

FILED  
Court of Appeals  
Division II  
State of Washington  
10/29/2018 3:29 PM  
No. 51314-5-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**BRIAN DAVIDSON,**

Appellant.

---

Appeal from the Superior Court of Washington for Pacific County

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**Respondent's Brief**

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MARK McCLAIN  
Pacific County Prosecuting Attorney

By:

  
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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
I. RESPONSE TO ASSIGNMENTS OF ERROR.....	1
II. RESPONSE TO ISSUES PERTAINING TO ERROR.....	1
III. STATEMENT OF THE CASE.....	2
IV. MOTION TO STRIKE.....	4
V. ARGUMENT.....	8
A. Filing a “Motion and Proposed Order to Show Cause” was insufficient to bring a cause of action pursuant to the Public Records Act .....	8
1. Standard of Review.....	9
2. Mr. Davidson failed to properly bring a cause of action.....	10
B. VEXATIOUS LITIGANT .....	13
1. Standard of Review.....	14
2. Mr. Davidson is a vexatious litigant.....	14
C. AWARD OF FEES.....	15
1. Standard of Review.....	16
2. The assessment was \$250 was reasonable.....	16
V. CONCLUSION.....	17

## TABLE OF AUTHORITIES

### **Washington Cases**

<i>Berchler v. Wenatchee Valley College</i> , 174 Wn.App. 141, 289 P.3d 110 (2013).....	11
<i>Bryant v. Joseph Tree, Inc.</i> 119 Wn.2d 210, 829 P.2d 1099 (1992) .....	16
<i>Durland v. San Juan County</i> , 175 Wn.App. 316, 305 P.3d 246 (2013).....	9, 12
<i>Green v. Normandy Park</i> , 137 Wn.App. 665, 151 P.3d 1038 (2007).....	9
<i>Hadley v. Maxwell</i> , 144 Wn.2d 306, 27 P.3d 600 (2001) .....	12
<i>In re Marriage of Lilly</i> , 75 Wn.App. 715, 880 P.2d 40 (1994) .....	14
<i>In re Marriage of Giordano</i> , 57 Wn.App. 74, 787 P.2d 51 (1990) ..	15
<i>In re Marriage of Schnurman</i> , 178 Wn.App. 634, 316 P.3d 514 (2013), <i>review denied</i> , 180 Wn.2d 1010 (2014).....	6
<i>Kruse v. Hemp</i> , 121 Wn.2d 715, 853 P.2d 1373 (1993).....	9
<i>Landberg v. Carlson</i> , 108 Wn.App. 749, 33 P.3d 406 (2001) .....	15
<i>Landstar Inway, Inc. v. Samrow</i> , 181 Wn.App. 109, 325 P.3d 327 (2014).....	6
<i>Martini v. Post</i> , 178 Wn.App. 153, 313 P.3d 473 (2013).....	6
<i>Metz v. Sarandos</i> , 91 Wn.App. 357, 957 P.2d 795 (1998).....	5
<i>Moore v. Wentz</i> , 11 Wn.App. 796, 525 P.2d 290 (1974).....	6
<i>Mueller v. Miller</i> , 82 Wn.App. 236, 917 P.2d 604 (1996).....	11
<i>Rains v. State</i> , 100 Wn.2d 660, 674 P.2d 165 (1983) .....	12

<i>Schaefco, Inc. v. Columbia River Gorge Comm'n</i> , 121 Wn.2d 366, 849 P.2d 1225 (1993).....	5
<i>SentinelC3, Inc. v. Hunt</i> , 181 Wn.2d 127, 331 P.3d 40 (2014).....	6
<i>State v. Kelley</i> , 64 Wn.App. 755, 828 P.2d 1106 (1992).....	5
<i>Streeter–Dybdahl v. Nguyet Huynh</i> , 157 Wn.App. 408, 236 P.3d 986 (2010).....	9
<i>Spokane Research &amp; Defense Fund v. City of Spokane</i> , 155 Wn.2d 89,117 P.3d 1117 (2005).....	7, 10
<i>Troxell v. Rainier Public School Dist. No. 307</i> , 154 Wn.2d 345, 111 P.3d 1173 (2005) .....	10
<i>Washington State Physicians Ins. Exch. &amp; Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 858 P.2d 1054 (1993).....	9
<i>Westerman v. Cary</i> , 125 Wn.2d 277, 892 P.2d 1067 (1994).....	7
<i>Witt v. Port of Olympia</i> , 126 Wn.App. 752,109 P.3d 489 (2005) ...	12
<i>Yurtis v. Phipps</i> , 143 Wn.App. 680, 181 P.3d 849 (2008) .....	14, 15

**Federal Cases**

<i>Boddie v. Connecticut</i> , 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) .....	15
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**Washington Statutes**

RCW 2.28.010(3) .....	14
RCW 4.28.020.....	10
RCW 4.28.080(1).....	12
RCW 4.96.020.....	10

RCW 42.56.550(6).....6

**Court Rules**

CR 3(a) .....10

CR 6(b).....6

CR 7.....10

CR 11.....9, 15, 16

CR 12(b).....9

CR 56(c).....11

CR 59(b).....4, 5

RAP 2.4.....8

RAP 5.2(a).....6

RAP 18.1 .....16

**I. RESPONSE TO ASSIGNMENTS OF ERROR**

- A. The trial court did not error when it dismissed Mr. Davidson's case for failure to properly initiate a law suit by filing of a summons and complaint.
- B. The trial court properly awarded terms of \$250 where Mr. Davidson had previously filed two similar actions which had both been dismissed.
- C. The trial court properly determined Mr. Davidson is a vexatious litigant based on the serial causes of actions that were improperly filed and subsequently dismissed and were time barred. This issue is also not properly before this Court as Mr. Davidson voluntarily withdrew appeal of this issue under Pacific County Cause No. 15-2-00266-1.

**II. RESPONSE TO ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- A. The trial court did not abuse its discretion when it dismissed Mr. Davidson's "Motion and Proposed Order to Show Cause" as an attempt to initiate a civil cause of action without filing a summons and complaint. Further, this Court declined to show cause and Mr. Davidson failed to timely seek reconsideration or appeal. Thus, the issue is not timely filed here and should not be heard.
- B. Mr. Davidson's "Motion and Proposed Order to Show Cause" was insufficient as a matter of law to initiate a civil cause of action.
- C. Mr. Davidson, having had the same issue dismissed on two separate attempted, demonstrated he was, again, bringing a frivolous cause of action and the court's order of \$250 was justified.
- D. Mr. Davidson is a vexatious litigant as demonstrated by his three attempts at an order to Show Cause and this issues is not properly before this Court.

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

Brian Davidson, the Appellant herein, improperly initiated a civil cause of actions against Pacific County for a purported violation of the Public Records Act (PRA) by filing as an original cause of action a “Motion and Proposed Order to Show Cause” without filing a summons and complaint, or, first, making a claim for damages with the County. Mr. Davidson did this on three separate occasions and it is the third attempt of which he seeks untimely review of here. This matter is untimely because judgment in favor of Pacific County was obtained on December 3, 2015 and Mr. Davidson sought review January 2, 2018. CP 103, CP 244.

In order to provide context this Court should understand how the trial court arrived at its decision. While this issue involves Mr. Davidson’s third “suit” filing as a “Motion and Proposed Order to Show Cause,” the previous two were likewise improperly filed, filed without exhaustion of administrative remedy, and were improperly served upon the County. Mr. Davidson’s first suit was filed in Pacific County Cause Number 14-2-00368-6. That case was dismissed on October 29, 2015 with the trial court finding Mr. Davidson had failed to properly initiate a suit and failed to exhaust his administrative remedies, specifically failing to make a claim for damages with

Pacific County. Appendix 1.

Mr. Davidson filed a second suit in Pacific County Cause Number 15-2-00266-1, complaining about the same set of records, and again seeking a “Motion and Proposed Order to Show Cause” as an original cause of action. The matter was dismissed on December 1, 2015 for the same reasons as the first cause of action. The trial court then declared Mr. Davidson to be a vexatious litigant and ordered him not to file further Public Record Act suits against Pacific County unless they were filed by a licensed attorney or by leave of the Court. Appendix 2. On December 23, 2015 Mr. Davidson attempted to vacate the court’s order. Appendix 3. The trial court rejected Mr. Davidson’s filing. Appendix 4. Mr. Davidson filed a notice of appeal on December 30, 2015. Appendix 5. Mr. Davidson subsequently retained counsel and, with the assistance of counsel, voluntarily dismissed his appeal. Appendix 6. The Mandate issued on May 16, 2016, and was filed with the Clerk of the Pacific County Court on May 23, 2016. Appendix 7. Mr. Davidson improperly argued in this matter the issue of the declaration of a vexations litigant. For reasons stated elsewhere, this Court should not consider whether Mr. Davidson is a vexatious litigant.

Mr. Davidson’s third “Motion and Proposed Order to Show

Cause” was filed in Pacific County Cause Number 15-2-00293-9. This was again filed as a “Motion and Proposed Order to Show Cause,” was filed without a summons or complaint, and without exhausting administrative remedies. The matter was dismissed for want of compliance with the court’s order to have the matter filed by an attorney or by leave of the court. Dismissal and Judgement in favor of Pacific County was filed on December 3, 2015. CP 103. Mr. Davidson filed a motion to reconsider the trial court’s decision on September 7, 2017 (nearly two years after the matter was dismissed) and the trial court re-affirmed the trial court’s findings that the matter was filed without leave of the trial court, or assistance of an attorney, and the suit involved the same subject matter as the previous two suits. RP (11/16/17) 4, 5, 9. The trial court erred in permitting Mr. Davidson to file and argue his untimely motion for reconsideration as outlined below. It is from this untimely motion that this appeal follows. Thus, Respondent asserts appeal is untimely.

#### **IV. MOTION TO DISMISS OR STRIKE**

As a preliminary matter, Pacific County moves to dismiss Mr. Davidson’s appeal as untimely. The trial court entered a judgment in favor of Pacific County on December 3, 2015. CP 103. Davidson filed a motion to reconsider nearly two years later and this appeal follows.

CP 213, 244. While both courts reached the same conclusion, it was error to permit the expansion of the time limits and permit Mr. Davidson's motion to reconsider. Therefore, because this Court has the authority to affirm the trial court for any reason supported by the record and the law, this Court should reject this appeal and affirm the original trial court's December 3, 2015 decision. *State v. Kelley*, 64 Wn.App. 755, 764, 828 P.2d 1106 (1992).

Mr. Davidson's motion to reconsider must have been filed within 10 days of the entry of the Judgment, which occurred on December 3, 2015. CR 59(b), CP 103. Mr. Davidson's motion for reconsideration was filed nearly two years later. CP 213. While the trial court permitted Mr. Davidson's motion to be heard, doing so was in error, as the trial court had no discretionary authority to extend the time period for filing a motion for reconsideration. *Metz v. Sarandos*, 91 Wn.App. 357, 360, 957 P.2d 795 (1998), citing *Schaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 367-68, 849 P.2d 1225 (1993) (a motion for reconsideration is timely only where a party both files and serves the motion within 10 days. CR 59(b). A trial court may not extend the time period for filing a motion for reconsideration. CR 6(b); *Moore v. Wentz*, 11 Wn.App. 796, 799, 525 P.2d 290 (1974)). Pacific County should not have been subjected to

the trial court's decision of the untimely motion to reconsider. A trial court's decision on a motion for reconsideration is reviewed for an abuse of discretion. *Landstar Inway, Inc. v. Samrow*, 181 Wn.App. 109, 120–121, 325 P.3d 327 (2014). A trial court abuses its discretion where it exercises its discretion in a manifestly unreasonable manner or on untenable grounds or for untenable reasons. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 144, 331 P.3d 40 (2014). A trial court also abuses its discretion where the trial court's ruling relies on an erroneous view of the law or incorrect legal analysis. *In re Marriage of Schnurman*, 178 Wn.App. 634, 638, 316 P.3d 514 (2013), *review denied*, 180 Wn.2d 1010 (2014).

Here, the trial court unreasonably permitted Mr. Davidson to file and argue a motion to reconsider nearly two years after final judgment. The trial court had no authority to permit such an expansion of the rule and for that reason, Mr. Davidson's motion for reconsideration, and subsequently this appeal, are untimely and should not be considered. RAP 5.2(a).

Furthermore, this appeal should be dismissed as the issue is moot as the statute of limitations has run. Mr. Davidson failed to initiate a cause of action within one year of the agency's last production of a record and the statute of limitations has expired

pursuant to RCW 42.56.550(6). Mr. Davidson requested the trial court grant an order to show cause against Pacific County. While the trial court's decision was couched in terms of a dismissal, the net effect was an order denying Mr. Davidson's request to show cause. A show cause order is optional, not mandatory. *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 104-106 117 P.3d 1117 (2005). Here, Mr. Davidson made a tactical decision to seek an order to show cause. That order was effectively denied on December 3, 2015. CP 103. Following the denial, Mr. Davidson took no action to timely file a mandatory tort claim against the county, nor did he file a civil complaint for damages, nor did he seek timely review of the trial court's decision. Thus, there was no tolling of the statute of limitations on this PRA matter. As a result, the one-year time requirement to commence an action has expired. An appellate matter should be dismissed when the appellate court can no longer provide effective relief unless the court finds the matter is of continuing and substantial public interest. *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994). Three factors in particular are determinative of whether the matter is of continuing and substantial public interest: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable

to provide future guidance to public officers; and (3) whether the issue is likely to recur. *Id.* Here, the issue involves a procedural aspect of the PRA that is not particularly controversial and unlikely to reoccur. As a result, further review should not be undertaken as this issue is now moot.

In the event this Court disagrees, Respondent requests this Court dismiss, or alternatively strike, any portion of this appeal which relates to the declaration of Mr. Davidson as a vexatious litigant. Mr. Davidson voluntarily withdrew review of that issue and a Mandate has issued. Appendix 5, 6, 7. Review should not be undertaken here where Mr. Davidson voluntarily withdrew his opposition to the trial court's decision. RAP 2.4, 5.2, 19.9(c).

## V. ARGUMENT

### A. **Filing a "Motion and Proposed Order to Show Cause" was insufficient to bring a cause of action pursuant to the Public Records Act.**

Appellant asserts a summons and complaint are not required to initiate a civil cause of action against a county and that the trial court erred when it dismissed Mr. Davidson's original cause of action filed as a "Motion and Proposed Order to Show Cause." Respondent asserts a summons and complaint are necessary, that Mr. Davidson was required to file a tort claim with the county in advance of

litigation, and that his failures to do so in his third such action were properly dismissed pursuant to CR 12(b) and CR 11. Respondent further asserts appeal is untimely and moot for reasons stated above.

**Standard of Review.**

Review of orders of summary judgment are *de novo*, based on the record before the trial court, and the appellate court engages in the same inquiry as the trial court. *Green v. Normandy Park*, 137 Wn.App. 665, 151 P.3d 1038 (2007). Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993).

A motion to dismiss for lack of jurisdiction is reviewed *de novo*. *Durland v. San Juan County*, 175 Wn.App. 316, 320, 305 P.3d 246 (2013).

Sufficiency of service is reviewed *de novo*. *Streeter–Dybdahl v. Nguyet Huynh*, 157 Wn.App. 408, 412, 236 P.3d 986 (2010). The plaintiff bears the burden of making a prima facie case of sufficient service of process. *Id.*

CR 11 sanctions are reviewed for abuse of discretion. *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338–39, 858 P.2d 1054 (1993).

**1. Mr. Davidson failed to properly being a cause of action.**

As noted in *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn. 2d 89, 117 P.3d 1117 (2005):

The civil rules “govern the procedure in the superior court in all suits of a civil nature ... with the exceptions stated in rule 81.” CR 1, There is only one form of a civil action. CR 2. CR 81 states the civil rules govern to all civil proceedings “[e]xcept where inconsistent with rules or statutes applicable to special proceedings.” CR 81. Special proceedings are detailed in the statutes and include garnishment, *Zesbaugh, Inc. v. Gen. Steel Fabricating, Inc.*, 95 Wn.2d 600, 603, 627 P.2d 1321 (1981), unlawful detainer, *Canterwood Place L.P. v. Thande*, 106 Wn.App. 844, 847, 25 P.3d 495 (2001), and sexually violent predator proceedings, *In re Detention of Aguilar*, 77 Wn.App. 596, 600, 892 P.2d 1091 (1995). All of these proceedings are statutorily defined, whereas actions under the PDA are not. The statute simply does not define a special proceeding exclusive of all others. When a statute is silent on a particular issue, the civil rules govern the procedure. *King County Water Dist. v. City of Renton*, 88 Wn.App. 214, 227, 944 P.2d 1067 (1997). Thus, normal civil procedures are an appropriate method to prosecute a claim under the liberally construed PDA.

RCW 4.28.020, and CR 3(a) and CR 7, require an action to be commenced by service of a summons or by the filing of a complaint. When the claim involves a local government, it is also a prerequisite to commencement of any action that the claimant first file a tort claim against the county. RCW 4.96.020. Compliance with RCW 4.96.020 is required. *Troxell v. Rainier Public School Dist. No.*

307, 154 Wn.2d 345, 351, 111 P.3d 1173 (2005). Mr. Davidson, by his own admission, did not file a tort claim with the county, this issue involved the same records, and was not filed with an attorney's assistance or leave of the court. RP (11/16/17) 4, 5, 9. Consequently, Mr. Davidson was prohibited from again litigating this issue and dismissal was warranted.

A motion to dismiss pursuant to CR 12(b)(6) that is supported by materials outside of the complaint is treated as a summary judgment motion. *Mueller v. Miller*, 82 Wn.App. 236, 246, 917 P.2d 604 (1996). Summary judgment is appropriate where there are no genuine issues of material facts, and the moving party is entitled to judgment as a matter of law. CR 56(c).

Pacific County was entitled to dismissal as a matter of law because Mr. Davidson failed to exhaust his administrative remedies, failed to properly serve Pacific County, and was collaterally estopped from bring this third PRA suit. CP 13, Appendix 2. When a party fails to exhaust their administrative remedies, dismissal on summary judgment is appropriate. *Berchler v. Wenatchee Valley College*, 174 Wn.App. 141, 155, 289 P.3d 110 (2013). Mr. Davidson made no showing that he exhausted his administrative remedies. Thus, dismissal was warranted.

Mr. Davidson also failed to serve Pacific County. When a party fails to properly serve the county, dismissal is appropriate. The Washington Legislature permits suit against the state but requires personal service as described in RCW 4.28.080(1). Where personal service must be made on the person designated by statute, the failure to do so warrants dismissal. *Witt v. Port of Olympia*, 126 Wn.App. 752, 758, 109 P.3d 489 (2005) overruled on other grounds by *Durland v. San Juan County*, 182 Wn.2d 55, 340 P.3d 191 (2014). Mr. Davidson was required to demonstrate *prima facie* evidence of service. He failed to do so. Thus, dismissal was warranted for want of service.

Finally, Mr. Davidson was precluded from bring this third action. The doctrine of collateral estoppel is well known to Washington law as a means of preventing the endless relitigation of issues already litigated by the parties and decided by a competent tribunal. Collateral estoppel promotes judicial economy and prevents inconvenience, and even harassment, of parties. *Hadley v. Maxwell*, 144 Wn.2d 306, 311, 27 P.3d 600 (2001). It is distinguished from claim preclusion, or *res judicata*, in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a

different claim or cause of action is asserted. *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983). There is a four-part test to determine whether collateral estoppel applies: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

Here, Mr. Davidson, without exhausting his administrative remedies with the county, again sought court intervention which had previously been resolved to require him to comply with such requirements. This did not work an injustice, but instead merely required that he follow the requirements proscribed by the legislature. This, his third action was barred and the trial court did not abuse its discretion in dismissing the action.

The trial court's decision to dismiss was proper and should not be disturbed here.

## **B. VEXATIOUS LITIGANT**

As noted in Respondent's motion to strike, this matter is not properly before this Court. Mr. Davidson conceded as much when he voluntarily withdrew his appeal of this issue. Appendix 2, 5, 6, and 7.

However, in the event this Court considers this issue, the trial court's decision was proper.<sup>1</sup>

### **1. Standard of review.**

A trial court's decision to declare an individual as a vexatious litigant is reviewed for abuse of discretion. *Yurtis v. Phipps*, 143 Wn.App. 680, 693, 181 P.3d 849 (2008).

### **2. Mr. Davidson is a vexatious litigant.**

Unfortunately there are litigants who abuse our revered system and flood the courts with repetitive, frivolous claims which already have been adjudicated at least once. Courts are vested with the inherent power to control the conduct of litigants who impede the orderly conduct of proceedings. RCW 2.28.010(3); *In re Marriage of Lilly*, 75 Wn.App. 715, 720, 880 P.2d 40 (1994). Accordingly, a court may, in its discretion, place reasonable restrictions on any litigant

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<sup>1</sup> It is worth noting Pacific County is a small, rural county. Judges and attorneys are familiar with many who come before the court. Here, the trial court became familiar with Mr. Davidson through these matters and he presided over Mr. Davidson's appeals from two district court matters. In those cases, Mr. Davidson struggled with his relationships with his several public defenders before the matter reach the jury, and then several more during the RALJ review. Mr. Davidson has gone through a couple of Judges as well. Mr. Davidson has also filed several complaints to the Washington State Bar Association against the Pacific County Prosecutor and at least two against his public defenders. Mr. Davidson's antics are well known and while they are not cited here, this Court must appreciate the trial court's decision was informed by the full flavor of Mr. Davidson which cannot be imparted here.

who abuses the judicial process. *Yurtis v. Phipps*, 143 Wn.App at 694, citing *In re Marriage of Giordano*, 57 Wn.App. 74, 78, 787 P.2d 51 (1990). An individual must be afforded a reasonable right of access to court. *Yurtis v. Phipps*, 143 Wn.App at 694, citing *Boddie v. Connecticut*, 401 U.S. 371, 377, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

Here, Mr. Davidson's restriction is limited to filing PRA matters against Pacific County without either an attorney or seeking the trial court's permission. This restriction is not unreasonably restrictive and should not be disturbed.

### **C. AWARD OF FEES**

As previously noted, this issue should not be considered as Mr. Davidson failed to timely appeal. However, to the extent that this Court reviews this issue, the trial court's award of costs pursuant to CR 11 was proper and should not be disturbed. Mr. Davidson has certainly cost the citizens of Pacific County far more in responding to these actions than the mere \$250 assessed by the trial court.

Furthermore, should Pacific County prevail, we would request additional fees here. *Landberg v. Carlson*, 108 Wn.App. 749, 758, 33 P.3d 406 (2001)(Generally, if such fees are allowable at trial, the

prevailing party may recover fees on appeal as well) (citing RAP 18.1).

**1. Standard of review.**

A trial court's decision to award fees pursuant to CR 11 is reviewed for abuse of discretion. *Bryant v. Joseph Tree, Inc.* 119 Wn.2d 210, 829 P.2d 1099 (1992).

**2. The assessment was \$250 was reasonable**

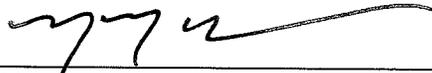
The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system and to reduce delaying tactics, procedural harassment, and mounting legal costs. *Bryant v. Joseph Tree, Inc.* 119 Wn.2d at 219. This rule is designed to force litigants to stop, think, and investigate more carefully before serving and filing papers. *Id.* Here, Mr. Davidson had filed his third suit incorrectly (as noted elsewhere), and despite being instructed by two courts, failed to properly bring his actions. It is also worth noting that the trial courts had permitted Mr. Davidson to proceed in *Forma Pauperis*. With this in mind, and understanding that the trial court was attempting to curb Mr. Davidson's harassing use of the legal system, the trial court fashioned the least severe sanctions adequate to serve the intended purpose. The trial court's sanction was proper and should not be disturbed.

## **V. CONCLUSION**

While the trial court incorrectly permitted Mr. Davidson's motion to be heard two years after judgment, this Court should correct that error here and dismiss this appeal as untimely, moot, and expressly reject issues which Mr. Davidson previously voluntarily withdrew. Finality warrants the dismissal.

In the event this Court disagrees, this Court should nevertheless affirm the trial court because Mr. Davidson's suit was improperly initiated and dismissal was warranted.

RESPECTFULLY submitted this 29th day of October, 2017.



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MARK MCCLAIN, WSBA 30909  
Pacific County Prosecutor  
Attorney for Defendant, Pacific County

# APPENDIX 1

FILED

2015 OCT 29 PM 2: 12

VIRGINIA LEACH, CLERK  
PACIFIC COUNTY, WA

*xl*  
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR PACIFIC COUNTY

BRIAN DAVIDSON,

Plaintiff,

vs.

COUNTY OF PACIFIC,

Defendant.

No. 14-2-00368-6

ORDER ON PACIFIC COUNTY'S MOTION  
TO DISMISS AND MOTION FOR TERMS  
AND COSTS

THIS MATTER, having come on the Defendant's motion, and the Court considering the motion, court record and argument of the Parties, and hereby finds:

THIS COURT FINDS Mr. Davidson has failed to properly initiate a cause of action and the matter should be dismissed.

IT IS ORDERED that this matter is dismissed.

DONE this 26<sup>th</sup> day of Oct., 2015.

*J. Paul McCauley*  
JUDGE

ORDER ON PACIFIC COUNTY'S MOTION TO  
DISMISS AND MOTION FOR TERMS AND  
COSTS — Page 1 of 2

PACIFIC COUNTY  
PROSECUTING ATTORNEY  
300 Memorial Avenue/PO Box 45  
South Bend, WA 98586  
360-875-9361 (Voice) 360-875-9362 (Fax)

# APPENDIX 2

FILED

2015 DEC -1 PM 12: 58

VIRGINIA LEACH, CLERK  
PACIFIC COUNTY, WA

BY \_\_\_\_\_ DEPT. :

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR PACIFIC COUNTY

BRIAN DAVIDSON,

Plaintiff,

vs.

PACIFIC COUNTY,

Defendant.

No. 15-2-00266-1

**ORDER ON PACIFIC COUNTY'S MOTION  
TO DISMISS AND MOTION FOR TERMS  
AND COSTS**

THIS MATTER having come on the Defendant's motion, and the Court considering the motion, Pacific County's motion, the court record, and any argument of the Parties, and hereby finds and rules as follows:

THIS COURT FINDS Mr. Davidson has, again, failed to properly initiate a law suit against Pacific County.

THIS COURT FINDS Mr. Davidson's request for an order to show cause is an improper request.

THIS COURT FINDS Mr. Davidson to be a vexatious litigant as to this issue.

NOW, THEREFORE, it is hereby ordered that Mr. Davidson's cause of action is dismissed with prejudice.

1  
2 IT IS FURTHER ORDERED that Mr. Davidson shall not file any further Public  
3 Records suit against Pacific County without <sup>(1)</sup> such a suit being initiated by a licensed  
4 Washington State Attorney and only then pursuant to CR 11, or (2) Mr. Davidson  
5 receiving in writing the Court's permission to file any documents.

6 IT IS FURTHER ORDERED that Mr. Davidson shall reimburse Pacific County for  
7 the cost of defending this suit pursuant to CR 11 in an amount to later be determined.

8 IT IS FURTHER ORDERED \_ \_ \_ \_ \_  
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16 DONE this 1<sup>st</sup> day of Dec, 2015.

17  
18 Michael B. Bellin  
19 JUDGE

20 Presented by:

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24 Mark McClain, WSBA # 30909  
25 PROSECUTING ATTORNEY  
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# APPENDIX 3

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VIRGINIA LEACH, CLERK  
PACIFIC COUNTY, WA

BY JD DEPUTY

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF PACIFIC

No. 15-2-00266-1

BRIAN DAVIDSON,  
Plaintiff,

MOTION FOR ORDER TO SHOW CAUSE  
Re: VACATION OF JUDGMENT/ORDER

v.

PACIFIC COUNTY,  
Defendant.

**RELIEF REQUESTED**

BRIAN DAVIDSON respectfully moves the Court for an Order requiring  
(Your Name)

PACIFIC COUNTY to appear and show cause why the Motion to Vacate  
(Opposing Party)

Judgment/Order(s) of the Court should not be granted.

MOTION FOR ORDER TO SHOW CAUSE  
RE: VACATE JUDGMENT/ORDER Page 1 of 5



1  
2 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

3 Signed at WACO, Washington [City and state] on 12/23/15 [Date]

4  
5 Brian Davidson  
Signature

6 Brian Davidson  
Print or type name

7  
8  
9  
10 **EVIDENCE RELIED UPON IN ADDITION TO EVIDENCE IN COURT FILE**

11 BRIAN DAVIDSON 's Motion to Vacate Judgment/Order.  
(Your Name)

12 Declaration by: BRIAN DAVIDSON  
(Writer's name)

13 Declaration by: \_\_\_\_\_  
(Writer's name)

14 Other: PHOTOCOPY OF PLAINTIFF'S MAILING ENVELOPE  
(other supporting documents/evidence)

15 COPY OF ORDER ON PACIFIC COUNTY'S MOTION TO DISMISS AND MOTION  
FOR TERMS AND COSTS.

16 [These documents are attached.]

17 **AUTHORITY**

18 BRIAN DAVIDSON 's Motion to Vacate Judgment/Order is made pursuant to one or

19 more of the following:

*MOTION FOR ORDER TO SHOW CAUSE*

*RE: VACATE JUDGMENT/ORDER Page 3 of 5*

- 1  Civil Rule 60(a): Clerical mistake(s) in the Judgment, Order, or other parts of the record;
- 2  Civil Rule 60(b)(1): Mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining  
3 the Judgment/Order;
- 4  Civil Rule 60(b)(2): Erroneous proceedings against a minor or person of unsound mind and the  
5 condition of the defendant/respondent did not appear in the record nor was the error discovered  
6 during proceedings;
- 7  Civil Rule 60(b)(3): Newly discovered evidence which by due diligence could not have been  
8 discovered in time to move for a new trial under CR 59(b);
- 9  Civil Rule 60(b)(4): Fraud, misrepresentation or other misconduct of an adverse party;
- 10  Civil Rule 60(b)(5): The Judgment/Order is void;
- 11  Civil Rule 60(b)(6): The judgment has been satisfied, released, or discharged, or a prior judgment  
12 upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the  
13 judgment should have prospective application;
- 14  Civil Rule 60(b)(7): If the defendant was served by publication, relief may be granted as prescribed  
15 in RCW 4.28.200;
- 16  Civil Rule 60(b)(8): Death of one of the parties before the Judgment in the action;
- 17  Civil Rule 60(b)(9): Unavoidable casualty or misfortune preventing the party from prosecuting or  
18 defending;
- 19  Civil Rule 60(b)(10): Error in judgment shown by a minor, within 12 months after arriving at full  
age;
- 18  Civil Rule 60(b)(11): Any other reason justifying relief from the operation of the judgment;

MOTION FOR ORDER TO SHOW CAUSE  
RE: VACATE JUDGMENT/ORDER Page 4 of 5

1  [Any other relevant legal authority: specify]

2

**PROPOSED ORDER**

3

A proposed order accompanies this motion.

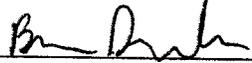
4

DATED: December 23, 2015

5

Respectfully Submitted,

6



\_\_\_\_\_  
(Your Signature)

7

Brian Davidson

\_\_\_\_\_  
(Print or Type Name)

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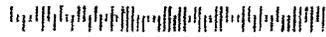
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ZIP 98586  
P.O. BOX 45



**Mark McClain**  
Prosecuting Attorney  
P. O. Box 45  
South Bend, Washington 98586

BRIAN DAVIDSON  
35335 SCHWAB LANE  
ASTORIA, OR 97103



DAVIDSON 971032012-1615 700 12/02/15  
NOTIFY SENDER OF NEW ADDRESS  
DAVIDSON BRIAN J  
1718 FRANKLIN AVE  
ASTORIA OR 97103-3523



FILED

2015 DEC -1 PM 12: 58

VIRGINIA LEACH, CLERK  
PACIFIC COUNTY, WA

BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR PACIFIC COUNTY

BRIAN DAVIDSON,

Plaintiff,

vs.

PACIFIC COUNTY,

Defendant.

No. 15-2-00266-1

**ORDER ON PACIFIC COUNTY'S MOTION  
TO DISMISS AND MOTION FOR TERMS  
AND COSTS**

THIS MATTER having come on the Defendant's motion, and the Court considering the motion, Pacific County's motion, the court record, and any argument of the Parties, and hereby finds and rules as follows:

THIS COURT FINDS Mr. Davidson has, again, failed to properly initiate a law suit against Pacific County.

THIS COURT FINDS Mr. Davidson's request for an order to show cause is an improper request.

THIS COURT FINDS Mr. Davidson to be a vexatious litigant as to this issue.

NOW, THEREFORE, it is hereby ordered that Mr. Davidson's cause of action is dismissed with prejudice.

1  
2 IT IS FURTHER ORDERED that Mr. Davidson shall not file any further Public  
3 Records suit against Pacific County without <sup>(1)</sup> such a suit being initiated by a licensed  
4 Washington State Attorney and only then pursuant to CR 11, or (2) Mr. Davidson  
5 *receiving in writing the Court's permission to file any documents.*

6 IT IS FURTHER ORDERED that Mr. Davidson shall reimburse Pacific County for  
7 the cost of defending this suit pursuant to CR 11 in an amount to later be determined.

8 IT IS FURTHER ORDERED \_\_\_\_\_  
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15  
16 DONE this 1<sup>st</sup> day of Dec, 2015.

17  
18 *Michael Buller*  
19 JUDGE

20 Presented by:  
21  
22  
23

24 \_\_\_\_\_  
25 Mark McClain, WSBA # 30909  
26 PROSECUTING ATTORNEY  
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Judge Sullivan  
Bench Copy

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF PACIFIC

No. 15-2-00266-1

ORDER TO SHOW CAUSE  
(VACATE JUDGMENT/ORDER)

BRIAN DAVIDSON  
Plaintiff,

v.

PACIFIC COUNTY  
Defendant.

IT IS ORDERED:

PACIFIC COUNTY shall appear personally before the court and show  
(opposing party's name)  
cause, if any, why the order(s) dated December 1, 2015 should not be vacated  
as requested in the attached Motion for Order to Show Cause Regarding the Vacate  
Judgment/Order.

A hearing shall occur on:

Date: \_\_\_\_\_ Time: \_\_\_\_\_ a.m. / p.m.

Place: \_\_\_\_\_ Room: \_\_\_\_\_  
Courtthouse

1 **FAILURE TO APPEAR IN PERSON AND DEFEND MAY RESULT IN AN ORDER BEING**  
2 **ENTERED BY THE COURT WHICH GRANTS THE RELIEF REQUESTED IN THE**  
3 **ACCOMPANYING MOTION WITHOUT FURTHER NOTICE TO YOU.**

4 Other:

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8 DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE/COMMISSIONER

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10 Presented by:

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13 \_\_\_\_\_  
Signature (your name)

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF PACIFIC

No. 15-2-00266-1

BRIAN DAVIDSON,  
Plaintiff,

MOTION FOR ORDER TO SHOW CAUSE  
Re: VACATION OF JUDGMENT/ORDER

v.

PACIFIC COUNTY,  
Defendant.

**RELIEF REQUESTED**

BRIAN DAVIDSON respectfully moves the Court for an Order requiring  
(Your Name)

PACIFIC COUNTY to appear and show cause why the Motion to Vacate  
(Opposing Party)

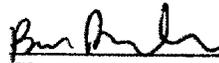
Judgment/Order(s) of the Court should not be granted.



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

Signed at WACO, Washington [City and state] on 12/23/15 [Date]

  
Signature

Brian Davidson  
Print or type name

**EVIDENCE RELIED UPON IN ADDITION TO EVIDENCE IN COURT FILE**

BRIAN DAVIDSON 's Motion to Vacate Judgment/Order.

(Your Name)  
Declaration by: BRIAN DAVIDSON  
(Writer's name)

Declaration by: \_\_\_\_\_  
(Writer's name)

Other: PHOTOCOPY OF PLAINTIFF'S MAILING ENVELOPE  
(other supporting documents/evidence)

COPY OF ORDER ON PACIFIC COUNTY'S MOTION TO DISMISS AND MOTION  
FOR TERMS AND COSTS!

[These documents are attached.]

**AUTHORITY**

BRIAN DAVIDSON 's Motion to Vacate Judgment/Order is made pursuant to one or

more of the following:  
*MOTION FOR ORDER TO SHOW CAUSE*  
*RE: VACATE JUDGMENT/ORDER Page 3 of 5*

- 1  Civil Rule 60(a): Clerical mistake(s) in the Judgment, Order, or other parts of the record;
- 2  Civil Rule 60(b)(1): Mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining  
3 the Judgment/Order;
- 4  Civil Rule 60(b)(2): Erroneous proceedings against a minor or person of unsound mind and the  
5 condition of the defendant/respondent did not appear in the record nor was the error discovered  
6 during proceedings;
- 7  Civil Rule 60(b)(3): Newly discovered evidence which by due diligence could not have been  
8 discovered in time to move for a new trial under CR 59(b);
- 9  Civil Rule 60(b)(4): Fraud, misrepresentation or other misconduct of an adverse party;
- 10  Civil Rule 60(b)(5): The Judgment/Order is void;
- 11  Civil Rule 60(b)(6): The judgment has been satisfied, released, or discharged, or a prior judgment  
12 upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the  
13 judgment should have prospective application;
- 14  Civil Rule 60(b)(7): If the defendant was served by publication, relief may be granted as prescribed  
15 in RCW 4.28.200;
- 16  Civil Rule 60(b)(8): Death of one of the parties before the Judgment in the action;
- 17  Civil Rule 60(b)(9): Unavoidable casualty or misfortune preventing the party from prosecuting or  
18 defending;
- 19  Civil Rule 60(b)(10): Error in judgment shown by a minor, within 12 months after arriving at full  
age;
- 18  Civil Rule 60(b)(11): Any other reason justifying relief from the operation of the judgment;

*MOTION FOR ORDER TO SHOW CAUSE*  
*RE: VACATE JUDGMENT/ORDER Page 4 of 5*

1  [Any other relevant legal authority: specify]

2

**PROPOSED ORDER**

3

A proposed order accompanies this motion.

4

DATED: December 23, 2015

5

Respectfully Submitted,

6



(Your Signature)

7

Brian Davidson

(Print or Type Name)

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POSTNET barcode

POSTNET 97103-3823  
POSTNET ADDRESS OF NEW ADDRESS  
ASTORIA, OR 97103-3823



**Mark McClain**  
Prosecuting Attorney  
P. O. Box 45  
South Bend, Washington 98586

**BRIAN DAVIDSON**  
35335 SCHWAB LANE  
ASTORIA, OR 97103

Hasler  
US POSTAGE \$002.72  
ZIP 93598  
P.O. Box 2664

FILED

2015 DEC -1 PM 12: 58

VIRGINIA LEACH, CLERK  
PACIFIC COUNTY, WA

BY \_\_\_\_\_ DEPT. :

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR PACIFIC COUNTY

BRIAN DAVIDSON,

Plaintiff,

vs.

PACIFIC COUNTY,

Defendant.

No. 15-2-00266-1

**ORDER ON PACIFIC COUNTY'S MOTION  
TO DISMISS AND MOTION FOR TERMS  
AND COSTS**

THIS MATTER having come on the Defendant's motion, and the Court considering the motion, Pacific County's motion, the court record, and any argument of the Parties, and hereby finds and rules as follows:

THIS COURT FINDS Mr. Davidson has, again, failed to properly initiate a law suit against Pacific County.

THIS COURT FINDS Mr. Davidson's request for an order to show cause is an improper request.

THIS COURT FINDS Mr. Davidson to be a vexatious litigant as to this issue.

NOW, THEREFORE, it is hereby ordered that Mr. Davidson's cause of action is dismissed with prejudice.

1 IT IS FURTHER ORDERED that Mr. Davidson shall not file any further Public  
2 Records suit against Pacific County without <sup>(1)</sup> such a suit being initiated by a licensed  
3 Washington State Attorney and only then pursuant to CR 11, or (2) *Mr. Davidson*  
4 *receiving in writing the Court's permission to file any documents.*

5 IT IS FURTHER ORDERED that Mr. Davidson shall reimburse Pacific County for  
6 the cost of defending this suit pursuant to CR 11 in an amount to later be determined.  
7

8 IT IS FURTHER ORDERED \_\_\_\_\_  
9 \_\_\_\_\_  
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15  
16 DONE this 1<sup>st</sup> day of Dec, 2015.

17  
18 *Wesley D. Sullivan*  
19 JUDGE

20 Presented by:

21  
22  
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24 \_\_\_\_\_  
25 Mark McClain, WSBA # 30909  
26 PROSECUTING ATTORNEY  
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SUPERIOR COURT OF WASHINGTON  
COUNTY OF PACIFIC

No. 15-2-00266-1

DECLARATION IN SUPPORT OF  
MOTION TO VACATE

BRIAN DAVIDSON  
Plaintiff,

v.

PACIFIC COUNTY  
Defendant.

This declaration is made by:

Name: BRIAN DAVIDSON

Address: 1718 FRANKLIN AVENUE

ASTORIA, OR 97103

Telephone: (503) 791-2722 (MESSAGE)

Age: 34

Occupation: STUDENT

Relationship to the parties in this action:

PLAINTIFF

I DECLARE that:

I WAS never given proper notice of this

1 motion before the order was signed nor was  
2 I given the chance to speak for myself  
at any hearing on this matter.

3 I was never clearly explained to what I did  
4 wrong in the first case. I thought that it  
5 was dismissed because I didn't have a  
return of service and I titled it wrong.  
6 There were no findings of facts or conclusions  
of law in the first case that was signed  
by a Judge.

7  
8 The reason a "motion to show cause" was  
filed because according to RCW 42.56.550(1)  
9 "Upon the motion of any person... superior court...  
may require the responsible party to show cause..."

10 WAC 44-14-08004 (1) and (3) also talk about this  
11 procedure "The act provides a speedy remedy for a  
requestor... To speed up the court process, a public  
12 records case may be decided merely on the "motion"  
of a requestor..." (1)

13  
14 "To initiate court review of a public records case,  
a requestor can file a "motion to show cause"...  
15 The show-cause procedure is designed so that a  
non attorney requestor can obtain judicial review  
16 himself or herself without hiring an attorney..." (3)

17 I request this order be vacated and that  
18 I be given a fair chance to  
19 explain my side before an order

1 is signed. I am not a vexatious litigant  
2 and the merits of this case should be  
3 heard and no technical barrier should be  
4 made to prevent this case from being  
5 heard.

4 (Attach Additional Pages if Necessary and Number Them.)

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

6 Signed at Ilwaco, Washington [City and State] on 12/23/15 [Date].

7 Brian Davidson  
Signature

8 Brian Davidson  
Print or Type Name

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF PACIFIC

No. 15-2-00266-1

BRIAN DAVIDSON  
Plaintiff,

ORDER ON MOTION TO VACATE  
JUDGMENT/ORDER

v.

(Proposed)

PACIFIC COUNTY  
Defendant.

The above-entitled Court, having heard a Motion to Vacate the Judgment/Order entered on \_\_\_\_\_:  
(Date)

IT IS HEREBY ORDERED that the Plaintiff's Motion to Vacate Judgment/Order is granted. The Order(s) or parts of Order(s) entered for this matter on 12/1/15 (date) shall be vacated as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# APPENDIX 4

FILED

2015 DEC 30 AM 11:00

VIRGINIA LEACH CLERK  
PACIFIC COUNTY, WA

*jb*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PACIFIC

BRIAN DAVIDSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PACIFIC COUNTY, )  
 )  
 Defendant. )  
 )

CAUSE NO. 15-2-00266-1  
ORDER DENYING PERMISSION  
TO FILE DOCUMENTS

The Court finds Mr. Davidson's Motion for Order to Show Cause duplicative. Mr. Davidson's prior, similar motion was denied pursuant to the Court's December 1, 2015 Order.

Therefore, it is ordered that Mr. Davidson not be allowed to file these similar, or nearly identical documents. Mr. Davidson's proposed documents are returned with a copy of this Order.

DATED: December 30, 2015.

*Michael J. Sullivan*  
\_\_\_\_\_  
JUDGE MICHAEL J. SULLIVAN

ORDER DENYING PERMISSION  
TO FILE DOCUMENTS

# APPENDIX 5



FILED

2015 DEC -1 PM 12: 58

VIRGINIA LEACH, CLERK  
PACIFIC COUNTY, WA

BY \_\_\_\_\_ DEPT. :

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR PACIFIC COUNTY

BRIAN DAVIDSON,

Plaintiff,

vs.

PACIFIC COUNTY,

Defendant.

No. 15-2-00266-1

**ORDER ON PACIFIC COUNTY'S MOTION  
TO DISMISS AND MOTION FOR TERMS  
AND COSTS**

THIS MATTER having come on the Defendant's motion, and the Court considering the motion, Pacific County's motion, the court record, and any argument of the Parties, and hereby finds and rules as follows:

THIS COURT FINDS Mr. Davidson has, again, failed to properly initiate a law suit against Pacific County.

THIS COURT FINDS Mr. Davidson's request for an order to show cause is an improper request.

THIS COURT FINDS Mr. Davidson to be a vexatious litigant as to this issue.

NOW, THEREFORE, it is hereby ordered that Mr. Davidson's cause of action is dismissed with prejudice.

1 IT IS FURTHER ORDERED that Mr. Davidson shall not file any further Public  
2 Records suit against Pacific County without <sup>(1)</sup> such a suit being initiated by a licensed  
3 Washington State Attorney and only then pursuant to CR 11, *or (2) Mr. Davidson*  
4 *receiving in writing the Court's permission to file any documents.*

5 IT IS FURTHER ORDERED that Mr. Davidson shall reimburse Pacific County for  
6 the cost of defending this suit pursuant to CR 11 in an amount to later be determined.  
7

8 IT IS FURTHER ORDERED \_\_\_\_\_  
9 \_\_\_\_\_  
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15  
16 DONE this 1<sup>st</sup> day of Dec, 2015.

17  
18 *Michael B. Sullivan*  
19 JUDGE

20 Presented by:

21  
22  
23  
24 Mark McClain, WSBA # 30909  
25 PROSECUTING ATTORNEY  
26  
27  
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29

# APPENDIX 6

FILED

2016 MAR 18 PM 4:30

VIRGINIA LEACH, CLERK  
PACIFIC COUNTY, WA

BY JS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF PACIFIC

BRIAN DAVIDSON

Plaintiff,

No. 15-2-00266-1

vs.

PLAINTIFF'S MOTION FOR  
VOLUNTARY DISMISSAL AND  
ORDER

PACIFIC COUNTY,

Defendant.

Comes now the Plaintiff, by and through the undersigned, and respectfully moves the Court for a voluntary dismissal of the above entitled action.

DATED this 20th day of February, 2016.

HILLIER & SCHEIBMEIR & KELLY, P.S.

By [Signature]

Samuel D. Satterfield  
WSBA No. 50067  
Attorney for Petitioner

/////

/////

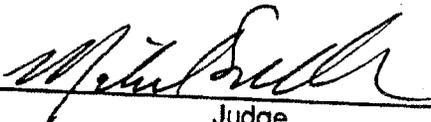
/////

1  
2 ORDER

3 This matter having come on before the above entitled Court this day, and the Court  
4 having reviewed the Plaintiff's Motion for Voluntary Dismissal, and being familiar with the  
5 records and files herein, and being in all things advised, now, therefore,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the above entitled cause  
7 of action shall be, and the same hereby is, dismissed without prejudice.

8  
9 DATED this 18<sup>th</sup> day of March, 2016.

10  
11   
12 \_\_\_\_\_  
13 Judge

14 Presented by:

15 HILLIER & SCHEIBMEIR & KELLY, P.S.

16 by \_\_\_\_\_

17   
18 Samuel D. Satterfield  
19 WSBA No. 50057  
20 Attorney for Petitioner

# APPENDIX 7



**Page 2**  
**Mandate 48542-7-II**

Mark D McClain  
Pacific County Prosecutor's Office  
PO Box 45  
South Bend, WA 98586-0045  
mmclain@co.pacific.wa.us

Samuel David Satterfield  
Hillier, Scheibmeir & Kelly, P.S.  
299 NW Center St  
Chehalis, WA 98532-2008  
ssatterfield@rainierconnect.com

Brian Davidson  
1718 Franklin Avenue  
Astoria, OR 97103

Hon. Michael J. Sullivan  
Pacific County Superior Court Judge  
300 Memorial Ave  
South Bend, WA 98586

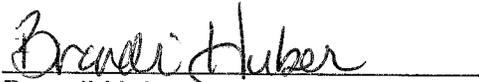
DECLARATION OF SERVICE

I declare, under penalty of perjury, under the laws of the State of Washington, that on the date below, I caused to be served a copy of State's Response Brief via email and submission to the Division II JIS Link system to the following parties.

COUNSEL FOR PETITIONER

Corey Evan Parker  
Law Office of Corey Evan Parker  
1230 Rosecrans Ave, Suite 300  
Manhattan Beach, CA 90266-2494  
(via email: corey@coreyevansparkerlaw.com)

Signed this 29<sup>rd</sup> day of October, 2018, at South Bend, Washington.

  
\_\_\_\_\_  
Brandi Huber  
Pacific County Prosecutor's Office  
P.O. Box 45  
South Bend, WA 98586  
(360) 875-9361

**PACIFIC COUNTY PROSECUTING ATTORNEY**

**October 29, 2018 - 3:29 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51314-5  
**Appellate Court Case Title:** Brian Davidson, Appellant v. Pacific County, Respondent  
**Superior Court Case Number:** 15-2-00293-9

**The following documents have been uploaded:**

- 513145\_Briefs\_20181029152532D2783691\_7631.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Respondents Brief.pdf*

**A copy of the uploaded files will be sent to:**

- bwalker@co.pacific.wa.us
- corey@coreyevanparkerlaw.com

**Comments:**

---

Sender Name: Brandi Huber - Email: bhuber@co.pacific.wa.us

**Filing on Behalf of:** Mark D McClain - Email: mmcclain@co.pacific.wa.us (Alternate Email: )

Address:  
PO Box 45  
South Bend, WA, 98586  
Phone: (360) 875-9361

**Note: The Filing Id is 20181029152532D2783691**