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WASHINGTON STATE
SUPREME COURT



ZBIGNIEW M. LASKOWSKI v. STATE OF WASHINGTON

DEPARTMENT OF LABOR

AND INDUSTRIES

THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CAUSE NO. 16-2-04012-34

THE SUPREME COURT OF STATE OF WASHINGTON NO. 95785-1

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON

DEPARTMENT OF LABOR

AND INDUSTRIES, Respondent

V.

ZBIGNIEW M. LASKOWSKI, Appellant Pro Se

PETITIONER BRIEF

ZBIGNIEW M. LASKOWSKI

APPELLANT, PRO SE

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RCW 51.04.050, .060

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RCW 51.32.220, .225, .240

RCW 51.52.100, .102, .115

WAC 296.20.01002(3)

WAC 296.20.270 & .280 & .290 & .300 & .250 & .260 & .220 &

.540 & .530 & .590 & .600 & .610 & .620 & .630 & .640 & .670 &

.680

I. INTRODUCTION

61 YEARS OLD PETITIONER'S MEDICAL CONDITIONS ALLOWED FOR THE WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES CLAIM AB 17747:

1. Sprain and Strain of Lumbosacral
2. Thoracic/Lumbosacral Neuritis/Radiculitis UNSPEC
3. (R) Sciatica
4. Radiculopathy Thoracolumbar Region
5. Radiculopathy Thoracic Region
6. Radiculopathy Lumbar Region
7. Sprain OTH Parts Lumbar Spine & Pelvis Init. Enc.
8. Radiculopathy Lumbosacral Region
9. Intervertebral Disc D/O W/Radiculopathy Thoracic
10. Intervertebral Disc D/O W/Radiculopathy TL Region
11. Intervertebral Disc D/O W/Radiculopathy LS Region
12. Intervertebral Disc D/O W/Radiculopathy Lumbar Region

II. ASSIGNMENTS OF ERRORS

ASSIGNMENT OF ERRORS:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND JUDGMENT,
THURSTON COUNTY SUPERIOR COURT CASE NO. 16-2-04012-34
ORDERED MAY 25, 2018 BY HON. CAROL MURPHY

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ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS:
FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND JUDGMENT,
THURSTON COUNTY SUPERIOR COURT CASE NO. 16-2-04012-34
ORDERED MAY 25, 2018 BY HON. CAROL MURPHY

NO.1 PAGE 2, 1.2. The Claim AB 17747 was closed without valid
medical certification and before the Petitioner was able to reach

Maximum Medical Improvement defined in WAC 296-20-01002(3). Dr. Diana Kraemer indicated curative treatment suggesting surgery on L3-4 lumbar spine.

NO.2 PAGE 2; 1.3. An agreed exam is Independent Medical Examination (IME) in which involved parties draft questions, select the examiner, and agree to abide by the findings, conclusions, and recommendations of the examiner. Agreed exams, however, are not always binding. According to the state law a worker cannot agree to relinquish any rights (RCW 51.04.060). In addition, the Department is not bound by any agreement when the Department of Labor and Industries has not been party to the agreement.

NO.3 PAGE 2; 1.4. The IME examination should be treated as examination which the Petitioner never was able to contest by asking Dr. Diana Kraemer direct questions, who should have answered them under oath as provided in RCW 51.52.100.

NO.4 Page 2, 3; 1.5 The dates of May 14, 2015 and May 15, 2015 are the dates which ALJ William P. Gilbert should address during ex-parte phone conversation after the June 28, 2016 Independent Medical Examination. Instead ALJ William P. Gilbert allowed himself to carry unauthorized conversation with Dr. Diana Kraemer (please see the confidential file, to which the Petitioner

didn't and still doesn't have access, reviled by Hon. Carol Murphy during second day of the trial that the contents of it are not what ALJ Gilbert disclosed for the record.

NO. 5 page 3; 1.6. The Order of the Parties never was issued by ALJ William P. Gilbert, instead, in his absents the Board of IIA issued order on September 12, 2016.

NO.6 PAGE 3; 2.1. The Thurston County Superior Court never assumed jurisdiction over the parties and the matter because Department's second closing order dated October 6, 2016 was issued improperly without Petitioner reaching Maximum Medical Improvement (WAC 296-20-01002(3) and the Petitioner's protest to that order dated December 02, 2016 was not addressed by the Department.

NO.7 PAGE 3; 2.2. The discrepancies in the record are material breaches to the parties' agreement what the Petitioner explained above.

NO.8 PAGE 3; 2.3. The Board of IIA September 12, 2016 order is incorrect and should not be affirmed by the Thurston County Superior Court and should not been affirmed.

NO.9 PAGE 3; 2.4, 2.5. The Department orders dated May 13, 14, 15 of 2015 are capricious backed by malpractice, fraud and corruption.

NO.10 PAGE 4; 3.1. The Board of Industrial Insurance Appeals order dated September 12, 2016 is not what the parties agreed upon. ALJ William P. Gilbert supposed to issue an order, but in his unexplained absence the Board did so. Closing attempt of Claim AB 17747 was initiated for the second time on October 06, 2016, but the Department missed to respond to the Petitioner protest of December 02, 2016 by approximately two (2) years trying to fix it.

ASSIGNMENT OF ERRORS:

STATE OF WASHINGTON, BOARD OF INDUSTRIAL APPEALS; ORDER ON AGREEMENT OF PARTIES, DOCKET NOS. 15 17653 & 15 17654

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**ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS:
STATE OF WASHINGTON; BOARD OF INDUSTRIAL INSURANCE APPEALS, ORDER ON AGREEMENT OF PARTIES:**

NO.1

PAGE 1, LINES 9-11: "In the Docket No. 15 17653, Affirmed"

Claim ab 17747 was closed before the Petitioner/Claimant/Patient could reach MMI (Maximum Medical Improvement), as implemented in WAC 296.20.01002(3)

NO.2

PAGE 1, LINES 12-14:" In the Docket No. 15 17654.... Reversed and Remanded."

The Category IV (4) impairment rating does not reflex all the conditions in this claim, most notably injury of Pelvis (but not only) which never was acknowledged by the Board or the IME examiner.

NO.3

PAGE 1, LINE 18:" The Department order dated May 13, 2015, is affirmed."

A closing of claim AB 17747 is based on wrong pretenses.

NO.4

PAGE 1, LINES 20-22:" The Department order dated May 14, 2015, is reversed... the claim should close."

The impairment rating does not consider WAC 296-20-290 or WAC 96-20-300 and more.

ASSIGNMENTS OF ERRORS:
INDEPENDENT MEDICAL EVALUATION BY DR. DIANA KRAEMER
FOR CLAIM AB 17747, DOCKET NOS. 15 17653 & 15 17654
DATED JUNE 28, 2016

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ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS:
INDEPENDENT MEDICAL EVALUATION BY DR. DIANA KRAEMER
FOR CLAIM AB 17747, DOCKETS NOS. 15 17653 & 15 17654
DATED JUNE 28, 2016

NO.1

PAGE 1, LINE 14: "This is binding examination on Zbigniew Laskowski."

RCW 51.04.060 "No evasion of benefits or burdens."

RCW 51.52.100

NO.2

PAGE 2, LINE 23-25: "Mr. Laskowski brings with him two additional sets of medical records..."

Not all records submitted are incorporated. A Doctor's Worksheet for rating dorso-lumbar & lumbo-sacral impairment is missing or was not produced by the IME doctor. Pelvis impairment was not rated.

NO.3

PAGE 3, LINES 12-13: Dr. Kraemer added her own words, but excluded (*EXHIBIT 2*) from MRI report dated 3/2/2006 "Spinal canal and neuroforaminal narrowing is mild. There is subtle T2 hyperintensity with both pedicles, extending into the pars interarticularis."

NO.4

PAGE 5, LINES 8-9: "There is interval Harrington-style L4-L5 transpedicular posterior fusion."

As of January 25, 2007, no fusion was install yet.

NO.5

PAGE 6, LINES 24-25:" There is no evidence that Methadone..."

Petitioner never was prescribed or used Methadone.

NO.6

PAGE 7, LINES 3-11

IME dated JUNE 8, 2010 performed by Dr. David E. Karges was protested in the letter dated April 29, 2011 to the claims manager, Ms. Suzette Slipper. A second letter with the protest to the IME Quality Assurance officer Ms. Carol Britton was received by the Department of Labor and Industries on May 13, 2011.

Dr. David E. Karges (page 12 of his 06/08/2010 IME report, bottom two lines) introduced the Petitioner to the Weddell's signs:" Weddell's signs are moderately-to-strong positive to vortex shoulder compression, to light skin palpation over lumbosacral area, particularly Sacral area and over the left side and to the end-block rotation."

Dr. David E. Karges not only contradicted objective clinical findings but he didn't follow the rigorous rules of Independent Medical Examination, instead he stayed sitting what made an application of pushing down Petitioner's/Patient's shoulders when he seats on an examination table out of reach for this five (5) feet tall man. Claim AB 17747 was reopened despite Dr. David E. Karges

opposition. Dr. Karges described all the Weddell's signs in areas affected by the injury/occupational disease which are documented in Claim AB17747 file as objective.

NO.7

PAGE 7, LINE 12-bottom

Within six (6) months after June 8, 2010 Dr. David E. Karges IME report was issued, Dr. Jeffery Pearce on November 29, 2010 indicated possible facet blocks at L4-5. Then MRI from February 3, 2011 (*EXHIBIT 3*) notices progressing conditions in the three outlined points where first time multilevel of midthoracic spine problems are confirmed.

NO.8

PAGE 8, LINE 1-7:" May 17, 2012: Independent Medical Evaluation by Diana Kraemer (current examiner) and Dr. Douglas Porter. Diagnoses: 1) Lumbosacral strain, administratively accepted as related. 2) Sciatica, administratively accepted as related. Another term for Sciatica would be lumbar radiculopathy. Discussion: Mr. Laskowski is complaining of symptoms, which are suspicious for worsening of a left L5 radiculopathy."

Page 9, lines 22-23:" ... without evidence of central canal or neural narrowing."

Page 9, lines 31-34: On July 29, 2013" Most recent lumbar spine

MRI shows mild-to-moderate neural foraminal stenosis at L4-L5 which could produce these symptoms” by Barbara Jane Distad, MD of University of Washington Neurology Department.

Page 10, lines 20-33; Page 11, lines 1-18:” June 5, 2014: 1) Lumbar myelogram proceeds post-myelogram CT scan of lumbar spine which will be reported on separate form. 2) There are 6 non-rib-bearing lumbar vertebrae. 3) Using this numbering scheme, posterior spinal fusion with transpedicle screws and short segment rods, at L5 and L6 levels, with intervertebral spacer at L5-L6 level. 4) Suspected spinal stenosis at the L4-L5 (AP dimension 6-7 mm), and L3-L4 levels (AP dimension 8 mm).

June 10, 2014: “Lumbar myelogram, post contrast CT is performed. There are six non-rib-bearing lumbar vertebrae. Using this numbering scheme, posterior spinal fusion with short transpedicular screw and short-segment rods at L5 and L6 levels with intervertebral spacer at the L5-L6 level. There is suspected spinal stenosis at L4-L5 and L3-L4 levels. Post myelogram CT impression: (1) Six non-rib-bearing lumbar vertebrae.

Interpretation of CT scan is based on this numbering scheme. (2) Postoperative laminectomy and spinal fusion at L5 and L6 levels with intervertebral spacer at the L5-L6 interspace. (3) L5 and L6 bilateral transpedicular screws are optimal in position without

neural foraminal or spinal canal transgression. (4) Intervertebral spacer at L5-L6 level does not protrude posteriorly into the spinal canal. (5) Moderate spinal canal stenosis at L4-L5 level due to a combination of broad-based disk bulge and ligamentum flavum hypertrophy. (6) Mild-to-moderate spinal canal stenosis due to combination of broad-based disc bulging at ligamentum flavum hypertrophy. In the body of the report it states that at the L4-L5 interspace, there is moderate spinal canal stenosis measuring 6 to 7 millimeters in anteroposterior dimension. Broad-based, near circumferentially disc bulging as well as ligamentum flavum hypotrophy result in extradural encroachment. This is negative for asymmetric disc protrusion. Negative for bony neural foraminal narrowing. Mild bilateral neural foraminal narrowing from broad-based disc bulging." (EXHIBIT 4)

NO.9

PAGE 9, LINE 37:" He receives ongoing trial of manipulation and massage..." it is inaccurate and lacking due diligence. 'We have to make something out of it' solicited Dr. Kelly Golob office manager. After 10 minutes into a massage, very first session was interrupted, never repeated. "Ongoing" is misleading.

The last visit at the Tumwater Chiropractic Center was nothing else than search for new attending physician and referral to

neurosurgeon.

NO.10

PAGE 11-12, LINES 25-38 & LINES 1-17

Dr. Sean Keem was clearly instructed when he performed Slam-test on Petitioner left and right knee during September 2, 2014 visit. The unexpected impact was painful enough to report assault to the Seattle Police.

Ms. Rose, ARNP, the assistant to Dr. Christoph Hofstetter, University of Washington Department of Neurosurgery, described Slam test as gentle and not pain inflicting when presenting it to the Petitioner during medical appointment on October 20, 2017. Her neurological hammer impact didn't compare with Dr. Keem's assault. And then accusation of threatening gestures which man, as the doctor does, owning three martial arts black belts, should be rather ashamed of.

NO.11

PAGE 12, LINES 33-36

The exam room designated for the Independent Medical Examination on March 18, 2015 had back of the door covered with poster 'At any time during the exam you can ask for chaperon'. When Dr. William Stump raised his voice, the Petitioner responded by asking the medical assistant to join the

conversation. That turned to what the doctor couldn't tolerate, ultimately ordering the clinic personal "throw them both out of here", sense the Petitioner was join at the appointment by son. Several interventions were elected to save the appointment, but Dr. Stump couldn't recover from it. The Department was informed by the Petitioner but decided against finishing the visit.

NO.12

PAGE 13, LINES 5-19

Dr. Jeffery Pearce since 2007 surgery he performed on Petitioner, for the first time in the notes from September 28, 2015 (*EXHIBIT 5*) appointment, calls lumbar interspaces respectively second and third "interspace". That happened after he reviewed CT scan dated June 10, 2014 from Dr. Rich J. Matthies at Overlake Hospital in Bellevue, WA. (*EXHIBIT 4*)

NO.13

PAGE 13, LINES 20-34:" CT myelogram of the lumbar region: images and report reviewed with the patient there are six lumbar vertebrae. The patient has a laminectomy and fusion at L5-L6. There is moderate spinal stenosis at L4-5 is well as less significant spinal stenosis at L3-4."

November 5, 2015 medical appointment with Dr. Kevin A. Berry

was arranged by ACLU, or at least chain of events which took place at that time may suggest so. Some questions answered by Dr. Berry during various appointments were only answered by shake of his head, like he feared to be heard. (EXHIBITS 6 & 7)

NO.14

PAGE 16, LINES 16-17:" 1. Lumbar Strain administratively accepted 2. Lumbar radiculopathy, administratively accepted."

The list (EXHIBIT 1) of Accepted (allowed) Conditions was updated twice: 08/01/2012 and 02/07/2016. It is reasonable to suggest that the first update of Accepted (allowed) Conditions was a result of May 27, 2012 IME conducted by Dr. Diana Kraemer and Dr. Douglas Porter.

NO.15

PAGE 17, LINES 24-29:" The conditions of Lumbar sprain and lumbar radiculopathy are accepted as related to Claim AB 17747. Therefore, MRI imaging, the surgery of January 25, 2007, and the treatment and imaging through December, 2007, are thought to be related to Claim AB 17747. It is noted that Dr. Backer performed a Physical Capacity Examination on December 12, 2007 that reported that Mr. Laskowski was capable of performing Full Time Medium work, with some modifications." (EXHIBIT 8)

Dr. Kraemer convictions are much bigger than the medical facts in

the Claim AB 17747. The Physical Capacity Examination with Dr. Theodore Backer was schedule after original appointment at Workable Solutions of Lynnwood, Washington on October 31, 2007 was canceled. (EXHIBITS 8 & 10)

NO.16

PAGE 18, LINE10-12:” There is no recommended treatment related to Claim AB 17747. Mr. Laskowski is a candidate for lumbar decompression for treatment of central Stenosis at L3-L4, unrelated to Claim AB 17747.” (EXHIBIT 11)

NO.17

PAGE 18, LINES 25-28:” It is noted that lumbar fusion was performed on February 10, 2014. Most surgeons recommend 3, 6, 12 months of recovery after fusion before returning to work. By those standards, Mr. Laskowski would have been capable of full time work between May 12, 2015 and May 14 or May 15, 2015. October 22, 2015 (EXHIBIT 9) another, last medical visit with Dr. Todd E. Jackman took place. The doctor of the second surgery became cursing all ‘f’ words during the last appointment, mostly hoping to staged provocation. When the Petitioner reflected on the last appointment with Dr. Jackman, the Board of Industrial Insurance ALJ Wayne Lucia join by Assistant Attorney John Barnes took prolonged laugh during scheduled conference. Dr. Diana

Kraemer described as a "shame" Dr. Jackman provocation but failed short to report abuse or mention the visit in her IME report.

NO.18

PAGES 18-19, LINES 34-2:" There is no progression related to the industrial injury that would alter those recommendations."

PAGE 19, LINES 6-13:" The Doctor's Worksheet for Rating Dorso-Lumbar and Lumbosacral Impairment is filled out at follows:

Column A. Moderate Leg Atrophy = 6 points; Column B. Reflex

Loss = 3 points; Column C. MRI changes = 4 points; Column D.

Other findings: + SLR = 3 points. Columns A+B+C+D= 16 points,

divided by 4, equated to a Category IV (4) rating using WAC 296-20-280.

If the Category III (3) impairment, first estimated in 2008 IME, change to Category IV (4), then the noted progress should be one (1) full category.

III. STATEMENT OF THE CASE

In year 2012 when Department of Labor and Industries executed replacement of the attending physician in respond to Dr. Mark Wentworth letter dated December 14, 2011 (*EXHIBIT 8*), all possible medical care became out of reach. Newly elected practitioner Ms. Teresa Garrison, ARNP couldn't coordinate comparison of IME reports. Long delays became new reality.

The role of University of Washington Neurology Department should be noted, but in particular involvement of Associated Professor Barbara J. Distad, MD and Dr. Krista Reina Kawaguchi, MD (please see clinical notes for appointment on April 22, 2013). Dr. Barbara J. Distad association with the Neurological Associates of Washington of Kirkland, WA was through her past employment at the clinic, what may try to explain why to give a straight answers to the Patient / Petitioner became then problematic. Problematic to the extent that two addendums had to be produce because radiologist at the University of Washington Medical Center couldn't get right the first or the second time. A camaraderie with Dr. Jeffery Pearce, Neurological Associates of Washington, who performed first failed surgery on Petitioner in January 2007, should be properly disclosed. Dr. Barbara J. Distad association with this particular clinic maybe a factor in decisions she had to made in regards to the Petitioner industrial disease. To be able to see specialist, after long waiting, Petitioner had to ask for referral his very first attending physician Dr. Lonnie Lowe, DC instead.

When the surgery by Dr. Todd Jackman didn't bring awaited results, the doctor became hostile by calling Petitioner "liability". The suspicion of potential malpractice drove the Petitioner to get

help. Unfortunately, Bellevue Police wouldn't take the report. The Seattle FBI office and ACLU became only hope to get medical attention. That is when Dr. Rich J. Matthies, the radiologist at the Overlake Hospital in Bellevue, WA, in his CT scan interpretation revealed the actual level of spine, Dr. Todd Jackman operate on Petitioner on February 10, 2014. After the surgery failed, the Petitioner started seeking second medical opinion, at Seattle Polyclinic with Dr. Sean Keem whose reluctant approach towards Petitioner and hardline instruction (the doctor was told to exam Petitioner 'lumbar only') made the appointment unproductive. Dr. Kevin A. Berry when asked by Petitioner to be specific about his findings during November 5, 2015 appointment, responded by shaking his head only. The simple reason Dr. Kevin A. Berry was able to disclose colleagues malpractice was involvement of ACLU. The vast majority of medical data in the Claim AB 17747 is not available because clinics like Seamar Clinic of Olympia, WA billed Medicare instead for doctor visits, not the Washington State Department of Labor and Industries through which the Petitioner was insured before the industrial injury in year 2006. That is why the expected paper trail (chart notes) won't follow the bills into Department of L & I. Dr. Diana Kraemer involvement in second IME in this claim may

not be truly volunteer. The claims manager may have felt appropriate when choosing Dr. Diana Kraemer for the second time, consider that Dr. Diana Kraemer was the last IME doctor who evaluated Petitioner in year 2012. But when the Department made second inquiry in year 2015, Dr. Diana Kraemer turned down the offer citing surgery scheduling conflict.

The trouble about Dr. Kraemer are the conflicting messages thru her various opinions she issued. The doctor unleashed tired too, as the Petitioner supposed to recover in year 2007, right after Dr. Theodore Backer decision and accept back the job of injury. But then she says the same after Dr. Todd Jackman operated in February 2014 second time when recovery supposed to last no longer than 3-12-month period. The daunting question comes to anyone's mind which time she was right and why she couldn't write so in her May 17, 2012 IME report?

In conclusion, a theory that the only accurate information in this claim is the one obtains under the threat of possible law enforcement involvement or when a witness testimony is taken with oath.

IV. ARGUMENT

The Petitioner did not reach the MMI (Maximum Medical

Improvement) as stated in WAC 296.20.01002(3):" The department or the self-insurer stops payment for health care services once the worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in accepted condition can be expected, with or without treatment."

The list of Allowed Conditions in Claim AB 17747 listed above do not leave any doubt that Lumbar spine as a whole was and remains one of ten (10) conditions accepted (reference code: M54.16). L3-L4 and L4-L5, both are integral parts of the lumbar. Several reports in medical part of the claim conclude that surgical procedures for the L3-L4 & L4-L5 are necessary and recommended. Some curable treatment suggestions made by Dr. Diana Kraemer, Dr. Kevin Berry and newly consulted Dr. Trent Tredway or Dr. Christoph Hofstetter of University of Washington Department of Neurosurgery are available.

The Petitioner needs to point to the Court that injuries and the occupational disease has a much greater negative impact on Petitioner and correctly rated impairment would reflect that. On March 19, 2018 Dr. Robert Lang, Neurosurgeon performed rigorous examination of Petitioner. That was followed by his petition to reopen Claim AB 17747. On March 20, 2018 x-ray of

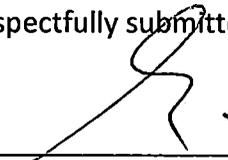
Petitioner lumbar spine was performed and interpreted by South Sound Radiology to revile for second time that L5-6 lumbar was operated on, and not L4-5 as early reported by numerus doctors, including Dr. Diana Kraemer. After two scheduled and canceled by the department Independent Medical Examination the third IME was performed by Dr. Eric Rudd of Minnesota and Dr. Joseph Jares of Wisconsin on September 14, 2018. Both doctors signed the IME report which carry several instances of malpractice and fraud. After Petitioner letter to Director of Department of Labor and Industries Mr. Joel Sacks, the Department opened investigation in respond by sending letters to both practitioners. Results of the investigation are to be announced yet.

V. CONCLUSION

The Petitioner is asking the Court to order the Department of Labor and Industries, as the procedure may require, to pay the pension and medical benefits to the Petitioner for the past and remaining life.

DATED, November 06, 2018

Respectfully submitted,



Zbigniew M. Laskowski Petitioner Pro Se

Certificate of Service

I certify that on November 06, 2018, I deposited in the United States mail, delivered through a legal messenger service, personally delivered, a copy of this document to the attorney(s) of record for Plaintiff/
Petitioner Defendant/Respondent All Other Parties of Record.

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 Defendant/Respondent
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PRESENTING PARTY:

Sign: _____

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