

NO. 47994-0-II

COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

John R. Toney,
Appellant

v.

Lewis County, Lewis County
District Court et, al, Lewis
County Prosecuting Attorney's
Office et, al, J. David Fine,
Pamela Shirer, Just Hazel Doe,
Irene Whitman, Jane Doe's 1-10,
John Doe's 1-8,
Respondent's.

FILED
COURT OF APPEALS
DIVISION II
2016 JUN 27 AM 9:02
STATE OF WASHINGTON
BY DEPUTY

amended

BRIEF OF APPELLANT

John R. Toney, appellant
9531 Barnes DR.
Castle Rock Wa. 98611
360-274-5840

Glenn Carter, WSBA # 33863
Chief Civil Deputy
J. David Fine WSBA #33362
Senior Civil Deputy, Prosecuting Attn.
Counsel for Defendants Lewis County
345 W. Main St. 2nd. Floor civil division
Chehalis Wa. 98532
360-740-1240

pm 6/23/16

TABLE OF CONTENTS

ASSIGNMENT OF ERROR No. 1 / ISSUES	p. 2-3
ASSIGNMENT OF ERROR No. 2. / ISSUES	p. 3
ASSIGNMENT OF ERROR No. 3 / ISSUES	p. 3
STATEMENT OF THE CASE	p. 3-5
ARGUMENT No. 1 VENUE	p. 5-10
ARGUMENT FOR IMPROPER SERVICE	p. 11-13
ARGUMENT FOR SUBSTANTIAL COMPLIANCE	p. 13-16
CONCLUSION	p. 16
APPELLANTS MOTION FOR FEES AND COSTS	p.16 17

Constitutional Provisions

Article IV Section 7 SECTION p. 6

Statutes

RCW 2. 08.030 p.9

RCW 2.08.140 p. 9

RCW 2.08.150 p. 9

RCW 2.08.190 p.7

RCW 2.08.200 p. 6

RCW 4.12.030 p. 6

RCW 4.12.080 p.7

RCW 4.96. 020 p. 15

RCW 4.96.020(5) p. 15

Court Rules

CR 1 p. 9

CR 4 p. 3,12, 13

CR 5 p.3,12 ,13

CR56 (c) 5 p. 6

Rule 82 Venue p.7

Rules of Professional Conduct

RPC 3.3 p. 15

RPC 3.4 p. 15

RPC 8.4

p. 15

Exhibits

Exhibit 1

p. 14

Exhibit 2

p. 14

Exhibit 3

p. 14

Exhibit 5

p. 3

Exhibit 6

p. 4

Exhibit 7

p. 4

I. ASSIGNMENTS OF ERROR

ERROR No. 1. Judge Evans erred, departing from the normal course of proceedings under Washington Law, the legislative intent and the court rules, acting as a visiting judge for Lewis County Washington subsequently hearing the Motion for Summary Judgment in the improper venue of Cowlitz County without an order for change of venue from Lewis County or consent of the parties and disregarding the proper objections by Toney.

ISSUES PERTAINING TO ERROR No. 1.

No. 1. Should the court have followed over 100 years of law in Washington State, the intent of the legislature under RCW statute regarding venue and personal jurisdiction and Summary Judgment as well as the applicable court rules.

No. 2. What county had proper venue.

No. 3. Did Judge Evans have personal jurisdiction over the parties to the action in Cowlitz County when the action was commenced in Lewis County and no order of change of venue was issued or agreed to by the parties.

No. 4. Is an order of Summary Judgment void without the court having both proper venue and personal jurisdiction of the parties in the action.

No. 5. Does a court administrator retain authority to act on behalf of judges after recusal by those judges.

ERROR No. 2. Judge Evans erred allowing a named party to serve process.

ISSUES PERTAINING TO ERROR No. 2.

No. 1. Should the court have followed the intent of the Washington civil rules for service of process under CR 4 and CR 5 for all pleadings and papers before the court.

No. 2.. Was service of process upon Toney improper if a named defendant J. David Fine completed all service of process.

ERROR No 3. Did judge Evans abuse his discretion with regards to substantial compliance.

ISSUES PERTAINING TO ERROR No. 3.

No. 1. Did Toney's filing of the complaint before the 60 days passed warrant summary judgment dismissal or was it within the scope of substantial compliance.

No. 2. Was the courts ruling on substantial compliance based upon false information supplied by David Fine.

II. STATEMENT OF THE CASE.

Lewis County case no. 15 2 00500 4 had it's origin based upon a Lewis County Superior Court award on of costs and fee's \$622.55 on May 18, 2005, for appellant John R. Toney, EX 5 remanded for a new trial in Lewis County District Court on a traffic infraction in 2005. Toney tried without success to recover his costs and fees from District Court on several occasions but the clerks would either not accept the filing fee

or file garnishment papers or pay the cost's and fee's award to Toney therefore no court documents are currently available for the attempted garnishments.

Toney suffered a heart attack with severe consequences and complications and was unable to follow-up until April 15, 2015 for collection of monies owed Toney. The statute of limitations was near, Toney once again attempted to file garnishment papers and pay the filing fee to Lewis County District Court and once again the deputy clerks refused to perform their statutory duty and accept the filling fee or file garnishment documents.

Toney's process server did serve a Tort Claim against the county and the court clerks involved on April 15, 2015 CP 19, 20. By statutory required service upon Lewis County Auditor but did not pay the filling fee.

J. David Fine a civil deputy for Lewis county on May 18, 2015 CP 26 did mail to John Toney a ten day demand letter that I file the lawsuit, this required that Toney file the suit and pay the filling fee before the statutory sixty days (60) time limit expired.

Toney filed an amended Summons CP 1 - 3, and Amended Complaint CP 4- 8 and had the named parties served along with the county auditor with the exception of J. David Fine on May 27, 2015.

Named defendant Fine filed Defendant's Motion for Summary Judgment on May 29, 2015 CP 11-16, along with his declaration CP 17-26 .

Judges Hunt, Lawler and Brosey sitting as elected Superior Court judges for Lewis county all filed recusals from the case on June 1, 2015 CP 27, 28, 29, and on June 14 2015 Susie Parker Superior Court Administrator notified the parties that Judge Evans

would act as visiting judge in Cowlitz County for all motions but all filings would be done in Lewis County and trial would be in Lewis County, CP 30.

Toney objected EX 6.

On June 26, 2015 the matter was called on the civil docket for Motion for Summary Judgment in Lewis County Superior Court and stricken without notice to Toney EX 7. The Motion for Summary judgment was brought before (visiting) Judge Evans CP 140 in Cowlitz County Superior Court on July 8, 2015 and the Order Granting Summary Judgment signed by Judge Evans which was filed on July 16, 2015 in Lewis County CP 203-205 which is the order which Toney now appeals.

II. ARGUMENT

Argument for assignment of error No. 1. Venue.

This matter before the court originates from Lewis County Washington on defendant's motion for summary judgment (CP 11-16) heard in Cowlitz County Superior Department 2 July 7, 2015 in Kelso Washington before the Honorable Michael H. Evans (CP 140) without a change of venue, or agreement of the parties and a resulting in a subsequent order granting summary judgment for defendant's signed in Cowlitz County and filed in Lewis county some eight (8) days later on July 16, 2015. (CP 128-129).

16 We review a trial court's summary judgments de novo. *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). A material fact is one on which the

outcome of the litigation depends in whole or in part. Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

RCW 2.08.200 Decisions and rulings in matters heard outside judge's district.

Any judge of the superior court of the state of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his or her district, may decide, rule upon, and determine the same in any county in this state, **which decision, ruling, and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending.(emphasis added).**

Toney, as plaintiff presented argument before the court (CP 88-97) and at (CP, 140-153) that the visiting judge Evans lacked both proper venue and personal jurisdiction to hear the matter in Cowlitz County. Judge Evans as an elected Superior court judge of Cowlitz county does enjoy subject matter jurisdiction under Article IV section 6 of the Washington State Constitution statewide, however as a visiting judge may only hold court in another county if certain conditions are met, which were not.

Under Article IV Section 7 SECTION 7 EXCHANGE OF JUDGES — JUDGE PRO TEMPORE. The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his or her duty to do so. is agreed upon in writing by the parties litigant or their attorneys of record,

The present case no agreement of the parties was ever made to change venue, (CP 152) Judge Evans statement “ And to the argument that it was done without the parties’ stipulation, there doesn’t need to be any stipulation.” Is clearly in error. State v. ex rel. Lefebvre v. Clifford, 65 Wash. 3113, 118 Pac. 40, the spirit and reason of the

law must be regarded to the end that there should be no undue interference with the orderly administration of justice;

RCW 4.12.080 Change by Stipulation.

Notwithstanding the provisions of RCW 4.12.030 all the parties to the action by stipulation in writing or by consent in open court entered in the records may agree that the place of trial be changed to any county of the state, and thereupon the court must order the change agreed upon.

RCW 2.08.190

Powers of judge in counties of his or her district.

Any judge of the superior court of the state of Washington shall have power, in any county within his or her district: (1) To sign all necessary orders and papers in probate matters pending in any other county in his or her district; (2) to issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his or her district; **(3) to decide and rule upon all motions, demurrers, issues of fact, or other matters that may have been submitted to him or her in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county: PROVIDED, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties. (emphasis added)**

Rule 82, Venue

(2) In a county in which the acts, or any of them, were done which gave rise to service under RCW 4.28.180 and 4.28.185...

The Lewis County Superior court judges Hunt Lawlier and Brosy all individually filed letters of recusal on June 1, 2015 (CP 27-30) without filing an order appointing a visiting judge to hear the matter,

State Ex Rel, Carpenter v. Superior Court, 131 Wash. 448, 230 When the visiting judge has been obtained, an order should be made transferring the case to such judge, and notice given to the parties to the cause, or to their attorneys, of the designation and transfer to the visiting judge to take charge of the case.

Toney received a letter from Superior Court Administrator , Susie Parker (CP 30) dated June 14, 2015 which was not filed with the court clerk, indicating that Judge Evans of Cowlitz County would hear the motions in Cowlitz County and if trial be had it would be under Lewis County court rules in Lewis county. It is Toney's position that Susie Parker cannot appoint a visiting judge for several reasons,

(CP 146)

Mr. Toney: ... Now, Susie Parker, who is the court administrator for Superior Court, she sent a letter, and it was June 14th, where she basically appointed you as the judge to hear the case.

The Court: She did not appoint me.

Mr. Toney: Well whatever. Says—

The Court: She asked me and I said, “yes”

Susie Parker is not authorized by statute to appoint visiting judges, and upon judges Hunt, Lawlier and Brozys recusal Susie would likewise be unable to act at their direction as they had removed themselves from any matters in the case. Susie Parker is not acting on behalf of the Governor, the judges, or the Supreme Court or governing body of the county and has provided no orders or other legal documents that would authorize her to act in appointing a visiting judge or assigning a place of hearings or trial.

Susie Parker is not a listed person under statute who is authorized by statute to determine

where court shall be held. Judge Evans at (CP 150) States: "We're going to have court here." Referring to Cowlitz county.

Courts of record—Sessions.

RCW 2.08.030 The superior courts are courts of record, and shall be always open, except on non judicial days. **They shall hold their sessions at the county seats of the several counties, respectively, and at such other places within the county as are designated by the judge or judges thereof with the approval of the chief justice of the supreme court of this state and of the governing body of the county. (emphasis added)** They shall hold regular and special sessions in the several counties of this state at such times as may be prescribed by the judge or judges thereof.

RCW 2.08.150

Visiting judge at request of judge or judges.

Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county **to the superior judge of any other county, he or she is hereby empowered, if he or she deem it consistent with the state of judicial business in the county or counties whereof he or she is a superior judge (and in such case it shall be his or her duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners,** (emphasis added) and during such period as shall have been specified in the request, or such shorter period as he or she may deem necessary by the state of judicial business in the county or counties whereof he or she is a superior judge.

RCW 2.08.140

Visiting Judge at direction of Governor

Whenever a judge of the superior court of any county in this state, or a majority of such judges in any county in which there is more than one judge of said court, shall request the governor of the state to direct a judge of the superior court of any other county to hold a session of the superior court of any such county as is first herein above mentioned, the governor shall thereupon request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties, to hold a session of the superior court in the county the judge shall have requested the governor as aforesaid. Such request and direction by the governor shall be made in writing, and shall specify the county in which

he or she directs the superior judge to whom the same is addressed to hold such session of the superior court, and the period during which he or she is to hold such session. **Thereupon it shall be the duty of the superior judge so requested, and he or she is hereby empowered to hold a session of the superior court of the county specified by the governor, at the seat of judicial business thereof, during the period specified by the governor, and in such quarters as the county commissioners of said county may provide for the holding of such session. (emphasis added)**

Venue in Civil litigation can only do so as per RCW statute which sets forth venue according to the Civil Rules and RCW statutes:

RULE CR 1 SCOPE OF RULES

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

State ex rel. Clark v. Neal, 19 Wash. 642, 54 P. 31

The appellants also insist that the judge who tried this case, being called from another county, had no authority to sign the findings and judgment outside Clallam county. There is no merit to this contention.

Also in Comstock Q.M. Co. v. Superior Court, 57 Cal.625:

“ it was not the signing but the filing of the findings and order for judgment that determined the action.”

The complaint and summons were filed in Lewis County Washington on May 27, 2015, Venue (place) personal jurisdiction follows venue therefore Jurisdiction and Venue are properly before Lewis County Superior Court not Cowlitz County Superior Court. (CP 140).

The intent of the legislature is quite clear with regard to venue, Superior court judges jurisdiction within their respective counties where court may be held, who may designate the respective places that court may be held, who may appoint a visiting

judge and set forth the restrictions upon a judge hearing matters outside his or her district and the procedure for filling of documents. Judge Evans clearly did not follow the statutory language set forth in both the case law and the intent of the legislature dealing with visiting Judges in Washington.

ARGUMENT FOR IMPROPER SERVICE

J. David Fine a named party (CP 1 and 2) and counsel for the defendants, (CP 142)

Mr. Fine: I also appear for (emphasis added) the District Court of Lewis County; for Lewis County; for the Lewis County Prosecuting Attorney's Office; for two insubordinate clerks of the District Court; a lady identified as "Just Hazel Doe", who's in fact , Ms. Hazel Dibble; for Irene Whitman; and I assume, for up to 10 Jane Does. Up to 18 John Does; **and for myself.(emphasis added)**

Made an admission on the record that he was indeed a party to the action as a named defendant in the action. Mr. Fine filed a Notice of Appearance on May 28, 2015 (CP 9) on behalf of the defendant's and further on (CP 10) provided a Certificate of Service which stated:

I hereby certify that on May 28, 2015, I caused a true copy of the foregoing pleading to sent by U.S. Mail with first class postage prepaid to:

John R. Toney
9531 Barnes Drive
Castle Rock Washington 98611

Mr. Fine filed his Defendant's Motion for Summary Judgment (CP 11) on May 29, 2015 and at (CP 16) signed the document and again included the Certificate of Service signed by himself.

Mr. Fine also filed a Declaration of J. David Fine in Support of Defendant's Motion for Summary Judgment on May 29, 2015 (CP 17- 18 with exhibits CP 19-26) (CP page 18 contained a declaration signed by J. David Fine and the Certificate of Service of mailing once again signed by Mr Fine personally.

Mr Fine has likewise filed with the court additional documents for Certificates of Service upon John R. Toney at (CP 33, 87, 123, 125, 127)

Toney properly objected to service of process (CP 155- 161) by the defendant J. David Fine in violation of CR 4 and 5 the action improperly brought before the Cowlitz County Superior Court.

All pleadings are the product of improper service and are thereby void.

CR 4 Process (2) (c) By whom Served. Service of summons and process, except when service is by publication, shall be by the sheriff of the county IV. wherein the service is made, or by the sheriff's deputy, or by any person over 18 years of age who is competent to be a witness in the action, **other than a party**.. (emphasis added) .

CR 5 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS
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** (emphasis added) 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. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them **shall be served upon them in the manner provided for service of summons in rule 4.(emphasis added)**.

Gross v. Sunding, 139 Wn. App. 54, 60, 161 P. 3d 380 (2007) "Since proper
"To be sufficient, service should have been effectuated according to the require

statutory procedure...”

Service of Motion

Richard C. Woodruff, Respondent, v. Richard Spence, et al. Appellants. 76 Wn. App. 207.

(1) Process - Service – Validity – Invalidity – Effect Proper service of the summons and complaint is a prerequisite to the court’s obtaining jurisdiction over a party. A judgment entered without jurisdiction is void.

(2) Process - - Service – Validity - Affidavit of Service – Burden and Degree of Proof. A party challenging the validity of service of process must overcome the presumption that an affidavit of service is correct and demonstrate, by clear and convincing evidence, that service was improper.

Toney properly objected to Fine’s service. Plaintiff was served by the defendant J.

David Fine in violation of CR 4 and 5 and Judge Evans understanding of the court rules was in error.

At (CP 199 and 202) both Mr. Carter and Mr. Fine have enlisted Casey Mauerman to perform proper service by mail upon Toney in accordance with the court rules for proper service.

ARGUMENT FOR SUBSTANTIAL COMPLIANCE

Judge Evans was deliberately misled by Mr. Fine (CP 162-167) with regards to the 60 day waiting period, Mr. Fine stated that Mr. Toney waited only 32 days (CP 163) and at (CP 164) Fine stated “Mr Toney then filed a cause of action on May 27th, which is 47 days following the filing of the tort-claim notice.”

It is undisputed as to the time line of filing of the tort claim (CP 17 at exhibit A) and filing of the amended complaint (CP 1-8). Mr Fine’s demand letter of May 18, 2015 (CP 17 at exhibit C) Toney had no choice but to file the complaint prior to the 60 day limitation.

Mr Fine at (CP 166 states “You can’t begin to discharge a burden, Your Honor, until you adduce evidence showing that there --- the purpose of the tort – claim statute has been met, that the risk manager or other authorities in Lewis County had had sufficient time to fully dispose of the tort – Claim notice, to consider it, to contemplate it, to evaluate it, to adjust it if they should choose to do so.

No evidence has been forthcoming by plaintiff to show that. Therefore, plaintiff has – cannot begin to a claim here that he has he has substantially complied with the purpose underlying the tort – claim notice statute.” Mr Fine has acted in bad faith and presented sworn declarations and motions before the court to obtain the dismissal of Toney’ lawsuit, done as a officer of the court, Fine was instrumental in advising the Members of Risk Management for Lewis County (exhibit 1) and Toney’s claim.

Paulette Young received an e-mail from Tawni Sheperd on April 27, 2015 (exhibit 2) which states in part: “The County has not been approved to handle this matter.” And set total indemnity of \$3,000 dollars.

Holly Fierro and Paulette Young email on April 30, 2015 (exhibit 3) clearly indicates that David Fine was involved in the process, which he did not disclose to Judge Evans, but knew full well that the claim was being denied when Fine filed the Motion for Summary Judgment and well before the matter was heard by Judge Evans.

Substantial Compliance is set forth in the case of Lee v. Metro Parks Tacoma P 3d.
1014

¶ 12 However, in 2009 the legislature enacted a new subsection to RCW 4.96.020, which states:

With respect to the content of claims under this section and all *procedural requirements* in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

RCW 4.96.020(5) (emphasis added). Therefore, the substantial compliance doctrine now applies to the "procedural requirements" of RCW 4.96.020. The question here is whether the 60-day waiting period is a "procedural requirement."

¶ 13 Our Supreme Court explained the meaning of the term "procedural" in *Purman v. Wenatchee Valley Medical Center, P.S.*, 166 Wash.2d 974, 984-85, 216P.3d 374 (2009) and *Waples v. Yi*, 169 Wash.2d 152, 234 P.3d 187 (2010). Both cases support a finding that a statutory waiting period before filing suit is procedural.

RPC 3.4 FAIRNESS TO OPPOSING PARTY

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

RPC 8.4 MISCONDUCT It is professional misconduct for a lawyer to:

- (d) engage in conduct that is prejudicial to the administration of justice;
- (g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities

Defendant Fines "Service Issues" argument lacks merit and is frivolous and constitute a violation of RPC 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by the opposing party; or
- (4) offer evidence that the lawyer knows to be false.

CONCLUSION

It is clear from the record in this case that the matter that Toney did substantially comply with the tort claim statute, that the matter was properly before the Lewis County Washington Superior Court, the three Superior Court Judges of Lewis County recused themselves, that no party motioned the court for change of venue, and no change of venue was ordered. The Summary Judgment motion was improperly served by David Fine a named party to the action, heard in Cowlitz County by visiting Judge Evans outside the jurisdiction of Lewis County without stipulation of the parties, properly objected to by Toney, The order of Summary Judgment was entered on July 8, 2015 by Judge Evans in Cowlitz County and filed in Lewis County July 16, 2015. The court departed from the usual course of proceedings under Washington Law, along with Mr. Fine's manipulation in bad faith of events to thwart Toney's lawsuit, the Summary Judgment order of July 8, 2015 should be reversed and the case remanded for trial on the merits to within Lewis County before a proper appointed visiting judge.

AWARD OF FEE'S AND COSTS

Appellant Toney would seek an award of attorney's fees and costs against the Respondent. Costs have included at least the filing fee of \$290.00. Clerks papers fee of \$157.00 and a report of proceedings transcription fee of \$434.00 and estimated photocopies of \$160.00 (clerk's office copies approximately \$50.00, Pooster Graphics approximately \$100.00 @\$.11 per copy), Process service fees \$125.00 (5 process @ \$25.00), Postage \$15.00 (certified and first class postage). In addition appellant's time to date is preliminarily estimated to have consumed no

fewer than 23 hours at \$200.00 per hour for an attorney's fee of at least \$4600.00.

Thus an award against Respondent of \$ 5781.00 for fees and costs is sought.

Dated June 23, 2016 at Castle Rock, Washington.

Respectfully submitted,



John R. Toney, appellant
9531 Barnes Dr.
Castle Rock Wa. 98611
1-360-274-5840

Risk Management Update Minutes

April 21, 2015

Attendees: Commissioner Stamper, Commissioner Schulte, Commissioner Fund, Paulette Young,

Start Time 9:05 a.m. End Time 9:30 a.m.

1. New Tort Claims

- a. John Russo – Lost property – Claims jail did not give him back his underwear, socks and debit card - \$65.00 – Paulette was waiting on the jail property log to make a determination.
- b. John Toney – Civil Rights Violation – claims District Court employees refused to perform their duties under statute of their oath of office, resulting in monetary loss, discrimination, constitutional rights and mental anguish - \$1,000,000. – Turned into the Risk Pool, haven't heard back from them. [REDACTED]

[REDACTED]. Redaction #1

2. Review of Risk Pool Open Loss Run – Reviews the open loss run by claim. No decisions were made, discussion only.

Meeting ended at 9:30 am.

exhibit 1

Paulette Young

From: Tawni Shepherd
Sent: Monday, April 27, 2015 10:46 AM
To: Paulette Young
Subject: FW: Claim Assigned

FYI

From: claims@wcrp.wa.gov [mailto:claims@wcrp.wa.gov]
Sent: Monday, April 27, 2015 10:43 AM
To: Tawni Shepherd
Cc: holly@wcrp.wa.gov
Subject: Claim Assigned

The claim you submitted on 04/15/15 for John Toney, Claim Number Unknown has been assigned to Holly Fierro for monitoring.

The County has not been approved to handle this matter.

The Risk Pool claim number is LW2015060274.

The following reserves have been set on the file:

Expenses: County: \$ 2,000.00 Pool: \$ 0.00 Over SIR: \$ 0.00 Total Expenses: \$ 2,000.00

Claimant Name	Type	Amount
John Toney	Co Indem	3,000.00
		Total Indemnity: \$ 3,000.00

If you would like to discuss reserves please contact the adjuster listed above.

exhibit 2

Paulette Young

From: Holly Fierro <holly@wcrp.wa.gov>
Sent: Thursday, April 30, 2015 1:42 PM
To: Paulette Young
Subject: RE: Toney - Tort Claim

Hi Paulette,

That's exactly what I was calling you about, I wanted to see what you thought and what we could gather to figure out whether this is bogus or not. If David is working on this I will just wait to hear back from you once he's had a chance to review. I appreciate the additional information.

Thank you,
Holly Fierro, AINS
Washington Counties Risk Pool
Claims Analyst
360-292-4484

From: Paulette Young [mailto:Paulette.Young@lewiscountywa.gov]
Sent: Thursday, April 30, 2015 12:36 PM
To: Holly Fierro
Subject: Toney - Tort Claim

Hi Holly,

Here is some more information on the Toney claim. I think it is a bogus claim and am having David Fine look it over.

Let's talk this afternoon. I am back in my office now.

Paulette Young
Risk & Safety Administrator
(360) 740-1279 – Office
(360) 740-1494 - Fax

exhibit 3

June 22, 2015

Susie Parker
Superior Court Administrator
345 W. Main St.
Chehalis Wa. 98532

Re: Toney v. Lewis County et al.
Lewis County No. 15-2=00500-4

Dear Susie:

Please be advised that I formally object to your moving this matter to Cowlitz County Superior Court for presentation of any matters before the court, as Cowlitz County Superior Court has no subject matter jurisdiction and the proper venue lies with Lewis County, as the alleged acts and or omissions occurred, and I do believe that the defendant's all reside within Lewis County Washington.

Cowlitz County Superior Court rulings therefore would be null and void for lack of subject matter jurisdiction and have no effect upon the matters before the court.

If the matter is to be heard in Cowlitz County it will be required that you pay the appropriate fees for change of venue, to which I object.

RULE 82 Change of Venue--Fees. Any fees or costs required to be paid by a party pursuant to RCW 4.12.090 shall be to the clerk of the county from which the case is being transferred by check or money order made payable to the clerk of the county to which the case is being transferred.

exhibit 6

6/24/2015 3:12
PM

Friday, 06/26/2015

Civil Docket

9:30 AM

Courtroom #3-4th Floor Law and Justice Center

4th Floor Law & Justice Center

Clerk: Roberts, Joelle

Court Reporter: Turner, Jessica

(13)

9:30 AM

15-2-00500-4

JOHN R. TONEY VS LEWIS COUNTY ET AL

TONEY, JOHN R

LEWIS COUNTY : : : : :
, NFN
MOTIONS MT FOR SUM JDGMNT

STRICKEN

Being heard in Cowditz County.

exhibit 7

FILED
COURT OF APPEALS
DIVISION II
2016 JUN 27 AM 9:02
STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS DIVISION II FOR THE STATE OF WASHINGTON

Lewis County, Lewis County District)	
Court et, al, Lewis County)	
Prosecuting Attorney's Office et al, J.)	
David Fine, Pamela Shirer,)	
Just Hazel Doe, Irene Whitman, Jane)	
Doe's 1-10, John Doe's 1 -8,)	No. 47994-0-II
Respondent's,)	Affidavit of service
v.)	
)	
John R. Toney)	
Appellant.)	

I Declare/Affidavit:

1. I, Sandra A. Putaansuu, am over the age of 18 years, and I am not a party to this action.
2. I served David Fine Chief civil deputy for Lewis County and attorney of record for the named defendants with the following documents by first class U.S. Mail postage prepaid on 4-5-2016: Lewis County Prosecuting Attorney's Office
345 W: Main St. 2nd. Floor, civil division
Chehalis Wa. 98532
 - a. Appellants Amended Brief

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

Signed at Castle Rock, Washington on May 9, 2016.

Sandra A. Putaansuu June 23, 2016

Sandra A. Putaansuu
9531 Barnes
Castle Rock Wa. 98611