including a reasonable attorney fee unless good cause is shown for, or justice requires, the granting of an extension of time.

(3) Limitation. No sanction shall be imposed if prior to the hearing the pleading or paper other than the complaint is filed and the moving attorney is notified of the filing before he leaves his office for the hearing.

(4) Nonpayment. No further action shall be taken in the pending action and no subsequent pleading or other paper shall be filed until the judgment is paid. No subsequent action shall be commenced upon the same subject matter until the judgment has been paid.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile transmission if permitted elsewhere in these or other rules of court, or if authorized by the clerk of the receiving court. The clerk may refuse to accept for filing any paper presented for that purpose because it is not presented in proper form as required by these rules or any local rules or practices.

(f) Other Methods of Service. Service of all papers other than the summons and other process may also be made as authorized by statute.

(g) Certified Mail. Whenever the use of "registered" mail is authorized by statutes relating to judicial proceedings or by rule of court, "certified" mail, with return receipt requested, may be used.

...

[Amended effective July 1, 1972; September 1, 1978; September 1, 1983; September 1, 1988; September 1, 1993; September 17, 1993; October 29, 1993; September 1, 2005.]

## **Appendix 7:**

### Annotated Citations:

Award of Attorney Fees to *pro se* Attorneys

## Attorneys Fees Not Available *Pro Se* Attorneys or Firm

### California

Musaelian v. Adams, 198 P.3d 560 (Cal. 2009) – attorneys fees for *pro se* attorney litigants not available under California Code of Civil Procedure section 127.8 (modeled after rule 11 of the Federal Rules of Civil Procedure (28 U.S.C.)).

Trope v. Katz, 45 Cal.Rptr.2d 241, 11 Cal.4th 274 (Cal. 1995) – attorneys fees not available to *pro se* attorney in action to enforce attorneys fees contract provision.

### District of Columbia

McReady v. Department of Consumer & Regulatory Affairs, 618 A.2d 609 (D.C. 1992) -- attorneys fees not available to *pro se* attorney in D.C. Freedom of Information Act.

### Florida

American Reliance Ins. Co. v. Nuell, Baron & Polsky, 654 So.2d 289 (Fla.App. 3 Dist. 1995) – assignment of error was attorney fee multiplier; court held that multiplier was invalid and reversed and remanded for redetermination of attorneys fees.

### Iowa

Fritzsche v. Scott County, 0-306 / 09-0860 (IWCA) 06/16/2010 – attorneys fees not available to *pro se* attorney in state Open Meetings Act statute section 21.6(3)(b).

### Illinois

Kehoe v. Saltarelli, 337 Ill.App.3d 669, 786 N.E.2d 605 (Ill.App. 1 Dist. 2003) – attorneys fees not available to attorney appearing *pro se* in legal malpractice suit.

### Indiana

Miller v. West Lafayette Community School Corp., 665 N.E.2d 905 (Ind. 1996) – attorney's fees not available to attorney-parent in Individuals with Disabilities in Education Act case.

### Massachusetts

Sykes v. Dish Network, 2005 Mass.App.Div. 58 (2005) – case remanded for decision on merits, footnote states “It may be noted briefly that if [attorney] Sykes continues to proceed *pro se* in this matter and prevails after trial, no G.L.c. 93A award of attorney's fees to him would be permissible.”FN 5.

Miller v. Commissioner of Correction, 629 N.E.2d 315, 36 Mass.App.Ct. 114 (1994) – *pro se* attorney may not collect attorneys fees for his own time, but may collect for independent standby counsel.

### Michigan

Watkins v. Manchester, 559 N.W.2d 81, 220 Mich.App. 337 (Mich.App. 1997) – Fees not available to attorney or his staff for time he appeared *pro se* in breach of contract action.

FMB-First Mich. Bank v. Bailey, 591 N.W.2d 676, 232 Mich.App. 711 (Mich.App. 1999) – fees not available to *pro se* attorneys in state frivolous lawsuit and signature rules statutes MCR 2.114(E), M.C.L. § 600.2591(2) and MSA 27A.2591(2).

Omdahl v. West Iron County Bd. of Educ., 478 Mich. 423, 733 N.W.2d 380 (Mich. 2007) – attorney's fees not available to *pro se* litigant under state Open Meetings Act statute (MCL 15.271(4)).

#### Mississippi

Cruse v. Nunley, 699 So.2d 941 (Miss. 1997) – *Pro se* attorney's fees not available in 42 U.S.C. §1988 case.

#### Nebraska

Young v. Midwest Family Mut. Ins. Co., 753 N.W.2d 778, 276 Neb. 206 (Neb. 2008) – attorney's fees not available to *pro se* attorney in insurance claim case.

#### New Hampshire

Emerson v. Town of Stratford, 139 N.H. 629, 660 A.2d 1118 (N.H. 1995) – attorney's fees not available for *pro se* litigant (notes that attorney fees are not available whether or not litigant is attorney).

#### New Jersey

Dunn v. State, Dept. of Human Services, 711 A.2d 944, 312 N.J.Super. 321 (N.J.Super.A.D. 1998) - *pro se* litigant not entitled to attorneys fees.

#### New York

Matter of Mayerson v. Debuono, 710 N.Y.S.2d 528, 271 A.D.2d 447 (N.Y. Ct. App. Div.2 2000) – attorneys fees not available to attorney parent under Individuals with Disabilities in Education Act.

#### North Dakota

Shark v. Northern States Power Co., 477 N.W.2d 251 (N.D. 1991) – *pro se* attorney litigant not entitled to attorneys fees for actions against administrative agencies.

#### Ohio

Grine v. Sylvania Schools Bd. of Education, 2008-Ohio-1562, No. L-06-1314 (Ohio Ct.App. Dist. 6 2008) – attorneys fees not available to attorney parent in Individuals with Disabilities in Education Act case except for fees incurred by outside counsel.

#### Oregon

Anderson v. Wheeler, 214 Or.App. 318, 164 P.3d 1194 (Or.App. 2007) – attorneys fees not available to *pro se* attorney litigant under ORS 36.425(4)(b) (attorneys fees provision of arbitration and trial de novo statute).

Colby v. Gunson, 229 Or.App. 167, 210 P.3d 917 (Or.App. 2009) – attorneys fees not available to *pro se* attorney litigant under ORS 192.490(3) (court authority in review action of inspection of public records attorneys fees provision).

#### Pennsylvania

DiPaolo v. Moran, 277 F.Supp.2d 528 (E.D.Pa. 2003) – attorney may not collect fees under Rule 11 for time spent defending himself.

#### Texas

Beasley v. Peters, 870 S.W.2d 191 (Tex.App. —Amarillo 1994) – attorney’s fees not available to *pro se* litigant attorney for sanctions under Tex.R.Civ.P. 215(2)(b)(8).

#### Wisconsin

State ex rel. Young v. Shaw, 165 Wis.2d 276, 477 N.W.2d 340 (Wis.App. 1991) – *pro se* attorney could not collect fees under state open records law.

Dickie v. City of Tomah, 190 Wis.2d 455, 527 N.W.2d 697 (Wis.App. 1994) – *pro se* attorney could not collect fees for himself or his firm, only disbursements, in condemnation proceeding.

#### Circuit Opinions

##### D.C. Circuit

Burka v. United States Dept. of Health and Human Services, 142 F.3d 1286 (D.C. Cir. 1998) – attorney fees not available to *pro se* attorney for Freedom of Information Act case.

Kooritzky v. Herman, 178 F.3d 1315 (D.C. Cir. 1999) – attorney fees not available to *pro se* attorney under Equal Access to Justice Act statute.

##### Second Circuit

Hawkins v. 1115 Legal Service Care, 163 F.3d 684 (2nd Cir. 1998) – attorneys fees not available for *pro se* attorney in discrimination action.

S.E.C. v. Waterhouse, 41 F.3d 805 (2nd Cir. 1994) – attorneys fees not available for Equal Access to Justice Act action for *pro se* attorney but may claim time for non attorney preparation as costs under the statute’s text.

S.N. ex rel. J.N. v. Pittsford Cent. School Dist., 448 F.3d 601 (2nd Cir. 2006) – attorneys fees not available for parent-attorney under Individuals with Disabilities in Education Act.

Pietrangelo v. United States Army, 568 F.3d 2009 (2nd Cir. 2009) – attorneys fees not available to *pro se* attorney litigant under Freedom of Information Act.

#### Third Circuit

Woodside v. School Dist. Of PA. Bd. Of Edu., 248 F.3d 129 (3rd Cir. 2001) – attorneys fees not available for attorney-parent in Individuals with Disabilities in Education Act.

Zucker v. Westinghouse Elec., 374 F.3d 221 (3rd Cir. 2004) – attorneys fees not available to *pro se* attorney in shareholders suit where attorney is also shareholder.

Pardini v. Allegheny Intermediate Unit, 524 F.3d 419 (3rd Cir. 2008) – attorneys fees not available to *pro se* litigants under Individuals with Disabilities in Education Act.

#### Fourth Circuit

Erickson v. Board of Educ. Of Baltimore County, 162 F.3d 289 (4th Cir. 1998) – attorney fees not available to attorney-parent in Individuals with Disabilities in Education Act case.

#### Seventh Circuit

Chowaniec v. Arlington Park Race Track, Ltd., 934 F.2d 128 (7th Cir. 1991) – attorneys acting *pro se* not entitled to attorneys fees (because no cross claim by Respondent to vacate award, court action limited to denial of additional fees).

#### Ninth Circuit

Benson v. Hafif, 114 F.3d 1193 (9th Cir. 1997) – *Pro se* attorney not entitled to attorneys fees under Employee Retirement Income Security Act.

Elwood v. Drescher, 456 F.3d 943 (9th Cir. 2006) – *Pro se* attorney defendant not entitled to fees under 42 U.S.C. § 1988.

Ford v. Long Beach Unified School Dist., 461 F.3d 1087 (9th Cir. 2006) – attorneys fees not available for attorney-parent under Individuals with Disabilities in Education Act.

#### Tenth Circuit

Demarest v. Manspeaker, 948 F.2d 655 (10th Cir. 1991) – attorneys fees not available to *pro se* litigant whether or not attorney under Equal Access to Justice Act.

#### Eleventh Circuit

Massengale v. Ray, 267 F.3d 1298 (11th Cir. 2001) – attorneys fees not available to *pro se* attorney litigants under Fed. R. Civ. Proc. 11.

Ray v. United States Dept. of Justice, 87 F.3d 1250 (11th Cir. 1996) – attorneys fees not available to *pro se* attorney under Freedom of Information Act.

Federal Circuit

Pickholtz v. Rainbow Technologies, 284 F.3d 1365 (Fed. Cir. 2002) – attorneys fees not available to *pro se* attorney litigants under Fed. R. Civ. Proc. 37.

## Attorneys Fees Available to Pro Se Attorney or Firm

### California

Gilbert v. Master Washer & Stamping Co., 104 Cal.Rptr.2d 461, 87 Cal.App.4th 212 (Cal.Ct.App. Dist.2 Div. 7 2001) – attorneys fees available to attorney’s firm where representation involved the attorney’s personal interests in contract.

PLCM Group, Inc. v. Drexler, 95 Cal.Rptr.2d 198, 22 Cal.4th 1084 (Cal. 2000) – corporate litigant entitled to attorneys fees for in-house counsel for suit to enforce contract.

### Georgia

Harkleroad v. Stringer, 499 S.E.2d 379, 231 Ga.App. 464 (Ga.App. 1998) – attorneys fees available to firm and attorney acting *pro se* in action to collect attorneys fees.

### Hawaii

Hall v. Laroya, 28754 (HIICA) 09/02/2010 – attorneys fees available in action to collect attorneys fees under contract.

### Indiana

Ziobron v. Crawford, 667 N.E.2d 202 (Ind.App. 1996) – attorney acting *pro se* in malicious prosecution case may collect attorneys fees.

### Massachusetts

Robbins v. Krock, 73 Mass.App.Ct. 134 (Mass. 2008) – attorneys fees available to attorney for own time by reason of contract.

### New Jersey

Gyimoty v. Gyimoty, 319 N.J.Super. 544, 725 A.2d 1189 (N.J.Super.Ch. 1998) – attorney fees available to *guardian ad litem* attorney acting *pro se* in action to enforce and collect court ordered fees under New Jersey Court Rule 1:10-3 Relief to Litigant (in pertinent part: “The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule.”).

### New York

Main St. Bldg. Partnership v. Hernandez, 844 N.Y.S.2d 617, 17 Misc.3d 206 (N.Y. Ct. App. Div. 2 2007) – attorneys fees available to attorney representing his firm in real property contract suit.

### Ohio

Mikhael v. Gallup, 2006-Ohio-3917, No. 22992 (Ohio Ct. App. Dist. 9 2006) 08/02/2006 – attorneys fees available to attorney litigant who also represented other defendants simultaneously.

## Circuit Opinions

### D.C. Circuit

*Baker Hostetler LLP v. United States Dept. of Commerce*, 473 F.3d 312 (D.C. Cir. 2006) – attorneys fees available to law firm in Freedom of Information Act action where represented by law firm attorney as there is the existence of an attorney-client relationship.

### First Circuit

*Schneider v. Rico*, 187 F.3d 30 (1st Cir. 1999) – attorney fees available to *pro se* attorney where he represented another client simultaneously in the action.

### Fourth Circuit

*Bond v. Blum*, 317 F.3d 385 (4th Cir. 2003) – attorneys fees available to member of law firm representing the firm in copyright action stemming from use of copyright material in a child custody case handled by the firm.

### Fifth Circuit

*Gold et al. v. Metal Sales Manufacturing Corp.*, 236 F.3d 214 (5th Cir. 2000) – attorney firm entitled to attorneys fees for action to collect fees on contract.

11 FEB 10 PM 12:59

STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

**Court of Appeals for the State of Washington  
Division Two**

In re:

Dee Ann Stiles

Plaintiff,

and

Gerald Kearney

Defendant.

**No. 41289-6-II**

**Declaration of Service**

**Declaration**

My name is Connie J Greene, I am over the age of eighteen years and not a party to this action.

I served the following documents to the Law Office of Gerald A. Kearney at 11227 State Highway 104 NE in Kingston, Washington on December 13, 2010 at 10:38 pm/am:

- 1. Appellant's Reply Brief

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) Kingston, (state) WA on (date) ~~10~~ 2-10-11.

Connie J Greene  
Signature

Connie J Greene  
Print or Type Name

Fees:  
Service \$20.00  
Mileage \_\_\_\_\_  
Total \$20.00