

No. 45593-5-II

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

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TORI KRUGER-WILLIS,

Appellant,

v.

HEATHER HOFFENBURG AND JOHN DOE HOFFENBURG,

Respondent.

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OPENING BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

ASSIGNMENTS OF ERROR.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW.....12

ARGUMENTS.....12

    1. Appearance by an Attorney.....12

    2. Authority of Attorney.....14

CONCLUSION.....17

**TABLE OF AUTHORITIES**

| <b>CASES</b>  | <b>PAGE</b>                      |
|---|----------------------------------|
| <i>Griggs v. Averbeck Realty, Inc.</i> ,<br>92 Wn.2d 576, 583, 599 P.2d 1289 (1979).....          | 13                               |
| <i>In Re: Miller</i> ,<br>95 Wn.2d 43, 625 P.2d 701 (1981).....                                   | 16, 17                           |
| <i>Johnson v. Petersen</i> ,<br>42 Wn. App. 801, 806, 719 P.2d 607 (1986).....                    | 14                               |
| <i>Lane v. Brown &amp; Haley</i> ,<br>81 Wn. App. 102, 108, 912 P.2d 1040 (1996).....             | 12                               |
| <i>Molloy v. Union Transfer, Moving &amp; Storage Co.</i> ,<br>60 Wn. 331, 111 P. 160 (1910)..... | 12                               |
| <i>State ex rel. Turner v. Briggs</i> ,<br>94 Wn. App. 299, 302, 971 P.2d 581 (1999).....         | 12, 13                           |
| <i>State v. Johnson</i> ,<br>128 Wn.2d 431, 443, 909 P.2d 293 (1996).....                         | 12                               |
| <i>Tank v. State Farm</i> ,<br>105 Wn.2d 381, 388, 715 P.2d 1133 (1986).....                      | 15                               |
| <br><b>STATE STATUTES</b>   | <br><b>PAGE</b>                  |
| RCW 2.44.010.....   | 13                               |
| RCW 2.44.020.....   | 1, 14                            |
| RCW 2.44.030.....   | 1, 9, 10, 11, 12, 13, 14, 15, 17 |
| <br><b>COURT RULES</b>  | <br><b>PAGE</b>                  |
| CR2A.....   | 13                               |
| CR 60(e)(1).....  | 13                               |
| <br><b>RULES OF PROFESSIONAL CONDUCT</b>  | <br><b>PAGE</b>                  |
| RPC 1.2(f).....   | 15                               |

**WSBA ADVISORY OPINION**

**PAGE**

928 (1985).....15, 16

## I. ASSIGNMENT OF ERROR

### Assignment of Error

The trial court erred when it denied the appellant's motion under RCW 2.44.030 for respondent's attorney to produce or to prove the authority under which he appeared and to stay all proceedings until such authority was produced or proved.

### **Issues Pertaining to Assignment of Error**

- Whether the provisions of RCW 2.44.020 permits a party to challenge the authority of an attorney to appear for a party after an appellate court issues a mandate to the trial court when:
  1. An attorney is unaware of the actual name of his purported client;
  2. An attorney has *never* had any communications whatsoever with his purported client;
  3. An attorney purports to represent a client with whom he has had no communications through:
    - a. pretrial proceedings;
    - b. an arbitration;
    - c. request for a trial de novo;
    - d. a trial;
    - e. post-trial proceedings;
    - f. an appeal;
    - g. post-mandate proceedings; and

- h. a second appeal.
- 4. The attorney failed to disclose to the trial court and to the appellate court that he has never had any communications whatsoever with his purported client, even after the opposing party alleged in its initial appeal that the attorney acted at the direction of a non-party to the suit;
- 5. The attorney moved to substitute the non-party as judgment creditor instead of his purported client to collect attorney fees and costs awarded by the trial court and affirmed by the appellate court; and
- 6. The attorney finally conceded that he has never had any communications whatsoever with his purported client *after* the appellate court issued its mandate to the trial court.

## II. STATEMENT OF THE CASE

This action arises out of a motor vehicle collision that occurred on February 21, 2008. CP 107. Tori Kruger-Willis<sup>1</sup> 2003 Chevrolet K1500 Suburban was legally parked and unoccupied on the side of the street outside of her place of employment in Shelton, Mason County, Washington. CP 107. Heather Hofferbert<sup>2</sup> was the driver of Derek

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<sup>1</sup> ("Kruger-Willis").

<sup>2</sup> The actual name of the respondent is Heather Hofferbert ("Hofferbert") and not Heather Hoffenburg. Heather Hoffenburg ("Hoffenburg") will be used for purposes of this proceeding.

The misidentification of Hofferbert as Hoffenburg was not due to a scrivener's error; rather, it was by an affirmative representation by Hoffenburg's purported attorney, Morgan Wais, who moved the trial court to change the case caption from Hofferbert to Hoffenburg. CP 107.

Lebeda's<sup>3</sup> 2005 Chevrolet pickup truck. CP 107. Hoffenburg was traveling southbound on the 300 block of North 6<sup>th</sup> Street near West Pine Street when she crashed into Kruger-Willis' vehicle, thereby causing substantial property damage to Kruger-Willis' vehicle. CP 107. Hoffenburg left the scene of the collision without attempting to locate the owner of the vehicle she just hit and without notifying law enforcement. CP 107. Subsequently, Hoffenburg was identified by witnesses at the scene of the collision and she admitted to law enforcement that she was distracted by her falling purse while she was driving and she hit the Kruger-Willis vehicle. CP 107. Hoffenburg was cited by the Shelton Police Department for hit and run/property damage. CP 107. On the police report, the respondent's name was written as Heather Hofferbert. CP 107.

Kruger-Willis filed a claim for diminished value of her vehicle after the repairs to it were complete. CP 107. Lebeda's insurance company, GEICO, offered Kruger-Willis \$397.48 for the diminished value of her vehicle. CP 107. Kruger-Willis declined GEICO's offer because her independently retained property damage appraiser determined that the diminished value of her vehicle greatly exceeded the amount offered by GEICO. CP 107. Kruger-Willis then commenced an action against Derek Lebeda and Heather Hofferbert in Mason County Superior Court for property damage. CP 107. Subsequently, the parties entered into a stipulation to dismiss Lebeda as a party-defendant. CP 107. As Kruger-

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<sup>3</sup> ("Lebeda").

Willis was seeking only monetary damages under \$50,000.00, this matter was transferred to mandatory arbitration. CP 107.

On February 23, 2010, an arbitration hearing took place before arbitrator Laurel Smith (“Smith”). CP 107. At arbitration, GEICO presented no experts to refute Kruger-Willis’ expert’s valuation of her loss. CP 107. Smith made an award in favor of Kruger-Willis in the amount of \$5,044.00. CP 107. Thereafter, GEICO timely filed a request for a trial de novo. CP 107. Hoffenburg’s purported attorney, Morgan Wais,<sup>4</sup> never disputed that it was GEICO and not Hoffenburg who requested the trial de novo, nor did he confirm it. CP 107. Further, Wais did not inform the trial court, the appellate court, or Kruger-Willis that Hoffenburg has never been involved in the defense of the case against her. CP 107. Nearly a year later, on February 15, 2011, GEICO presented Kruger-Willis with an offer of judgment in the amount of \$1,000.00, which she declined. CP 107.

After the request for a trial de novo, the case proceeded to a three day trial on April 26, 2011. CP 107. On April 28, 2011, the jury returned a verdict for Hoffenburg. CP 107. On May 26, 2011, GEICO filed a motion for defendant’s costs and reasonable attorney fees. CP 107. Kruger-Willis opposed the motion because it was not timely filed. CP 107. On June 6, 2011, the trial court heard oral argument from the parties’ counsel regarding the motion and it continued the hearing to allow Wais to submit by declaration the time he expended on the case under the lodestar

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<sup>4</sup> (“Wais”).

method. CP 107. At the hearing, it was not disputed by Wais that GEICO requested the trial de novo, nor did he confirm it, even when he knew that Hoffenburg has never been involved in the defense of the case against her. CP 107.

Thereafter, on June 15, 2011, Wais filed a second motion for costs and for reasonable attorney fees. CP 107. Kruger-Willis opposed the second motion on the basis that as the third party insurance company, GEICO was not an aggrieved party and lacked standing to file a request for a trial de novo and similarly, it could not be considered the prevailing party entitled to reasonable attorney fees. CP 107. On June 27, 2011, the trial court granted Hoffenburg's motion for costs and for reasonable attorney fees in the amount of \$11,490.00, which represented attorney fees from the beginning of the case. CP 107. The appellate court affirmed the trial court's order. CP 107. At no time did Wais advise the appellate court that Hoffenburg had never been involved in the defense of the case against her. CP 107.

Nearly a week after the appellate court affirmed the trial court, Hoffenburg's purported attorney made a demand of \$11,490.00 to Kruger-Willis (CP 100):

**Morgan J. Wais:**

Alana:

I assume that you have seen the attached COA opinion by now. I was wondering when I could expect to receive a check from you and/or your client on this matter. Please let me know. CP 100.

Thanks. CP 100.

**Alana K. Bullis:**

I am considering a Motion for Reconsideration and/or Petition for Cert. My clients are working people with children who suffered property damage through no fault of their own. As lawyers, we may maneuver for legal victories, but the consequences are very real for innocent third parties who only seek what they are entitled to under the law. Would your client consider an amount less than what it is now, considering my clients were awarded \$5500 at arbitration? CP 100.

**Morgan J. Wais:**

Alana:

In terms of a Motion for Reconsideration and/or a Petition for Cert., you do what you feel you need to do. However, it seems to me that you should stop the bloodletting at this point. The Court of Appeals did you a favor by not granting me additional fees for my time spent on the appeal. You should know that if you file a Motion for Reconsideration or a Petition for Certiorari, I will be properly requesting those attorney's fees. CP 100.

In terms of your client's loss, they were paid for it years ago when they had their Suburban fully repaired – 12 people agreed on that. I, frankly, don't feel like your client's should have to pay the \$11,490 owed to us; you should. It is evident that your client was not driving this lawsuit since your client was not even scheduled to appear at trial absent my half-time motion to dismiss. Recall also that we had, in fact, offered \$1,000 to settle the case long before the jury trial. Thus, it was your brazen lawyering that got you (and your client) into this situation, so you should do the right thing and pay the judgment. CP 100.

In terms of accepting an amount less than \$11,490, **I will present the option to GEICO.** Still, I can't think of why **I would advise them** to accept something less when there is currently a judgment, entered by the Superior Court and affirmed by the Court of Appeals, which is accruing interest (emphasis added). CP 100.

**Alana K. Bullis:**

Morgan:

Please send me your Tax ID. CP 100.

Thanks. CP 100.

**Morgan J. Wais:**

Tax ID is 53-xxxxxxx.<sup>5</sup> The check should be written to GEICO.  
CP 100.

Thanks, CP 100.

**Alana K. Bullis:**

GEICO is not the aggrieved party per the courts. Thanks. Will get the satisfaction paperwork and check to you! CP 100.

Immediately after Wais' demand, and before the appellate court issued its mandate to the trial court, appellant tendered payment in the amount of \$11,490.00 to Wais c/o Mary E. Owens and Associate. CP 107. The check was made payable to Heather Hoffenbert. CP 107. Throughout the discussion regarding payment of the \$11,490.00 pursuant to the trial court's order, Wais never related to appellant that he expected an amount greater than \$11,490.00. CP 107.

Upon receipt of the check in the full amount of Wais' demand of \$11,490.00, Wais left a voicemail with Kruger-Willis' counsel stating that the check should have been made payable to GEICO and not to Hoffenburg; that counsel was "playing games;" and that as a result, he now sought interest on the \$11,490.00. CP 107.

When Kruger-Willis refused to reissue a check made payable to GEICO because GEICO was not a party to this action, Wais filed a motion enforcing order and entering judgment against Kruger-Willis. CP 91. In this motion, Wais stated:

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<sup>5</sup> Redacted for purposes of this appeal.

Plaintiff should issued [sic] immediate payment to GEICO General Insurance Company consistent with this Court's previous Order that was then subsequently affirmed by the Court of Appeals, Division II... CP 91.

While Plaintiff will inevitably argued [sic] that she has, in fact, issued payment to the named Defendant, Heather Hoffenburg, Plaintiff's Counsel is doing so knowing full and well that 1) Ms. Hoffenburg **has never been involved in the defense of the case against her**, and that it was GEICO who indemnified and insured Ms. Hoffenburg who should receive the statutory litigation costs and reasonable attorney's fees. Without a doubt, Plaintiff's Counsel issued the payment to "Heather Hoffenburt" (sic) knowing that GEICO would not be able to deposit or otherwise collect the funds that it is entitled to for having indemnified and defended Ms. Hoffenburg. Plaintiff will argue that Ms. Hoffenburg, not GEICO, is the aggrieved party, despite the fact that it is GEICO that incurred the costs of defending the lawsuit on behalf of Ms. Hoffenburg. Significantly, the award of statutory litigation costs and reasonable attorney's fees are not somehow a windfall for GEICO. It was GEICO, not Heather Hoffenburg, that spent tens of thousands of dollars in attorney's time, copying costs, witnesses time, expert witness fees, and travel costs defending the case against Heather Hoffenburg. Since the case was valued at zero dollars by the jury, GEICO legally is entitled to those costs and fees back (emphasis added). CP 91.

...It is not Plaintiff's role to question or otherwise interfere with the contractual relationship of Heather Hoffenburg and her insurance company... CP 91.

This Motion should have been entirely unnecessary and was only brought because Plaintiff's Counsel is stalling and playing games by issuing the payment check to Heather Hoffenburg rather than GEICO, the entity entitled to collect its costs of defending this case. Plaintiff should have to pay Defense Counsel, whom [sic] works for GEICO, an additional \$1,000.00 for unnecessarily having to spend not fewer than eight hours on this motion. CP 91.

On June 24, 2013, the trial court requested that the parties provide it with legal authorities regarding the court awarded costs and reasonable

attorney fees and whether the check could be made payable to GEICO.<sup>6</sup>  
CP 107. Appellant filed a brief with her legal authorities.<sup>7</sup> CP 112.

Based upon Wais' admission that Hoffenburg has never been involved in the defense of the case against her in his motion to enforce order awarding costs and attorney's fees and enter judgment against plaintiff (CP 91), Kruger-Willis moved the trial court under RCW 2.44.030 for Wais to produce or to prove the authority under which he appeared and to stay all proceedings until such authority is produced or proved. CP 107.

In his response to Kruger-Willis' motion under RCW 2.44.030, a Statement of Issue raised by Wais was (CP 110):

Q2: Whether Defendant Hoffenburg's Attorney had authority to act on Defendant Hoffenburg's behalf despite the attorney despite [sic] not having direct communication with Defendant Hoffenburg? CP 110.

In the Conclusions of Law from the same response, Wais states (CP 110):

Plaintiff does not raise new issues with this motion, and her calling into question Defendant Hoffenburg's Attorney's authority to act is too little, too late. Plaintiff did not question GEICO's authority to pay any losses on Ms. Hoffenburg's behalf, but only questions the authority to act when it was adverse to Plaintiff. What's good for the goose is good for the gander. CP 110.

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<sup>6</sup> To date, the trial court has not decided Wais' motion enforcing order and entering judgment against Kruger-Willis, CP 91. More than ninety days has passed since the trial court requested additional briefings from the parties with respect to Wais' motion. CP 107, 112. Under RCW 2.08.240, the time limit for the trial court's decision is ninety days from the date it gave the parties to submit the requested briefs.

<sup>7</sup> Wais did not provide the trial court with the requested brief. CP 107.

On August 9, 2013, the trial court heard oral arguments from the parties' counsel on Kruger-Willis' motion under RCW 2.44.030. CP 107.

In open court, Wais stated (RP 25):

Well, Your Honor, it's not a secret at this point – I don't think it's ever been kept as a secret that there – I have not had contact with the named defendant in this lawsuit. The facts have been substantially outlined and gone over at length. But it seems that plaintiff's argument is simply that just because the – I haven't spoken with the named defendant, that there is no authority, but the fact is that the authority does exist pursuant to the contract... That there hasn't been actual communication with that person despite my diligent efforts to accomplish that, doesn't, I believe, void coverage. RP 25.

In response, Kruger-Willis' counsel argued (RP 28-30):

It's not the plaintiff that created this – what Mr. Wais argued as a novelty; it is Mr. Wais's own position. RP 28.

According to RCW 2.44.030 this can be raised – the attorney's authority to act on any – on his client's behalf can be raised at any time by any party, and that also includes the adverse party. It's not a protection mechanism for the defense under the insurance policy. What it is is it's law. It is law and it [is] also expressed in the RPCs that an attorney must have authority from his or her client to act on the client's behalf, and here Mr. Wais has conceded that he has never spoken to Ms. Hoffenburg. RP 28-29.

And it wasn't until the recent filing that – where he tried to substitute Geico as the party – I guess it's the party creditor -- that he concedes that Ms. Hoffenburg has never been a party to the defense of the case against her. And we learned from that that the plaintiffs have – digging a little bit more and finally we got Mr. Wais to concede that he'd never spoken to the – he can't even find her. And at this point in time the parties and the Court as well have expended a great [deal of time] when Mr. Wais could have denied the policy by the insured or the covered party failing to comply with the cooperation clause under the policy. RP 29.

Plaintiff was at a disadvantage this entire time because we couldn't delve into conversations between Ms. Hoffenburg and Mr. Wais because of attorney-client privilege, but Mr. Wais in his response brief pretty much [concedes] what actually surprised us. He's never spoken to her. You have to speak to your client in order to

get authority, and if you don't have that authority any action beyond that is voidable according to the case law that the plaintiffs provided in their brief. RP 29-30.

So, I guess what we're asking the Court to find is that Mr. Wais has never had communication with his client and therefore he has never had her authority to act on her behalf. And the contract – insurance contract, she's a third party beneficiary. She doesn't have – she doesn't even have knowledge of the terms of the policy, so how can the Court, you know, interpret this contract and apply it to her when she's not even a party to the contract? And I guess I will leave it at that, Your Honor, and rely on our brief and our reply brief. RP 30.

On October 21, 2013, the trial court denied Kruger-Willis' motion under RCW 2.44.030. CP 121. In a memorandum accompanying the order, the trial court stated (CP 120):

In an unpublished opinion by the Court of Appeals, Division II, filed February 21, 2013, the Court of Appeals summarized the claims of Ms. Kruger-Willis and its ruling as follows (CP 120):

Tori-Kruger Willis appeals the trial court's award of attorney fees and costs following a trial de novo, arguing that Heather Hoffenburg's motion for fees and costs was untimely, that Hoffenburg's insurance company lacked standing to request fees and costs, and that the trial court erred in awarding fees incurred before Hoffenburg requested the trial de novo. Finding no error, we affirm. CP 120.

The issue post-mandate has been to whom the check for attorney fees and costs should be made payable. CP 120.

The law of the case being that "Plaintiff shall make payment to Defendant's Counsel, Mary E. Owen & Associates,..." the court will deny Plaintiff's Motion under RCW 2.44.030 for Defendant Heather Hoffenburg's Attorney to Produce or to Provide the Authority Under Which He Appears and to Stay all Proceedings Until Such Authority is Produced or Proved. An Order to that effect is enclosed. CP 120.

### III. STANDARD OF REVIEW

Whether Kruger-Willis may raise the authority of an attorney under RCW 2.44.030 post-mandate when the statute provides that the issue may be raised at any stage during the proceedings involves statutory interpretation – a matter of law. Review of issues of law is *de novo*. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

### IV. ARGUMENTS

**THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT’S MOTION UNDER RCW 2.44.030 BECAUSE THE STATUTE PERMITS A PARTY TO CHALLENGE THE AUTHORITY OF AN ATTORNEY, ON REASONABLE GROUNDS, AT ANY STAGE IN THE PROCEEDINGS.**

#### 1. APPEARANCE BY AN ATTORNEY

A voluntary appearance by an attorney on behalf of a party is presumed to be authorized. *See Molloy v. Union Transfer, Moving & Storage, Co.*, 60 Wn. 331, 111 P. 160 (1910). “[O]nce a party has designated an attorney to represent him in regard to a particular matter, the court and the other parties to an action are entitled to rely upon that authority...” *Lane v. Brown & Haley*, 81 Wn. App. 102, 108, 912 P.2d 1040 (1996).

If the attorney’s appearance is shown to be unauthorized, any judgment or order based on it would be voidable and subject to being vacated on motion. *State ex rel. Turner v. Briggs*, 94 Wn. App. 299, 302, 971 P.2d 581 (1999). “However, voidable orders must be vacated within one year or within a reasonable time, and a meritorious defense must be

demonstrated. CR 60(e)(1); Griggs, 92 Wash.2d at 583, 599 P.2d 1289.”  
*State ex rel. Turner v. Briggs*, 94 Wn. App. at 305.

In *Turner v. Briggs*, Briggs’ attorney entered into a stipulated judgment without his client’s authority establishing paternity and setting child support for Briggs’ alleged child. Briggs argued that since his attorney did not have his authority to enter into the stipulation, the stipulated judgment was void because it did not comply with CR 2A or RCW 2.44.010. The court held that the stipulated judgment was not void, but that it may be voidable if Briggs had moved to vacate it within one year and a meritorious defense was demonstrated. Briggs did not move to vacate the stipulated judgment within one year and he did not present a meritorious defense.

Kruger-Willis timely moved to raise the issue of the authority of Wais to act on Hoffenburg’s behalf. Kruger-Willis presumed that Wais was clothed with the authority to act on Hoffenburg’s behalf, as demonstrated by his multiple filings in this matter declaring that he was the attorney of record for Hoffenburg. It was not until Wais’ motion filed on April 29, 2013, to substitute GEICO for Hoffenburg as the judgment creditor with regard to the award of attorney fees and costs that Wais conceded that Hoffenburg “has never been involved in the defense of the case against her” that Kruger-Willis had a reasonable basis as required under RCW 2.44.030 in which to challenge Wais’ authority to act on Hoffenburg’s behalf. CP 91. Kruger-Willis timely raised this issue in her

response at CP 94 and in her amended response at CP 99 to Wais' motion. While Kruger-Willis has long suspected that Wais was acting in this matter at the direction of GEICO and not Hoffenburg, Kruger-Willis never imagined that an attorney would hold himself out to represent a party without having any communication whatsoever with his purported client. CP 107.

## **2. AUTHORITY OF ATTORNEY**

The authority of an attorney to represent a client may be challenged under RCW 2.44.020 and RCW 2.44.030 by the opposing party. When a party successfully challenges the authority of an attorney to appear for his opponent, an award of damages, including attorney fees, is a means of repairing the injury under RCW 2.44.020, which authorizes a trial court to compel an attorney to "repair the injury" resulting from the attorney's unauthorized appearance. *Johnsen v. Petersen*, 42 Wash.App. 801, 806, 719 P.2d 607 (1986).

RCW 2.44.020 provides:

### **Appearance without authority -- Procedure.**

If it be alleged by a party for whom an attorney appears, that he or she does so without authority, the court may, **at any stage of the proceedings**, relieve the party for whom the attorney has assumed to appear from the consequences of his or her act; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his or her assumption of authority (emphasis added).

RCW 2.44.030 provides:

**Production of authority to act.**

The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he or she appears, and until he or she does so, may stay all proceedings by him or her on behalf of the party for whom he or she assumes to appear.

Likewise, the Washington State Bar Association addresses the authority of an attorney under its Rules of Professional Conduct. RPC

1.2(f) provides:

A lawyer shall not purport to act as a lawyer for any person or organization if the lawyer knows or reasonably should know that the lawyer is acting without the authority of that person or organization, unless the lawyer is authorized or required to so act by law or a court order.

There was no court order entered in this matter that authorized Wais to act on behalf of Hoffenburg and Lebeda's insurance company, GEICO, cannot be the client under Washington law,<sup>8</sup> therefore, Wais required authority from Hoffenburg to act on her behalf.

Again, the Washington State Bar provides guidance with respect to the authority of an insurance company-retained attorney. According to WSBA Advisory Opinion 928 (1985), a lawyer retained by an insurance company must have contact with the client before he or she has authority to act on the client's behalf:

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<sup>8</sup> See *Tank v. State Farm*, 105 Wn.2d 381, 388, 715 P.2d 1133 (1986) "Both retained defense attorney and the insurer must understand that *only the insured* is the client." (emphasis added).

### **Formation of Attorney-Client Relationship**

[The lawyer was retained by an insurance company to represent an employee of the insured company. The employee was covered under the terms of the insurance policy but was no longer employed by the insured.] In reviewing your inquiry, the Committee understood the facts to be that the employee you had been requested to represent had had no contact with you, and that in fact no attorney-client relationship had ever been formed. Based upon that understanding of facts, the Committee was of the opinion that you had no authority to act as lawyer for the employee, and therefore should not enter a general denial on his behalf.

As outlined in the Statement of Facts, *supra*, Wais did not concede until post-mandate that he has never had any communications whatsoever with Hoffenburg. Accordingly, Wais had no authority from Hoffenburg to represent her; to dismiss Lebeda from the case; to file a request for a trial de novo; to proceed to trial; to move for costs and for reasonable attorney fees; to represent her in the subsequent appeal; or to file any motions after the appellate court issued its mandate to the trial court. Simply put, Wais had no authority whatsoever to act in this matter on behalf of Hoffenburg.

In *In Re: Miller*, 95 Wn.2d 453, 625 P.2d 701 (1981), an attorney was disciplined by the Bar for approving a stipulated judgment against his clients without their authority and allowing that judgment to be entered without advising the court of his lack of authority. The court held that the attorney had a duty to disclose to the court his lack of authority when the attorney signed the judgment without authorization and allowed its presentation to the court for approval. *Id.* at 456. "Simply permitting the entry of such a judgment without disclosure to the Court is prejudicial to the administration of justice." *Id.*

In *Miller*, the attorney's lack of authorization caused the parties numerous filings that required the use of the court's time and resources. "[Miller's] actions caused the Court to enter a judgment which he justifies on the ground that it was a nullity due to his lack of authority. It caused a motion to vacate, required a defense and necessitated another judge to hear the vacation motion." *Id.* The court found that such actions are prejudicial to the administration of justice.

Here, we have an attorney who has *never* spoken to his client, much less obtained the authority to act on her behalf, and he represented to the trial court and to the appellate court that he was clothed with such authority through discovery; through appellant's deposition; through an arbitration; through a trial; through an appeal; through post-mandate filings; and now, through a second appeal. Such actions are prejudicial to the administration of justice.

## V. CONCLUSION

For the foregoing reasons, this court should find that Wais did not have authority to appear for Hoffenburg in this matter and it should reverse the trial court's denial of Kruger-Willis' motion under RCW 2.44.030.

RESPECTFULLY submitted this 11<sup>th</sup> day of May, 2014.

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CERTIFICATE OF SERVICE

I certify that on May 11, 2014, I caused a true and correct copy of this Opening Brief of Appellant to be served on the following by U.S. First Class Mail, postage prepaid.

**Counsel for Respondent:**

**Morgan J. Wais  
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GEICO Staff Counsel  
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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

*/s/ Alana K. Bullis*  
Alana K. Bullis