

FILED  
Court of Appeals  
Division II  
State of Washington  
9/7/2018 2:43 PM

No. 51749-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

---

GARY LIVINGSTON, and  
PATRIOT SEALCOAT, INC.

Appellants

v.

DAVID ROBERTS,  
Respondent.

---

ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Suzan Clark

---

BRIEF OF APPELLANT (CORRECTED)

---

PATRICIA J. CAMPBELL  
Attorney for Appellant  
LAW OFFICE OF PATRICIA J. CAMPBELL  
5514 NE 107<sup>th</sup> Ave., Suite 202  
Vancouver, WA 98662  
(360) 989-8800  
patricia@pcampbelllaw.com

## TABLE OF CONTENTS

A.	INTRODUCTION .....	1
B.	ASSIGNMENTS OF ERROR .....	3
	Issues Pertaining to Assignment of Errors ..	3
C.	STATEMENT OF THE CASE .....	4
D.	ARGUMENT .....	13
	1. Livingston Was Deprived Of Due Process By Receiving One Court-Day Notice Prior To The Contempt Hearing	13
	2. An Order of Contempt For Failure to Make Discovery Requires a Prior Order Compelling Discovery	16
	3. The Contempt Order Concerning Documents Is Void For David's Failure To Comply With 45(C)(2)(b)	20
	4. The Court Should Award Livingston Attorney fees and Expenses on Appeal	21
E.	CONCLUSION .....	22

## TABLE OF AUTHORITIES

### FEDERAL CASES

<i>Bloom v. State of Illinois</i> , 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968) .....	13
<i>Cooke v. United States</i> , 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767 (1925) .....	14
<i>In re Oliver</i> , 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948) .....	14
<i>Taylor v. Hayes</i> , 418 U.S. 488, 41 L.Ed. 897, 94 S. Ct. 2697 (1974) .....	14

### WASHINGTON CASES

<i>In re Dependency of A.K.</i> ,.162 Wn.2d 632, (2007) .....	13
<i>Nielsen v. Nielsen</i> , 38 Wn.App. 586, 589 (1984) .....	14
<i>Washington State Physicians Ins. Exch. &amp; Assn. v. Fisons Corp.</i> , 122 Wn. 2d 299, 339-340 (1993) .....	19

### STATUTES

RAP Rule 18.1 .....	21
RCW 7.21 .....	19
CR 26(i) .....	12, 15
CR 30 .....	1, 16, 17
CR 37 .....	3, 4, 7,12,16, 17,19, 21

RULES

Clark County Local Rules, Rule 6 ..... 7, 15

Secondary Authority

1-10 LN Practice Guide: Washington Civil Discovery  
§ 10.07 ..... 19

1-10 LN Practice Guide: Washington Civil Discovery  
§ 13.03 ..... 19

## **A. INTRODUCTION**

This appeal arises from the trial court's order of contempt against Appellants, non-party Gary Livingston, individually and in his capacity as the President of Patriot Sealcoat, Inc., (collectively, "Livingston").

Respondent, David Roberts<sup>1</sup> caused Livingston to be served with a subpoena under CR 45 and a deposition notice under CR 30 relating to David's dissolution action. Livingston appeared for the deposition, but declined to produce certain documents for which David had been served a timely objection. Livingston also declined to answer certain questions that he believed invaded his privacy rights and weren't calculated to lead to the discovery of admissible evidence.

David didn't seek a court order compelling answers to his deposition questions or production of documents following Livingston's deposition. Rather, David sought and obtained an ex parte order shortening time for a hearing on a motion for contempt against Livingston. Livingston was given one-day notice before the contempt hearing.

---

<sup>1</sup> The underlying action concerned a marital dissolution between Petitioner Tammy Roberts and Respondent David Roberts. In order to avoid any confusion, and without intending any disrespect to the underlying parties, Livingston shall refer to them as Tammy and David, respectively.

Livingston appeared for the contempt hearing without benefit of counsel due to the shortened notice. The court allowed Livingston to speak, but only after he already been found in contempt. The court also rejected argument from Tammy's counsel that the matter should have been presented as a motion to compel discovery, not a motion for contempt. The Court ordered Livingston to appear for a second deposition. At David's counsel's request, the court reserved on the issue of a cost bill until presentation of the order of contempt.

Without any explanation for his delay, David finally presented the order of contempt seven (7) months after the contempt hearing. David also presented a cost bill for \$4192.90. Livingston opposed the presentation of the contempt order and the cost bill, which the court opted to treat as a motion for reconsideration. The court signed the order of contempt and granted David the full \$4192.90.

Two months later the court denied Livingston's motion for reconsideration stating that law and fact supported the court's findings.

This appeal followed.

## **B. ASSIGNMENT OF ERROR**

### Assignments of Error

1. The court erred in granting David's ex parte motion to shorten time causing non-party Livingston to receive one day's notice before the hearing on the motion for contempt, thereby depriving Livingston of due process.

2. The court erred in granting David's motion for contempt against non-party Livingston where no order compelling discovery under CR 37 was first obtained.

3. The court erred in granting David's motion for contempt against non-party Livingston where no order under CR 45(C)(2)(b) compelling production of documents was first obtained.

4. The court erred in awarding David \$4192.90 in fees and costs as no contempt had occurred.

### Issues Pertaining to Assignments of Error

A. Whether the court deprived Livingston of due process by setting a contempt hearing on one-day notice where David made no showing of exigent circumstances and Livingston wasn't given an adequate opportunity to prepare a defense?

B. Whether a motion to compel a non-party to answer at a deposition must be brought as a discovery motion under CR 37 when no prior court order compelling a response has issued?

C. Whether a non-party is subject to a proceeding for contempt under CR 45 where the non-party appears for the deposition, but declines to answer some, but not all, deposition questions?

D. Whether a motion to compel a non-party to produce documents at a deposition must be brought under CR 45(C)(2)(b) where the requesting party has been duly served with written objections prior to the deposition?

E. Whether the court lacked jurisdiction to award David fees and costs when the underlying contempt proceeding was improper.

### **C. STATEMENT OF THE CASE**

Livingston was served with a subpoena to appear for a deposition in the matter styled *In re the Marriage of Roberts*, Clark County Superior Court Cause No. 13-3-01077-9. (CP 13-17). The subpoena required Livingston to produce certain documents at the deposition. (CP 13-17). On April 3, 2017, and April 19, 2017,

David was served with written objections to the deposition notices and subpoenas. (CP 44-48). Livingston appeared for the deposition on May 2, 2017, and at that time produced documents to which he had no objection. (CP 30, 31(p. 8:13-16))

Livingston answered questions for one hour and twenty minutes (CP 29 (p. 4:1-2; CP 42 (p. 51:20) ), including the following:

Livingston first became romantically involved with Tammy in December 2015 (CP 33 [Deposition Transcript (DT) 16:14-18]);

Livingston's never helped Tammy with her finances. (CP 33 [DT 16:19-21] );

Livingston's never paid Tammy any money or paid her expenses, but that he had paid for trips with Tammy. (CP 33 [DT 16:24-17:2]; CP 40 [44:14-45:9]);

Tammy isn't a signatory on Livingston's personal or business accounts. (CP 37 [DT 32:7-14]);

Livingston has never deposited funds into Livingston's accounts and he has never deposited funds into Tammy's accounts. (CP 37 [DT 32:15-20]);

Livingston has never paid Tammy's attorney fees. (CP 37 [DT 36:4-6]);

Livingston has never bought gifts for Tammy or taken her on vacations in lieu of compensation for bookkeeping services or help with invoices for his business. (CP 41 [DT 48:20-49:24]);

Livingston's trip with Tammy to Seattle was not a form of compensation for any services she'd provided. (CP 41-42 [DT 49:25-50:25]).

Livingston did, however, object and decline to answer several questions during the deposition:

Livingston declined to provide the names his business' employees. (CP 31 [DT 7:10-8:10]);

Livingston refused to create an exhibit identifying trips he'd taken with Tammy. (CP 33-34 [DT 17:1-18:25]);

Livingston refused to answer questions concerning how he personally made money through a venture called Team National. (CP 36 [DT 27:5-29:21]);

Livingston refused to produce any W-2s, 1099s, or W-4s for the people who perform bookkeeping and accounting services for his business. (CP 39 [DT 40:16 – 41:21]).

On May 10, 2017, at 3:03 pm, David brought, and the court granted, an ex parte motion for an Order to Go to Court (Order to Show Cause) and Order Shortening Time for Hearing, which set

the contempt hearing against Livingston on May 12, 2017, at 9:00 a.m. (CP 1-48). Livingston was served with the motion and order at 8:57 p.m., that night, (CP 50) Thus, Livingston was effectively given one day's notice prior to the contempt hearing.<sup>2</sup>

Consequently, he was deprived of a reasonable opportunity to retain counsel to represent him or prepare a defense to the contempt motion.

Prior to bringing his motion for contempt, David failed to seek an order from the court compelling Livingston to provide discovery under CR 37. Moreover, David failed to obtain an order from the court pursuant to CR 45(C)(2)(b) compelling Livingston to produce documents to which he had objected. Thus, David's Contempt Papers were not based on an existing court order. Rather, the Contempt Papers were based solely on Livingston's unwillingness to answer question or produce documents at the May 2, 2017, deposition. (CP 5-10)

On May 12, 2017, Livingston, without counsel, appeared at the hearing and briefly addressed the court to explain that he hadn't

---

<sup>2</sup> Ordinarily, a motion for contempt on a domestic relations docket in Clark County must be filed and served ten (10) court days before the time specified for the hearing. *Local Rules of the Superior Court for Clark County, Rule 6(e)*.

resisted appearing for the deposition, but had declined to answer questions that he believed were not reasonably related to the dissolution proceeding between Tammy and David. (RP 12:14-14:9).

MR. LIVINGSTON: Your Honor, am I excused?  
Am I excused for [indiscernible]?

THE COURT: Well, I mean, technically he would be entitled to represent himself -- for your own counsel, so what would you like to say?

MR. LIVINGSTON: Well, Your Honor, I have a history with Mr. Roe. He was my attorney almost 20 years ago; okay? We developed a friendship over the years; okay? So after our last court proceeding, I had waited for him to get done in another courtroom to talk to him, What is it you want; what is it you would like me to show you?

MR. ROE: Your Honor, none of this is of record.

MR. LIVINGSTON: Typical.

THE COURT: Well...

MR. LIVINGSTON: So I agreed. Let's go to your office right now; let's set up the deposition Because I was under the assumption he was going to ask me questions about bookkeeping, if Ms. Roberts is on my payroll, if I pay her in any way. That's what I thought.

When I got there I didn't realize he was going to be asking questions as to where I sleep at night, where I stay after a Seahawks game. I didn't know I was going to be interrogated with questions that don't really have anything -- to what I feel

pertains to their case. Last I checked, I'm not getting divorced from Mr. Roberts.

THE COURT: No. But --

MR. LIVINGSTON: Okay. And --

THE COURT: Your -- any payments you make that benefit her can be considered income [indiscernible].

MR. LIVINGSTON: There are no payments. There are no payments. [Indiscernible].

THE COURT: I don't know. Are you paying for hotel rooms? Are you paying for meals? All those things.

MR. LIVINGSTON: Absolutely I pay. We're a couple. She buys groceries one day. I buy groceries the next day.

THE COURT: He's entitled to inquire fully into it, so that is the order.

MR. LIVINGSTON: Okay. Well... (RP 12:14-14:9).

The court also entertained argument from counsel during which time David's counsel, Mr. Roe, reiterated the fact that he was seeking to compel Livingston to appear for a further deposition and answer questions to which Livingston had objected. (RP 4:8-5:20). Tammy's counsel, Ms. Campbell, expressed two concerns regarding the propriety of the contempt motion. The first was that the motion was set for hearing on shortened notice, which counsel

would have opposed had she been given the opportunity to appear at the ex parte proceeding. (RP 5:21-6:1). Second, counsel raised the procedural concern that the matter should have been brought as a motion to compel discovery, not as a contempt proceeding because there was no prior court order. (RP 6:2-8).

Mr. Roe never addressed either of Tammy's counsel's arguments regarding the propriety of the contempt motion. Mr. Roe never explained the exigent circumstance that justified setting a hearing on one day's notice. Nor did Mr. Roe explain why, without a prior court order, this matter was brought as a contempt rather than a discovery motion.

The court found Livingston in contempt and ordered that he appear for a further deposition and provide the information requested. (RP 11:2-13; 14:9-14; CP 51). Mr. Roe requested the court to reserve ruling on a cost bill, which he would present at the same time as the order of contempt. (RP 12:6-13; CP 51). The court granted the request. (RP 12:6-13; CP 51).

Livingston appeared for the court-ordered deposition on May 24, 2017. (CP 55, Item line 8). David then waited until December 15, 2017, to file his notice of hearing for presentation of the contempt order and the cost bill. (CP 52). Livingston retained Ms.

Campbell for the limited purpose of filing an opposition to the presentation and cost bill, and appearing on Livingston's behalf at the hearing. (CP 56) Livingston filed an Opposition to Entry of Contempt Order and Judgment. (CP 57-63) In his opposition Livingston raises the issue of the prejudice he suffered from the shortened notice he was given prior to the contempt proceeding. (CP 57-63)

Livingston declared under oath as follows:

1. I make this declaration in opposition to Respondent's request for entry of a contempt order and judgment against me and my company, Patriot Sealcoat, Inc. As the Court knows, I am not a party to this action, but am a third party to this dissolution proceeding.
2. I am asking the Court to reconsider the finding of contempt made against me during the May 12, 2017, hearing, on the grounds that the motion was procedurally improper, and sought relief that was unavailable under the circumstances.
3. As the Court will recall, Respondent gave me less than 2-days notice to appear at a contempt hearing, which left me with essentially no opportunity to retain counsel or obtain legal advice prior to the hearing. Consequently, I was unable to provide a written response because of the shortened notice. Had I been given an opportunity to retain counsel and present a written opposition to the motion, I would have been able to show the Court that, a contempt proceeding was improper under the circumstances. A motion, if any, should have proceeded under CR 37(a) which controls discovery disputes. (CP 57-58).

Livingston further advised that he was deprived of the

procedural safeguards that require a meeting of counsel under Rule 26(i) and under CR 37(b)(1) which plainly state that an order of contempt could not issue unless and until he was directed by a court to be sworn and answer questions. (CP 58). Livingston further advised that sanctions for a motion under CR 37(a) were discretionary, and the court could find that the party opposing the motion was substantially justified in opposing the discovery motion. (CP 58-59). Livingston explained to the court that he never intended to obstruct discovery, but had an honest belief that questions concerning his personal finances and those of his employees were improper. (CP 59).

At the hearing on January 19, 2018, the court signed the order of contempt and entered a judgment in favor of David in the amount of \$4192.90. (CP 65-68). The court advised that it would treat Livingston's opposition as a motion for reconsideration and allowed David to file a brief in response. (CP 64; RP: Vol. 2).

David filed a memorandum on February 2, 2018, in which he contends that CR 45 permits a finding of contempt to issue against anyone who fails to answer every deposition question if they appear for the deposition pursuant to a subpoena under CR 45. David cites no law in support. (69-77).

The court issued its ruling denying reconsideration on April 2, 2018. (CP 78).

Livingston filed notice of appeal on April 12, 2018. (CP: 79).

#### **D. ARGUMENT**

1. Livingston Was Deprived Of Due Process By Receiving One Court-Day Notice Prior To The Contempt Hearing.

Contempt may be direct, occurring in the court's presence, or indirect, occurring outside of court. A court's authority to impose sanctions for contempt is a question of law, which the Court will review de novo. *In re Dependency of A.K.*, 162 Wn.2d 632, (2007). When contempt is indirect, meaning the judge has no personal knowledge of all the essential elements of contempt, the court is not in a position to evaluate the circumstances that evoked the allegedly contemptuous conduct. *Bloom v. State of Illinois*, 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968); *In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948); *Cooke v. United States*, 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767 (1925). Where the alleged contemptuous behavior is indirect, due process requires that the alleged offender be given notice, a reasonable time to

prepare a defense, and a hearing. *Taylor v. Hayes*, 418 U.S. 488, 41 L.Ed. 897, 94 S. Ct. 2697 (1974); *Nielsen v. Nielsen*, 38 Wn.App. 586, 589 (1984). Due process includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. *Cooke v. United States*, at 537, *Nielsen v. Nielsen*, at 589.

Livingston was deprived of due process when he was given only one court-day notice prior to the contempt hearing. He had no reasonable opportunity to retain counsel, no reasonable opportunity to consider the allegations against him, he was unable to research any legal authority concerning the allegations against him, nor was he allowed sufficient time to prepare a meaningful defense.

The deprivation of due process is particularly compelling under these facts because Livingston wasn't afforded an opportunity to challenge the propriety of the underlying contempt proceeding. Had Livingston had been given a full and fair opportunity to present a defense, he could have shown the court

that the proper procedure in this instance was a motion to compel discovery, not a contempt proceeding. In that regard, Livingston would have received the benefit of the procedural safeguards inherent in a discovery motion, like a conference of counsel (CR 26(i), and an opportunity to explain in detail the basis for his refusal to answer certain questions or produce certain documents.

Moreover, David offers no reason why this matter had to proceed on an expedited basis. At a minimum, the court should have required David to show that some exigent circumstance existed that would justify depriving a non-party of the ten (10) court-day notice to which he was otherwise entitled under *CCLR 6(e)*. No such showing was ever made.

The record shows that Livingston was not provided reasonable notice of the contempt hearing or time to prepare a defense to the allegations against him thereby depriving him of due process. Consequently, this Court should vacate the order of contempt and the judgment against Livingston.

2. An Order of Contempt For Failure to Make Discovery Requires a Prior Order Compelling Discovery.

Whether it is a party to the action or a non-party compelled

to appear for a deposition by service of a subpoena, CR 30 governs the deposition upon oral examination. CR 30

CR 30(a), in pertinent part, provides: “any party may take the testimony of *any person, including a party*, by deposition upon oral examination.” (*emphasis added*). The conduct of the deposition is set forth in CR 30(h), which sets forth the standard of conduct expected of counsel taking the deposition and the basis for objections, including the right to object to questions that seek information beyond the scope of discovery.

CR 37 is the governing statute when a party wishes to seek an order from the court to compel discovery. CR 37, in pertinent part, provides:

(a) *Motion for order compelling discovery.* A party, upon reasonable notice to other parties and *all persons affected thereby*, and upon a showing of compliance with rule 26(i), may apply to the court in the county where the deposition was taken, or in the county where the action is pending, for an order compelling discovery as follows:

(1) *Appropriate court.* An application for an order to a party may be made to the court in which the action is pending, or on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under rules 30 or 31, ... any party may move for an order compelling an answer ...

When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before the proponent applies for an order.

(b) *Failure to comply with order.*

(1) *Sanctions by court in county where deposition is taken.* If a deponent fails to be sworn or to answer a question *after being directed to do so by the court* in the county in which the deposition is being taken, the failure may be considered a contempt of that court. (*emphasis added.*)

Court Rules 30 and 37, by their express language, apply to depositions of parties and non-parties, and motions compelling further answers to deposition questions regardless of whether it involves a party-deponent or a non-party deponent.

CR 37(b) makes clear that a contempt may occur where a *deponent* fails to answer a question after being directed to do so by the court, not just a party.

Therefore, a motion under CR 37 is the procedure that David should have followed if he wanted to compel Livingston to answer deposition questions, not a contempt under CR 45.

CR 45, in pertinent part, states:

(a) *Form; Issuance.*

(1) Every subpoena shall:

...

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, ...

(g) *Contempt*. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend a deposition produce documents, or permit inspection at a place not within the limits provided by subsection (e)(2)

Thus, CR 45 provides the legal mechanism to compel a non-party to appear at a deposition, but it does not control the conduct of the deposition. Even the plain language of (g) does not lend itself to support a contempt for declining to answer a deposition question. Rather, it expressly provides that a failure to obey would concern attendance or failure to produce documents. There is nothing in CR 45 that support's David's contention that a contempt proceeding against Livingston was proper.

In fact, the 1-10 LN *Practice Guide: Washington Civil Discovery* § 10.07, provides guidance concerning responding to a subpoena. In a "Warning" under § 10.07[3], the Guides states:

"If a witness fails to give testimony or otherwise comply with

the subpoena, the subpoenaing party may file a motion in the court in the county where the deposition is being taken for an order compelling discovery [CR 37(a).”

While the Practice Guide is certainly not binding on the Court, the reasoning behind this warning is sound and in conformity with the discovery statutes.

Although David does not raise it below, even the provisions of *Revised Code of Washington, 7.21, et seq.*, concerning contempt would not apply. The long-standing rule in Washington provides that when there is a discovery dispute, a rule of general application, like RCW 7.21 should not be relied on in a specific discovery rule applies. *Washington State Physicians Ins. Exch. & Assn. v. Fisons Corp.*, 122 Wn. 2d 299, 339-340 (1993); 1-13 LN Practice Guide: WA Civil Discovery § 13.03[3] (2017). Here, CR 37 is the specific discovery rule that should apply, not a general rule for contempt under RCW. 7.21

Accordingly, Livingston respectfully requests this Court to vacate the order of contempt and judgment against him.

3. The Contempt Order Concerning Documents Is Void For David’s Failure To Comply With 45(C)(2)(b).

CR 45(C)(2)(b) provides:

(C) *Protection of persons subject to subpoenas.*

(2) (B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. *If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued.* If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. ... (emphasis added).

Here, David was served with written objections concerning the production of documents requested under the subpoena. Therefore, it was incumbent upon David to obtain an order from the court compelling production of the documents subject to the objection, something he did not do.

Consequently, the court could not find Livingston in contempt for declining to produce documents absent an underlying order compelling him to do so. Therefore, at a minimum, that portion of the contempt order and judgment should be vacated.

4. The Court Should Award Livingston Attorneys fees and Expenses on Appeal.

Pursuant to Rules of Appellate Procedure, Rule 18.1, Livingston respectfully requests that he be granted attorney fees and costs on this appeal. Had David followed the proper procedure below concerning discovery under Rule 37, Livingston would have been entitled to request the reasonable expenses Livingston incurred in opposing such a motion, including reasonable attorney fees. David should not benefit by his own failure in seeking an improper remedy and forcing Livingston to incur expenses and attorney fees to vacate an improper order and judgment.

Additionally, CR 45 (c)(1), in pertinent part, states:

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

Livingston has been forced to incur attorney fees and lost wages, below and in this appeal, as a result of David imposing an undue burden and expense on Livingston under the

subpoena. The subpoena, on its face, purported to compel Livingston to produce documents subject to his right to privacy and which were not reasonably calculated to lead to the discovery of admissible evidence in David's dissolution proceeding. Consequently, this Court should award Livingston reasonable attorney fees and lost wages.

**E. CONCLUSION**

Livingston respectfully requests the Court to vacate the order of contempt and vacate the judgment for costs for all the reasons set forth herein, and award Livingston fees and lost wages.

Respectfully submitted,



---

PATRICIA J. CAMPBELL (WSBA 45795)  
Law Office of Patricia J. Campbell  
5514 NE 107<sup>th</sup> Ave., Suite 202  
Vancouver, WA 98662  
(360) 989-8800  
Fax: (360) 397-8291  
Email: [patricia@pcampbelllaw.com](mailto:patricia@pcampbelllaw.com)

Attorney for Appellant

**LAW OFFICE OF PATRICIA J. CAMPBELL**

**September 07, 2018 - 2:43 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51749-3  
**Appellate Court Case Title:** N/P Gary Livingston, Patriot Sealcoat, Appellants v David Roberts, Respondent  
**Superior Court Case Number:** 13-3-01077-9

**The following documents have been uploaded:**

- 517493\_Briefs\_20180907144217D2982906\_0588.pdf  
This File Contains:  
Briefs - Appellants - Modifier: Amended  
*The Original File Name was Livingston Corrected Appellant Brief.pdf*

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

- Mike@Roelaw.com
- jesse@conwaylaw.net
- ramona@conwaylaw.net

**Comments:**

---

Sender Name: Patricia Campbell - Email: patricia@pcampbelllaw.com  
Address:  
5514 NE 107TH AVE STE 202  
VANCOUVER, WA, 98662-6346  
Phone: 360-989-8800

**Note: The Filing Id is 20180907144217D2982906**