

FILED
COURT OF APPEALS
DIVISION TWO

2020 JUL 27 PM 1:26

CLERK OF COURT

1100 WEST MAIN STREET
SPokane, WA 99201

Court of Appeals No. 54432-6-II

BEFORE THE WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

PAULA STEVEN

Appellant

vs.

DENNIS SCHROADER, JR. and JANE DOE
SCHROADER, husband and wife; and SCHROADER LAW,
PLLC, a WASHINGTON professional limited liability company
doing business as the LAW OFFICE OF DENNIS
SCHROADER

Respondent

On Appeal from the Pierce County Superior Court
Case No. 19-2-09486-4

OPENING BRIEF

PAULA STEVEN, PRO SE
P.O. Box 4071
Federal Way, Washington 98063

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ASSIGNMENTS OF ERROR.....1

A. ASSIGNMENTS OF ERROR

1. *The Court Erred By Granting Summary Judgment Based Upon Collateral Estoppel*.....1

2. *As a Matter Of Fact, And Law, There Are Issues Of Genuine Issues of Fact As To Causation And Damages In The Legal Malpractice Case*.....1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

1. *The Court Erred By Granting Summary Judgment Based Upon Collateral Estoppel, The Facts Are Not Disputed, The Plaintiff Did Not Come Forward With No Duty To The Court That The Defendant Breached And That Has Resulted In Harm To The Plaintiff, Judicial Notice*.....1

III. STATEMENT OF THE CASE.....5

A. The Case Within the Case.....5

1. *History of the Freo Washington, LLC., Matter*.....5

2. *The Schroader Matter is Tried before Pro Tem Julia M. Lindstrom*.....19

B. Procedural Background of This Lawsuit.....20

IV. ARGUMENT.....26

A. Standard of Review.....26

B.	The Court Erred by Finding, As a Matter of Law, Steven was Collaterally Estopped from Suing her Attorney.....	27
1.	<i>The Findings of Fact and Conclusions of Law and Order and Order Granting Writ and Judgment, in the.....</i>	27
a.	The Issues Are Not Identical.....	28
b.	The Parties and Claims Were Not The Same.....	29
c.	None of The Issues in This Action Were Adjudicated On the Merits or Material to The Outcome of the Underlying Action.....	30
d.	An Application of the Doctrine of Collateral Estoppel or Res Judicata Would Work a Massive Injustice.....	41
2.	<i>The Court Erred by Considering the Collateral Estoppel Argument on the Merits.....</i>	34
C.	Genuine, Material Issues of Fact Exist As To Whether Schroader’s Actions Were The Proximate Cause of Plaintiff’s Damages.....	34
1.	<i>Schroader’s Conduct Was the Proximate Cause Of Steven’s Damage Related To The Loss Of The Right To Exert Retaliation And Foreseeable Costs and Expenses.....</i>	36
2.	<i>Schroader was the “Legal Cause” of Steven’s Damage.....</i>	39
D.	WASHINGTON CONSUMER PROTECTION ACT.....	40
E.	EXPERT EVIDENCE.....	42
V.	CONCLUSION.....	44

TABLE OF AUTHORITIES

<i>Barr v. Day</i> , 124 Wn.2d 318, 325 (1994).....	27, 28, 29
<i>Bullard v. Bailey</i> , 91 Wn.App. 759, 755 (1998).....	39, 40
<i>Brown v. State Farm Fire & Casualty Co.</i> , 66 Wn.App. 273, 831 P.2d 1122 (1992).....	44
<i>Brust v. Newton</i> , 70 Wash.App. 286, 293, 852 P.2d 1092 (1993).....	35
<i>Butko v. Stewart Title Co. of Wa., Inc.</i> 99 Wn.App. 533, 546 (2000).....	28
<i>Castro v. Stanwood School Dist. No. 401</i> , 151 Wash.2d 221, 224, 86 P.3d 1166 (2004).....	26
<i>City of Seattle v. Blume</i> , 134 Wn.2d 243, 251-52 (1997).....	35
<i>Columbia Physical Therapy, Inc., PS v. Benton Franklin Orthopedic Associates, PLLC</i> , 168 Wn.2d 421, 442, 228 P.3d 1260, 1270.....	41
<i>Cotton v. Kronenberg</i> , 111 Wash.App. 258, 264, 44 P.3d 878 (2002).....	44
<i>Daugert v. Pappas</i> , 104 Wn.2d 254, 257 (1985).....	35
<i>Eriks v. Denver</i> , 118 Wn.2d 451 (1997).....	43
<i>Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.</i> , 105 Wn.2d 778, 780, 719 P.2d 531 (1986).....	41
<i>Hartley v. State</i> , 103 Wn.2d 768, 779, 698 P.2d 77, 83 (1985).....	40
<i>Hash by Hash v. Children's Orthopedic Hosp. and Medical Center</i> , 110 Wn.2d 912, 757 P.2d 507 (1988).....	27
<i>Herron v. Tribune Pub'g Co.</i> , 108 Wash.2d 162, 169, 736 P.2d 249 (1987).....	26
<i>Holiday Resort Comm. Ass'n v. Echo Lake Assoc., LLC</i> , 134 Wn. App. 210, 226, 135 P.3d 499 (2006).....	41
<i>J.A. Henderson v. Bardahl International Corp.</i> , 72 Wn.2d 109, 118 (1967).....	32
<i>Luisi Truck Lines, Inc. v. Washington Utilities and Trans. Comm.</i> (1967) 72 Wn.2d 887, 893-895.....	30

<i>Martini v. Post</i> , 313 P.3d 473 (2013).....	35
<i>McDaniels</i> , 108 Wn.2d at 305.....	27
<i>McDaniels</i> , 108 Wn.2d at 306.....	30
<i>McDaniels v. Carlson</i> , 108 Wn.2d 299, 303 (1987).....	27
<i>Neilson v. Eisenhower & Carlson</i> , 100 Wash.App.584, 999 P.2d 999 P.2d 42 (2000).....	35
<i>Schmidt v. Coogan</i> , 135 Wn. App. 605, 610, 145 P.3d 1216 (2006), <i>rev'd</i> <i>on other grounds</i> , 162 Wn.2d 488, 173 P.3d 273 (2007).....	5
<i>Ski Acres, Inc. v. Kittitas County</i> , 118 Wash.2d 852, 854, 827 P.2d 1000, 1002.(Wash.,1992).....	26
<i>State Farm Mut. Auto. Ins. Co. v. Avery</i> , 114 Wn.App.299, 304 (2002).....	44
<i>State v. Pacific Health Center, Inc.</i> , 135 Wn. App. 149, 170, 143 P.3d 618, 628 (2006).....	41
<i>VersusLaw v. Stoel Rives</i> , 127 Wash.App. 309, 111 P.3d 866 (2005).....	36
<i>Winterroth v. Meats, Inc.</i> (1973) 10 Wash.App. 7, 516 P.2d 522.....	34

I. INTRODUCTION

This is an appeal by Paula Steven ("Appellant") from the order of Judge Stephanie Arend, of the Pierce County Superior Court granting Motion for Summary Judgment in favor of defendants. The lawsuit is related to a legal malpractice action against Schroader.

II. ASSIGNMENTS OF ERROR

A. ASSIGNMENTS OF ERROR

1. *The Court Erred By Granting Summary Judgment Based Upon Collateral Estoppel*
2. *As a Matter Of Fact, And Law, There Are Issues Of Genuine Issues of Fact As to Causation and Damages In The Legal Malpractice Case*

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. *The Court Erred By Granting Summary Judgment Based Upon Collateral Estoppel, The Facts Are Not Disputed, The Plaintiff Did Not Come Forward With No Duty To The Court That The Defendant Breached And That Has Resulted In Harm To The Plaintiff, Judicial Notice*

Appellant respectfully submit that the court erred in its ruling on this issue of whether the judgment made by Commissioner Brandburn-Johnson in another matter (*FREO Washington, LLC. v. Paula Steven, Case No. 16-218347-6 KNT* (the FREO Washington, LLC matter)) and Pro Tem Lindstrom (*Dennis Schroader dba Law Office of Dennis Schroader v. Paula Steven, Case No. 7Z903398C, Smalls Claims action* (the Dennis Schroader, matter)) collaterally estopped Steven from suing her attorney Dennis Schroader, for legal malpractice, and therefore granting Motion for Summary Judgment in favor of defendant.

The are many issues pertaining to this assignment of error: (1) Judge Arend failed to fully analyze the issue under the elements of collateral estoppel; (2) if there are facts that are disputed; (3) if it had been adjudicated previously; (4) and if including application of the doctrine would work an injustice on Steven.

The parties never fully briefed, nor did the court analyze the elements of the doctrine of collateral estoppel, if defendant's negligence is the direct and proximate result of harm to Steven.

Steven, also submit that Judge Arend's prior involvement with Schroader, in his other matters before her, (*he had a hearing on matter before her just two days before Appellant's summary judgment hearing,*) Judge Arend, should have considered recusing herself from ruling on the underlying Motion for Summary Judgment and displayed a predisposition against Steven's position based upon her other experience with Schroader, in a different matter.

Additionally, Steven, respectively and allegedly submit that Judge Arend, acted prejudiced towards her due to race, Black, and Pro Se, status.

Schroader's motion was directed at five specific elements of legal malpractice: collateral estoppel, breach of fiduciary duty, violation of consumer protection act, causation and damages elements of legal malpractice. There are many issues of fact that bear on these five specific elements, and the matter should be remanded back to Pierce County Superior Court, or preferably King County Court, for trial. Steven, alleges she is not able to secure a fair trial in Pierce County Court, due to her being Black, Pro Se, and defendant practicing

law primarily in Pierce County, before the civil Pierce County Court, judges. A change of venue from Pierce County to King County, is appropriate to avoid unfair prejudices, impartial and bias treatment.

Steven believes the Court, violated her rights under the U.S. Constitution Right's, *Amendment VI*, and any other applicable Amendments.

Additionally, Steven, alleges that during her February 7, 2020, Pierce County, Summary Judgment, and 2018, Pierce County, Small Claims Court, hearings she was with intent treated differently than non-Blacks, with regard to the judges, Court Order/Decisions, and physical treatment.

For example, the Small Claims, action, Schroader, took against Steven, on April 24, 2017, *Dennis Schroader dba Law Office of Dennis Schroader v. Paula Steven, Case No. 7Z903398C, Smalls Claims action* (the Dennis Schroader, matter,) the case docket shows⁰ on June 29, 2017, Judge Decca, had a conflict with the hearing case and rescheduled hearing to November 13, 2017, at 9:00 a.m. On June 30, 2020, Schroader, called back to Clerk's, office and he and some one with the initials, "PRB," "set a new hearing to November 13, at 9:00, a.m., for the same date and time. However, a change was made, but Steven, believes it was not the date nor time.

On October 18, 2017, Steven, requested a change of venue, from the Court. Steven, believed the jurisdiction was not correct nor would she get a fair trial, because Schroader, predominantly practices law in Pierce County,

⁰ CP 782 - 1330 (Exhibit 72, starting on page 2).

jurisdiction.

Steven, was unfamiliar with how to request a change of venue, in a Small Claims, action. She reached out to the Clerk's office, for clarity. However, no one at the Clerk's, office was familiar with a change of venue, request.

At the November 13, 2017, Small Claims, trial, Pro Tem Judge Lindstrom, allowed Schroader, to provide her exhibits he did not share with Steven, at nor before the trial. Steven, alleges, the Motion to Sanction, filed by Schroader, was misrepresented. The case docket, states Schroader, filed a Motion to Sanction. Pro Tem Julia Lindstrom, granted Schroader's, Motion to Sanction, alleging Steven, had Exparte Communication. Pro Tem Judge Lindstrom, sanctioned, Steven, monetarily.

Moreover, what is very peculiar is that the case docket, *Dennis Schroader dba Law Office of Dennis Schroader v. Paula Steven, Case No. 7Z903398C, Smalls Claims action* (the Dennis Schroader, matter,) shows that Schroader, three (3,) days after Schroader, received Steven's, Complaint for Damages Based Upon: Legal Malpractice, Breach of Fiduciary Duty; and Violation of the Consumer Protection Act, on July 15, 2019, he requested from the Clerk, on July 18, 2019, copies of the certified documents, of the October 16, 2017, hearing, and November 13, 2017, trial.

On January 27, 2020, Steven, filed with the Clerk's Office, eight hundred and six, (**806**,) pages of exhibits with her Opposition to Defendants' Motion for Summary Judgment. The Clerk's, office only filed five hundred and forty nine (**549**) of Steven's pages. On February 10, 2020, Steven, notified the Court

and Clerk's Office, of this discrepancy, however to know avail. Moreover, that can be contrued and tampering with my evidence.^{1,2,3} Schroader, in his Defendant's Reply in Support of Summary Judgment states the following below:

"Steven attempts to distract the court with over 600 pages of exhibits."

III. STATEMENT OF THE CASE

This is a case involving claims of professional negligence or legal malpractice, and breaches of fiduciary duties. A legal malpractice case is often referred to as "case within a case" because the issue is whether the client would have done better in the underlying case, but for the negligence of the attorney. *Schmidt v. Coogan*, 135 Wn. App. 605, 610, 145 P.3d 1216 (2006), *rev'd on other grounds*, 162 Wn.2d 488, 173 P.3d 273 (2007).

A. The Case Within The Case

1. *History of the Freo Washington, LLC., Matter*

Appellant took occupancy of the single family dwelling located in Auburn in 2001, and had been a tenant continuously to August 2016. Problems began after the property was sold to FREO Washington, LLC in June 2013 and when Brink took over property management.

Brink and FREO either ignored Steven requests that repairs be made or delayed for several months addressing the problems. For example, Steven

1	CP	1495 to 1499
2	CP	2036 to 2037
3	CP	- 1494

notified Brink in writing on August 23, 2013, that water was coming into the house through the roof ceiling.

The repairs to the roof were not completed until February 26, 2014, more than six months after the initial written notification. Other request Steven made for repairs were similarly either not addressed at all or were addressed after several months.

As a result, Steven filed a Complaint for Damages against FREO Washington LLC, in small claims court for King County District Court. Steven's case was initially dismissed, but Steven, obtained a \$10,000.00, (ten thousand) Supercedeas Bond, and appealed.⁴ On October 31, 2014, Steven was awarded in King County Superior Court a judgment against FREO Washington, LLC totaling \$2,057.50.⁵

On November 26, 2014, Steven filed a Housing Complaint with the King County Office of Civil Rights & Open Government alleging that she was discriminated against because of her race.⁶ Steven, is African-American. FREO Washington, LLC did not cooperate in the investigation by the King County Office of Civil Rights & Open Government, and ultimately subpoenas needed to be issued.⁷

As a result of ongoing failures by FREO Washington, LLC and Brink Property Management, Steven, brought a second small claims action earlier that

4 CP 782 - 1330 (Exhibit 9 to the Steven Declaration).
5 CP 782 - 1330 (Exhibit 12 to the Steven Declaration).
6 CP 782 - 1330 (Exhibit 10 to the Steven Declaration).
7 CP 782 - 1330 (Exhibit 20 to the Steven Declaration).

year. On March 11, 2016, she was awarded a judgment of \$235.00.⁸

FREO Washington, LLC and Brink Property Management still refused to address Steven's concerns over repairs and defects to the property. Steven, filed a third small claims court action in early summer 2016, regarding the landlords failure to repair the septic system dating back to January 2015.

On June 26, 2016, FREO Washington, LLC, filed a counterclaim against Steven.⁹ The counterclaim, alleged Steven, owed at least \$642.00, and that Steven's, lawsuit was frivolous, retaliatory, and unfounded, filed as leverage by Ms. Steven, against, FREO Washington, LLC, in pending eviction proceeding.

On July 12, 2016, Steven, was awarded a judgment against FREO Washington, LLC in the amount of \$1,832.00. (*Paula Steven v. FREO Washington, LLC, Case No. 165- 02488.*¹⁰ That judgment has still not been paid. Additionally, the Court denied FREO Washington, LLC's, counterclaim.

FREO Washington, LLC's, Corporate Counsel, Tiffany Friedel Broberg, of the State of Arizona, represented FREO Washington LLC, at Steven's, Small Claims hearing. Ms. Broberg, traveled from Arizona, to Seattle, to represent FREO Washington, LLC, at the July 12, 2016, Small Claims hearing, (*Paula Steven v. FREO Washington, LLC, Case No. 165- 2488.*)

Ms. Broberg, was a licensed attorney in the State of Arizona. She was not licensed to practice law in Washington State. Ms. Broberg, filed no *pro hac vice* application, nor was she sponsored by an attorney. Ms. Broberg, should

8 CP 782 - 1330 (Exhibit 37 to the Steven Declaration).
9 CP 782 - 1330 (Exhibit 64 to the Steven Declaration).
10 CP 782 - 1330 (Exhibit 63 to the Steven Declaration).

not have been allowed to practice law in small claims jurisdiction, per Washington State, Title 12 RCW: 12.040.080 Hearing:

(1) No attorney-at law, legal paraprofessional, nor any person other than the plaintiff and defendant, shall appear or participate with the prosecution or defense of litigation in the small claims department without the consent of the judicial officer hearing the case. A corporation may not be represented by an attorney-at-law or legal paraprofessional except set forth in RCW 12.40.025.

RCW 12.40.080 which specifies in paragraph 1 that a corporation (such as FREO) can not be represented by an attorney. The only exception is in RCW 12.40.025 where the case began in district court and then was moved to small claims court because it was within the \$5000 jurisdictional limit.

Freo Washington, LLC, is a corporation

This is an example of the many injustices Steven, has endured with the State of Washington, judicial system, dealing with this matter due to what Steven, alleges as her race.

Steven, prevailed at the July 12, 2016, Small Claims hearing, (*Paula Steven v. FREO Washington, LLC, Case No. 165-02488.*) However, FREO Washington, LLC, should not have been allowed to have their legal counsel represent them at the hearing. That was very unfair to the Steven she is not an attorney.

After the owners, FREO Washington, LLC, were served with the subpoenas from the King County Office of Civil Rights & Open Government, and many other notices from Steven, regarding uninhabitable issues and retaliation¹¹ Steven, began receiving correspondences that FREO Washington,

11 CP 782 - 1330 (Exhibit 18 to the Steven Declaration, letter's from Steven to Brink).

LLC, intended to sell the house and that Steven, would have to move. Freo Washington LLC, advised that Steven could purchase the house.

As stated above Steven, filed a Small Claims Action, on December 22, 2015, (*Paula Steven v. FREQO Washington, LLC, Case No. 155-09252.*)¹² March 11, 2016, Appellant received a judgment in the amount of \$235.00.¹³

December 2015, Freo Washington, LLC, was served with a Subpoena Duces Tecum, from the Office of the Prosecuting Attorneys Office. The subpoena was issued because of King County Office of Civil Rights, and Open Government's, attempts for over a year to obtain without a Subpoena, all information necessary to investigate Steven's complaint.

FREQO Washington, LLC's, representatives made Steven, jump through all sorts of hoops providing information and documentation but ignored Steven's requests to tell her the list price for the house or submit a proposed Purchase and Sale Agreement for Steven to review. The burden seemed to be on Steven.

On March 23, 2016, Steven, received a letter from FREQO Washington, LLC, property management company, stating she would have seven (7), calendar days from the date Steven, received the price of the home to get her offer package submitted.¹⁴ On April 6, 2016, Steven received the purchase price from Ian Joseph, Designated Broker.¹⁵ On April 9, 2020, Mr. Ian Joseph, notified Steven, no purchase or sale agreement will be provided, the owners

12 CP 782 - 1330 (Exhibit 21 to the Steven Declaration).

13 CP 782 - 1330 (Exhibit 37 to the Steven Declaration,

14 CP 782 - 1330 (Exhibit 39 to the Steven Declaration, letter dated March 23, 2016, from Michele Braa-Heidner to Steven).

15 CP 782 - 1330 (Exhibit 42 to the Steven Declaration, letter is dated March 31, 2016, however attached to letter is FedEx Tracking receipt, letter was not until Wednesday, April 6, 2016).

refuse to provide Steven, with a Purchase and Sale Agreement of the house, and that he will no longer facilitate the sale of the house.¹⁶

May 9, 2020, FREO Washington, LLC, received Steven's, Notice of Small Claim, action for violation of RCW 59.18.060, (*Paula Steven v. FREO Washington, LLC, Case No. 165-02488*), for defects dating back to January 2015.¹⁷ On May 24, 2016, FREO Washington, LLC, proposed a monetary settlement offer to Steven.¹⁸ Steven, did not not accept offer, because FREO Washington, LLC, wanted Steven, to release and waiver of her claims. Steven, intended on filing a retaliation claim against FREO Washington, LLC.^{19, 20}

On June 9, 2016, FREO Washington, LLC, proposed another settlement offer.²¹ This proposed offer procured Steven, an additional 45, days for Steven, to vacate property and an increased monetary amount. Steven, did not accept offer, because the release and waiver language remained in the settlement offer.

On June 21, 2016, Steven, countered the proposed settlement offer, Steven, included the same terms, and proposed settlement monetary amount, however Steven, removed the "*release and waiver of her claims*"²² language. FREO Washington, LLC, did not agree to Steven's, counter settlement and parties were heard at Small Claims, trial before the honorable Judge Arthur Chapman, on July 12, 2016. The Court, awarded Steven, a

16 CP 782 - 1330 (Exhibit 45 to the Steven Declaration, see letter's dated April 8, 2016, and April 9, 2016).
17 CP 782 - 1330 (Exhibit 50 to the Steven Declaration).
18 CP 782 - 1330 (Exhibit 53 to the Steven Declaration).
19 CP 782 - 1330 (Exhibit 47 to the Steven Declaration).
20 CP 782 - 1330 (Exhibit 52 to the Steven Declaration).
21 CP 782 - 1330 (Exhibit 55 to the Steven Declaration).
22 CP 782 - 1330 (Exhibit 58 to the Steven Declaration).

judgment in the amount of \$1,832.00.²³ For the record, this is the trial FREO Washington, LLC's, Counsel, "Tiffany Friedel Broberg," traveled from the State of Arizona, to argue their defense before the honorable Arthur Chapman, judge at the Small Claims, trial.

The Public Health - Seattle & King County, Environmental Health - Wastewater Program, investigated the issues Steven, was having with the septic tank.²⁴ On Tuesday, July 12, 2016, Mr. Wilson, RS, Health and Environmental Investigator, notified FREO Washington, LLC, the holes in the yard should be capped to mitigate trip hazards in the backyard. The long deep holes were part of the septic tank.

January 12, 2016, through May 31, 2016, Freo Washington, LLC, sent Plaintiff, five (5), Notice of Non-Renewal of Lease, and Notice to Terminate Tenancy, notices.^{25, 26, 27, 28, 29}

June 17, 2016, the King County Office of Civil Rights & Open Government, made a "No Reasonable Cause Finding," of their Civil Rights investigation. However, they stated the following below in their Findings and Determination, Conclusions:³⁰

"With regard to rent payment issues, the evidence indicates that onsite Respondent rental management had poor organization that resulted in

23 CP 782 - 1330 (Exhibit 63 to the Steven Declaration).
24 CP 782 - 1330 (Exhibit 59 to the Steven Declaration).
25 CP 782 - 1330 (Exhibit 25 to the Steven Declaration).
26 CP 782 - 1330 (Exhibit 26 to the Steven Declaration).
27 CP 782 - 1330 (Exhibit 29 to the Steven Declaration, page 6).
28 CP 782 - 1330 (Exhibit 30 to the Steven Declaration).
29 CP 782 - 1330 (Exhibit 51 to the Steven Declaration).
30 CP 782 - 1330 (Exhibit 57 to the Steven Declaration, page 5, and 7).

error-ridden billing practices. However, the evidence does not indicate that race was a factor in their financial management.

With regard to the repair issues, Charging Party's experience with Respondent's process is replete with excessive delays, miscommunications and partial repairs. The similiary situated residents who are Caucasian lived in a rental house that had equally serious repairs needs. They were subjected to remarkably similar poor maintenance and repair actions on the part of Respondents."

At the end of June 2016, Steven, received a Notice from FREO Washington, LLC, advising her that she needed to move out of the residence by no later than July 31, 2016. When Steven failed to vacate the property, an unlawful detainer action was begun against her by FREO Washington, LLC.

In early August 2016, Steven was served with a Complaint for Unlawful Detainer and court Order requiring her to appear on August 12, 2016, at a Show Cause Hearing.³¹

On August 4, 2016, Steven retained the services of Schroader, Jr., an attorney who Steven now realize was not admitted to practice until April 30, 2015, only a year prior to Steven retaining him. Schroader, and Steven discussed Steven's defense to the eviction based on retaliation. We met again on August 9, 2016.

Steven had previously met Dennis Schroader, Jr., in December 2015, at his office regarding Freo Washington, LLC. At that time Schroader, Jr., did not disclose to Steven that he was a tenant of FREO Washington, LLC.

Steven did not retain Schroader, in December 2015, because she could

31 CP 1680 - 2020 (Exhibit 115 to the Surreply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment).

not afford the \$2,000.00, for his retainer. Steven, instead filed a Small Claims, action against FREO Washington, LLC, and on March 11, 2016, was awarded a judgment for \$235.00. (*Paula Steven v. FREO Washington, LLC, Case No. 155-09252.*)

On August 11, 2016, on or around 3:30 p.m., the day before the Steven's, Show Cause Hearing, Schroader, informed Steven, he was a tenant of FREO Washington LLC.

On Friday, August 12, 2016, Schroader, failed to appear at Steven's, Unlawful Detainer Show Cause, hearing. Schroader, failed to disclose his conflict of interest to Steven, before she retained him.

At the August 12, 2016, hearing the honorable, Court Commissioner, Bradburn-Johnson, continued the hearing to the following, Tuesday, August 16, 2016, but also awarded FREO Washington, LLC's, attorney terms against Schroader in the amount of \$1,125.00, due to his failure to appear for the court hearing.³²

Schroader failed to file with the clerk of the court a written sworn statement, sworn under penalty or perjury setting forth why Steven denied the allegations claimed against her in the complaint.

The Complaint for Unlawful Detainer, (*FREO Washington, LLC v. Paula Steven, Case No. 16-2-18347-6 KNT,*) filed against Steven, required that if Steven, denied the allegations made against Steven, did not want to be evicted immediately without a hearing, Steven must file with the clerk of the court a written statement signed and sworn under penalty of perjury setting forth why

Steven, denied the allegations against her in the Complaint for Unlawful Detainer. The Department of Judicial Administration, Copy Case Report, show no sworn statement was filed by Schroader.

The sworn statement was to be filed in addition to Steven's, written answer to the complaint. The deadline to file the sworn statement was August 11, 2016. Schroader, failed to file sworn statement. ³²

Schroader rented occupancy of a single family dwelling from FREO Washington, LLC, the Plaintiffs in the Unlawful Detainer.

Steven at all times paid her rent in full and on time. She at all times followed her lease agreement. Steven occupied the residence for 15, years.^{33, 34, 35}

At the court hearing on August 16, 2016, Schroader, met with the FREO Washington, LLC's, attorney. They reached an agreement which was then reduced to writing in the form of a CR2A Settlement Agreement.

Schroader, offered no defense at Steven's, Unlawful Detainer, Show Cause hearing. Steven was unaware of the significance of the CR2A Settlement Agreement. Schroader, did not adequately explain to Steven what she was agreeing to do.

Paragraph 6 of the CR2A Agreement provided that the settlement resolved all disputes and claims. Steven reminded Schroader that she wanted

32 CP 782 - 1330 (Exhibit 73 to the Steven Declaration).
33 CP 782 - 1330 (Exhibit 61 to the Steven Declaration).
34 CP 782 - 1330 (Exhibit 62 to the Steven Declaration).
35 CP 782 - 1330 (Exhibit 69 to the Steven Declaration).

to pursue her claim that FREO Washington, LLC was acting in retaliation against her.

Schroader, advised Steven, that the purpose of the CR2A agreement was to avoid the, King County Sheriff, from evicting her from her residence within a few days. Schroader, told Steven, that she could still pursue her claim against FREO Washington, LLC for retaliation. Based upon Schroader's assurances, Steven signed the CR2A Settlement Agreement.³⁶

There is a distinction in the language between the CR2A and two settlement proposals made by FREO Washington, LLC, in June 2016. The settlement proposals included the words whereby each party "released" claims against the other. Steven refused to sign those settlement proposals because she did not want to "release" her retaliation claim against her landlord, FREO Washington, LLC.

The wording in paragraph 6 of the CR2A did not include the word "release" so Steven was unaware of what was intended. Schroader explained when Steven asked that she could still bring her retaliation claim at a later time.

Because Steven had doubts, she contacted the Housing & Justice Project, within a day or two after August 16, 2016.

The attorney Steven spoke with advised Steven that based on the CR2A Agreement she was precluded from bringing any claims against FREO

36 CP 1680 - 2020 (Exhibit 117 to the Steven Declaration).

Washington, LLC, including exerting as a defense retaliation by the landlord or pursuing a separate action against the landlord for retaliatory action to evict Steven from her residence.

Steven is confident that after a hearing on the merits, that the court would have recognized her defense of retaliation by landlord, FREQ Washington, LLC and would have dismissed the unlawful detainer, action against her.

Schroader on August 16, 2016, failed to adequately explain to her the terms and ramifications of the agreement that he and opposing counsel worked out.

On September 6, 2016, the Unlawful Detainer, hearing was held Steven's, new counsel she obtained, Mr. Allen Ruder, filed a Motion to Revoke August 16, 2016, CR2A Agreement, Declaration of Paula Steven in Support of of Motion to Revoke CR2A Agreement Executed on August 16, 2016,³⁷ and the Defendant's Memorandum in Support of Motion to Vacate CR2A Agreement.

The honorable, Nancy Bradburn-Johnson, Court Commissioner, stated on the record that she will not hear testimony nor rule on the, Motion to Revoke August 16, 2016, CR2A Agreement. She stated that the allegations made in the Motion to Revoke August 16, 2016, CR2A Agreement, Declaration of Paula Steven in Support of of Motion to Revoke CR2A Agreement Executed on August 16, 2016, and the Defendant's Memorandum in Support of Motion to Vacate CR2A Agreement, is an issue between "*Steven and Schroader*," not an issue

37 CP 1680 - 2020 (Exhibit 117 to the Steven Declaration).

between, "*FREO Washington, LLC, and Steven.*" The honorable Nancy Bradburn-Johnson, did not allow CR 2A, issues nor claims of the CR2A, to be litigated.³⁸

Additionally, FREO Washington, LLC's, counsel did not file an opposition to Steven's, Motion to Revoke August 16, 2016, CR2A Agreement. On September 15, 2016, they filed a Supplemental Declaration of Tiffany Broberg, Support of Writ of Restitution.

However, I allege one of Schroader's, attorney's in this legal malpractice matter, Ms. Erin M. Thenell, (*Steven v. Schroader, Case No. 19-2-09486-4,*) along with Schroader's, knowledge, intentionally mislead the Court, in the Declaration of Erin M. Thenell, in Support of Defendants' Motion for Summary Judgment.³⁹

Steven, alleges Ms. Erin Thenell, with intent declared under penalty of perjury and intentionally mislead, and misrepresented facts in her November 8, 2019, Declaration,⁴⁰ stating that her "**Exhibit 19,**" is "*true and correct copy of the Declaration of Tiffany Broberg, filed in Opposition of the Motion to Vacate filed in King County Superior Court on September 15, 2016,*"⁴⁰ the (FREO Washington, LLC, matter.)

It is fact that "**Exhibit 19,**" is a true and correct copy of the September 15,

38 CP 1680 - 2020 (Exhibit 119 to the Steven Declaration).
39 CP 208 - 211 (Erin Thenell Declaration in Support of Defendants' Motion for Summary Judgment).
40 CP 208 - 211 (Erin Thenell Declaration in Support of Defendants' Motion for Summary Judgment, No. 8.)

2016, "*Supplemental Declaration of Tiffany Broberg, Support of Writ of Restitution.*"⁴¹

Additionally, Schroader's, Declaration in Support of Defendants' Motion for Summary Judgment, states "**Exhibit 19,**" is the "*Supplemental Declaration of Tiffany Broberg, Support of Writ of Restitution.*"

On October 12, 2016, Schroader's, attorney's, Dean G. Von Kallenbach, of Williams, Katsner and Gibbs, PLLC filed an Application for Fee's, in the amount of \$22,703.43,⁴¹ with the Court. Mr. Von Kallenbach's, fees were excessive and Steven, alleged the fees to extortion like.

On October 20, 2016, Steven, filed a Response to Application for Attorney Fees and Costs and Findings of Fact.⁴² On October 22, 2016, the honorable Nancy Bradburn-Johnson, Court Commissioner, stated the following below on her Findings of Fact and Conclusions of Law Supporting Award of Attorney Fees and Costs:

*"The fee statement included block billing which made it impossible to determine legal activities performed individually, amounts charged for organizing the file, for the fee application and multiple declarations of counsel. The amount of the fees to get to the hearing was 14.8 hours the amount of fees shocks the conscious."*⁴³

The unlawful detainer, was not compelled by the CR2A. Moreover, and for the record FREO, did not sale property until January 2017.

41 CP 1680 - 2020 (Exhibit 120 to the Steven Declaration).
42 CP 1680 - 2020 (Exhibit 122 to the Steven Declaration).
43 CP 1680 - 2020 (Exhibit 121 to the Steven Declaration).

2. *The Schroader Matter is Tried before Pro Tem
Julia M. Lindstrom*

The Schroader, matter was tried before Pro Tem Julia Lindstrom, of the Pierce County District Court, Small Claims Court. April 24, 2017, Schroader, filed a Pierce County District Court, Small Claims action (*Cause No. 7Z903398C*), against Steven, for breach on contract, good and/or services, open account.

Schroader claimed Steven owed him \$1,829.70, plus interest of \$151.60.⁴⁴ On August 2016, Steven, paid Schroader, \$2,000.00, in full for his retainer fee in the form of a money order. Steven did not owe Schroader any money before nor after he filed the Small Claims action against her.

Steven, alleges Schroader's, Small Claims action against her, was with intent filed by Schroader against Steven in an attempt to derail her legal malpractice lawsuit she was bringing against him.

Steven notified Pierce County District Court, Small Claims, via her Counter Claim, oral testimony, and correspondence to Schroader stating the following:

"I am not bringing/litigating nor can I because of my damages in my legal malpractice claims/lawsuit.

Therefore, the **doctrine of Res Judicata** should not apply. My claims for legal malpractice are valid and have been confirmed with a legal malpractice attorney. My claims cannot be brought in this court. Please, let the record show that I am not waiving my legal malpractice claim. My claim is barred from this jurisdiction."⁴⁵

44 CP 1349 - 1419 (Exhibit 99 to the Steven Declaration).
45 CP 1349 - 1419 (Exhibit 101 to the Steven Declaration).

B. PROCEDURAL BACKGROUND OF THIS LAWSUIT

On November 8, 2019, defendants' Schroader filed its Motion for Summary Judgment.⁴⁶ The Motion for Summary Judgment was based upon the argument Steven, is collateral estopped, Schroader, did not breach his duty of any kind, that none of Schroader's, actions was the legal nor proximate cause of Steven's, damages.

Defendant's, argue amongst other things that the Motion to Revoke August 16, 2016, CR2A Agreement, and the Small Claims, action Schroader, took against Steven, were adjudicated. Additionally, that Schroader, did not violate the Washington Consumer Protection Act.

However, the unlawful detainer, findings of fact and conclusions of law, order granting writ and judgment, and the small claims action, do not say that. The language "*and allowing the CR2A to remain in effect,*" in the findings, and the language "*September 15, 2016, per the CR2A,*" in the order do not say that, nor does it adjudicate Steven's, legal malpractice claims.

The honorable Stephanie Arend, judge states on the record. the following below:

"I don't believe the facts are really disputed in the case. I do believe that even if it had not been adjudicated previously, which I believe it really has been,"⁴⁷

The introduction of Schroader's, motion was premised on four agruments (1) Steven's claims fail because the issues have been previously adjudicated; (2)

46 CP 40 - 56
47 See RP page 10, line 8 to 13

Steven's cause of action fail because she cannot prove Schroader, breached his duty; (3) Steven's, causes of action fail because Schroader was neither the legal nor proximate cause of Steven's alleged harm; (4) The claims for violation of the Washington Consumer Protection Act Fail because Steven was dissatisfied with the legal services Schroader, provided.⁴⁸

The five issues "presented" by Schroader in its motion were: (1) "Should the Court dismiss Paula Steven's, causes of action under the doctrine of Collateral Estoppel? (Yes)"; (2) "Should this Court dismiss Paula Steven's causes of action for Legal Malpractice and Breach of Fiduciary Duty, because Dennis Schroader, did not breach his duty of care to Paula Steven? (Yes)"; (3) "Should this Court dismiss Paula Steven's causes of action because Paula Steven, did suffer any damages causes by Dennis Schroader? (Yes);" (4) "Should this Court dismiss Paula Steven's, causes of action of Breach of Fiduciary Duty because Dennis Schroader, did not violate the Ruels of Professional Conduct? (Yes);" and (5) Should this Court dismiss Paula Steven's Consumer Protection Act violation causes of action because they are concerned with the practice of law? (Yes)."⁴⁹

The Findings of Fact and Conclusions of Law, Order Granting Writ and Judgment, made by Court Commission, Bradburn-Johnson, in the unlawful detainer, action, Steven is not seeking to "relitigate" that issue. The Small Claims, action (*Dennis Schroader dba Law Office of Dennis Schroader v. Paula*

48 CP 40 - 56
49 CP 40 - 56 (Page 7).

Steven, Case No. 7Z903398C, Smalls Claims action (the Dennis Schroader, matter) Steven, alleges Schroader, was attempting to derail her legal malpractice claims. Additionally, this legal malpractice suit is tort and tort cases cannot be brought in Small Claims. Steven was suing her former attorney for negligence not relitigated the unlawful detainer.

Steven opposed the Motion for Summary Judgment on the grounds that genuine materials issues of fact existed, issues of fact existed as to causation and damages, she is not collaterally estopped, and Schroader, is in violation of the Washington Consumer Protection Act.

Of significance, Steven, asserted that Judge Bradburn- Johnson's, specific findings, upheld in the Superior Court, Kent, were a landlord-tenant, unlaw detainer matter. Moreover, the evidence clearly established (and was not disputed) that Dennis Schroader, was the proximate cause of Steven, signing the CR2A,⁵⁰ agreement—as Steven, had sought out Schroader's, advice to do so. As such, any of the acts occurring after the CR2A, would result in an issue of fact to be determined by a trier of fact.

The motion was set to be heard by the “assigned judge.” Six (6) days before the hearing, Judge Stephanie Arend, was assigned the case. Judge Arend, did not recuse herself or indicate any concern that she may be biased having already sat through other hearings and/or trials, with Schroader, just two

50 CP 1680 - 2020 (Exhibit 117, page 7 - 10, to the Steven Declaration).

days prior, Steven's, Motion for Summary Judgment, hearing. Judge Arend, began our hearing by stating:

We have two motions on the docket this morning on this case.

The first one is a dispositive motion, a motion for summary judgment brought by the defense. So because it's dispositive, I will hear that motion first.

I am going to limit your time because I have another substantial - - or several, actually -- another case for a motion for summary judgment that I scheduled for 10:00, so I'm going to ask you limit your remarks to **five minutes**, if you could please. And Dan will **track the amount of time and let you know when the time is up, okay?**⁵¹

Judge Arend, did not state that to any other parties that argued before her prior nor after Steven's, hearing. Steven, alleges Judge Arend, knows legal malpractice is a complex case and five (5), minutes is inadequate.

Judge Arend, began her ruling by stating the following:

"Okay, as I indicated, the Court has read a rather substantial amount of documents with regard to the motion for summary judgment today, and there is a second motion, but we are not going to get to that motion."

"I don't believe the facts are really disputed in this case. I do believe that even if it had not been adjudicated previously, which I believe it really has been, the plaintiff has come forward with no duty to this Court that the defendant has breached and that has resulted in any harm to the plaintiff."⁵²

Judge Arend, went on to find that "as a matter of law," Steven, was collaterally estopped, there are no facts disputed, no breach from Schroeder, that

51 See RP page 4, line 1 to 11.
52 See RP page 10, line 3 to 13.

resulted in any harm to Steven.⁵³ Judge Arend, proceeded to state, "*I do believe that even if it had not been adjudicated previously, which I believe it really has been.*"⁵⁴ Judge Arend, appears to even herself acknowledge collateral estoppel does not apply.

Judge Arend, made no reference to the evidence presented in this case that related to Schroader's, counsel, Gregory Hensrude, testimony, as well as Steven's, testimony indicating Steven, would not have prevailed in her unlawful detainer, "but for" the advice of Schroader.

Judge Arend, mentions Steven's, Motion to Compel Discovery and For Fees Pursuant to CR 37, on the docket, on the case,⁵⁵ but did not allow Steven, to argue her motion. Steven's, motion to compel, notified the court of Schroader's, ongoing violation by Schroader, of the rules governing discovery.

Steven, alleged in her motion that Schroader, failed and refused to meet and confer regarding their deficient discovery. Schroader, misrepresented responses in their first and second sets of requests for interrogatories, production and requests for admissions, Steven, propounded. Steven, was not allowed to argue her motion. Steven's, motion to compel, notified the court of Schroader's, alleged ongoing violation by Schroader, of the rules governing discovery. Also, that production is being intentionally withheld.

53 See RP page 10, line 8 to 13.
54 See RP page 10, line 9 to 10.
55 CP 324 - 781.

For example Steven's propounded:

"SECOND SET OF REQUESTS FOR PRODUCTION"

REQUEST FOR PRODUCTION NO. 2:⁵⁶

Please produce the adjudicated Motion to Revoke August 16, 2016, CR 2A Agreement, Case No. 16-2-18347-6 KNT, Order and/or Judgment. *Freo Washington, LLC v. Paula Steven*, Case No. 16-2-18347-6 KNT.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2

The work product of another attorney for a case in which the Responding Party was no longer involved is not within Responding Party's possession or control. Propounding Party should contact her counsel who prepared and filed the "Motion to Revoke," the "Order and/or Judgment" for copies requested documents. Propounding Party has a copy of the CR2A Agreement she freely and willingly signed. All documents in Responding Party's possession have been produced.

REQUEST FOR ADMISSION NO. 3:⁵⁷

Admit there is no Court Order nor Judgment from the Honorable Court Commissioner, Nancy Bradburn-Johnson, nor any other tribunal Denying Plaintiff Steven's Order to Vacate the CR 2A, agreement.

RESPONSE TO REQUEST ADMISSION NO. 3:

To the extent this requests seeks a legal conclusion, Responding Party need not either admit or deny. Responding Party admits that the CR2A order Plaintiff freely and willingly signed has not been vacated.

56	CP	324 - 781 (Exhibit B, to the Steven Declaration).
57	CP	324 - 781 (Exhibit B, to the Steven Declaration).

Finally, nothing in the record establishes that Judge Arend, analyzed all the elements of “collateral estoppel,” or that those elements were adequately briefed before the court.⁵⁸

IV. ARGUMENT

A. Standard of Review

The standard of review on appeal of a summary judgment order is de novo, with the reviewing court performing the same inquiry as the trial court. *Ski Acres, Inc. v. Kittitas County*, 118 Wash.2d 852, 854, 827 P.2d 1000, 1002 (Wash., 1992); *Herron v. Tribune Pub’g Co.*, 108 Wash.2d 162, 169, 736 P.2d 249 (1987). See also *Castro v. Stanwood School Dist. No. 401*, 151 Wash.2d 221, 224, 86 P.3d 1166 (2004).

A motion for summary judgment can only be sustained if there is no genuine issue of material fact, looking the most favorably toward the nonmoving party. *Pelton v. Tri-State Mem’l Hosp., Inc.*, 66 Wash.App. 350, 354, 831 P.2d 1147 (1992).

CR 56(c) gives in part that “[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show there is no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

The burden of showing that there is no genuine issue of material fact falls

⁵⁸ Judge Arend relied upon no case cited in Schroader’s, Motion for Summary Judgment. See RP. Judge Arend did not state what she relied upon.

upon the party moving for summary judgment. If the moving party does not sustain its burden, summary judgment should not be granted, despite of whether the nonmoving party has submitted affidavits or other evidence in opposition to the motion. *Hash by Hash v. Children's Orthopedic Hosp. and Medical Center*, 110 Wn.2d 912, 757 P.2d 507 (1988).

B. THE COURT ERRED BY FINDING, AS A MATTER OF LAW, STEVEN WAS COLLATERALLY ESTOPPED FROM SUING HER ATTORNEY

In order for the doctrine of collateral estoppel to apply, four requirements **must** be met: 1) the issue decided in the prior adjudication *must be identical* with the one presented in the second; 2) the prior adjudication must have *ended in a final judgment on the merits*; 3) the party against whom the plea is asserted was *a party or in privity with a party to the prior adjudication*; and 4) application of the doctrine *must not work an injustice*. *Barr v. Day*, 124 Wn.2d 318, 325 (1994). All requirements must be met in order for collateral estoppel to apply and the burden of proof is on the party seeking estoppel. *McDaniels v. Carlson*, 108 Wn.2d 299, 303 (1987).

In the FREO Washington, LLC, and Schroader's, (*small claims action*), matters, Court Commissioner Bradburn-Johnson, and Pro Tem Lindstrom, never ruled on Steven's, claims of legal malpractice or the elements of causation and/or damages, and Steven, is not "collaterally estopped" from bringing those claims by the findings in the FREO Washington, LLC, nor Schroader, matters.

1. *The Findings of Fact and Conclusions of Law and Order and Order Granting Writ and Judgment, in the*

FREO Washington LLC, the Small Claims, action in the Schroeder, Matter Do No Estop Steven from Suing Her Attorney

a. ***The Issues Are Not Identical***

The pivotal requirement of both collateral estoppel and res judicata is one that the courts take seriously and without exception: In order for either doctrine to apply, the issues in both actions have to be identical in all respects. *Barr*, 124 Wn.2d at 325; *Butko v. Stewart Title Co. of Wa., Inc.* 99 Wn.App. 533, 546 (2000) (collateral estoppel does not apply to issues that are “superficially alike”).

If the circumstances in which the issue is presented differs from the earlier proceeding, the issues will not be considered identical. *McDaniels*, 108 Wn.2d at 305. *In Barr*, Mrs. Barr, was represented by attorney’s Mr. Day, and Stamper, in a tort action. Mr. Barr, also had a guardian ad litem, attorney Mr. Stocker. Mrs. Barr, filed a lawsuit contending the attorney fees were to excessive and for breach of contract. The trial court that ruled against Mrs. Barr, and granted summary judgment in favor of Mr. Stamper, on the grounds that Mrs. Barr, was collaterally estopped upon the guardianship court order.

The Supreme Court, reviewed and held that the doctrine of collateral estoppel did not bar Mrs. Barr’s, claims. The court held the fees and settlement were an issue distinct. Mrs. Barr, did not have a full and fair disclosure of all matters relating to the attorney fees. *Barr*, 124 Wn.2d at 325. Additionally, the court held that if Ms. Barr, was in agreeance to the settlement as a result of counsel nonfeasance or misfeasance she should have the ability to correct in a

subsequent malpractice action. *Barr*, 124 Wn.2d at 326.

Similar to *Barr*, and as argued below, the claims and parties are not identical here and the FOF, Order, and Small Claims, action were not “identical” issues presented here. Court Commission Bradburn-Johnson, and Pro Tem Lindstrom, did not adjudicate an attorney’s negligence in the FREO, and Schroader, matter, nor did she reach whether Schroader’s, advice was negligent, and the catalyst for the CR2A, and Steven, being precluded from bringing any claims against FREO, including exerting as a defense retaliation by FREO, or pursuing a separate action against FREO, for retaliatory action to evict Steven, from her residence. For Judge Arend, to bootstrap those findings to a separate malpractice case is and was simply an error.

b. The Parties and Claims Were Not The Same

The FREO, matter only dealt with the unlawful detainer issues, and the Schroader, matter was filed to derail Steven’s, legal malpractice lawsuit. It did not address malfeasance by Schroader. Just like lower court in *Barr*, in making her findings in the FREO, matter, and in the Schroader, matter, Court Commissioner Bradburn-Johnson, nor Pro Tem Lindstrom, did not address the merits of Steven’s, malpractice claims.

Moreover, there were not identical claims or parties. Schroader, was not a party to the FREO, matter. There was absolutely *no* adjudication in the FREO, matter of the culpability of Steven’s legal counsel in providing negligent advice or counsel, or whether the “*intent*” manifested by Steven, in signing the CR2A, was occasioned by the advice she sought out from Schroader.

c. ***None of The Issues in This Action Were Adjudicated On the Merits or Material to The Outcome of the Underlying Action.***

With regard to both collateral estoppel and res judicata, it must be shown that the issue was "**actually litigated**" in the prior action and that such issue was needed to the outcome of such action. *Luisi Truck Lines, Inc. v. Washington Utilities and Trans. Comm.* (1967) 72 Wn.2d 887, 893-895; *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn.App.299, 304 (2002).

In spite of the effort to cloud the facts by Schroader, in its motion, the argument of this is very simple: But for the actions of Schroader, Steven would not have signed the CR2A. No other facts, intents, subsequent acts or decisions, or blaming is relevant. The only factual "Finding" that matters is that Schroader's, negligence and breaches (*which cannot be disputed since they were part of the Motion for Summary Judgment and are conceded by Schroader,*) were the same cause in fact, and legal cause, of that signing.

Judge Arend, never considered argument on the subject of Schroader's, fiduciary and ethical breaches in the FREO, matter, alleged violation of Washington Consumer Protection Act, and Schroader, (small claims) matter. An issue is considered "adjudicated" for those purposes, simply because it is raised, argued or advanced. In this regarding, the holding in *McDaniels*, supra, is illustrative. In that case (a paternity suit), the Supreme Court held that the doctrine could not apply as "the issue of paternity was never actually litigated in [a prior] dissolution proceeding; it was merely presumed upon the parties' stipulations (emphasis added)." *McDaniels*, 108 Wn.2d at 306.

Additionally, Steven could not have litigated any issues regarding Schroader's, professional liability during the course of the FREO, and Schroader (*small claims*,) matters, even if she wanted to. Schroader, was not a party in the underlying action. The FREO, and Schroader (*small claims*,) court did not have jurisdiction over the Steven's, malpractice claims and could not have found Schroader, liable for anything nor could it have awarded Steven, damages for injuries resulting from Schroader's, acts or omissions. Steven, notified the court and Schroader, prior to the smalls claims action the case is barred from the res judicata doctrine, and in the FREO, matter Court Commissioner Bradburn-Johnson, did not allow CR2A, issues nor claims of the CR2A, to be litigated. There was no complaint heading off the nature of any claims asserted against Schroader. Basically said, Schroader's, professional liability was never adjudicated or considered, and any argument to the opposite is, at best, erroneous.

d. *An Application of the Doctrine of Collateral Estoppel or Res Judicata Would Work a Massive Injustice*

Noted above Judge Arend, did not indicate any analysis of the elements of collateral estoppel in her oral ruling or her order.⁵⁹ Judge Arend, summarily concluded that "as matter of law" Steven claims were estopped and Steven came forward with no duty Schroader, breached and that resulted in any harm to Steven. Judge Arend, did not state what she based it on. She stated she read

59 CP 1491 - 1493

documents with regard to the motion for summary judgment. But, she did not clarify who, what motion, or what documents.

In doing so, Judge Arend made absolutely no finding, or analysis, of the first, second, third, and fourth, elements.

1) the issue decided in the prior adjudication ***must be identical*** with the one presented in the second; 2) the prior adjudication must have ***ended in a final judgment on the merits***; 3) the party against whom the plea is asserted ***was a party or in privity with a party to the prior adjudication***; and; 4) application of ***the doctrine must not work an injustice***.

Collateral estoppel is not only limited to issues that were actually litigated. It must be also be shown that the issues previously adjudicated was material and necessary to the outcome of the prior actions. *J.A. Henderson v. Bardahl International Corp.*, 72 Wn.2d 109, 118 (1967) (“*It is axiomatic that for collateral estoppel by judgment to be applicable, that the facts or issues claimed to be conclusive on the parties in the second action were actually and necessarily litigated and determined in the prior action. . . (emphasis added).*”)

Moreover, the doctrine of collateral estoppel is not applied, even if the foregoing elements are met, if so doing defeats the ends of justice. The application of the doctrine worked a massive injustice. As stated above, malpractice litigation would have been inappropriate to the subject matter of the FREO, matter and the Schroeder, (small claims action,) matter, nor did Court Commissioner, Bradburn-Johnson, and Pro Tem, Lindstrom, afford such relief.

Relief could not have been awarded since Court Commissioner, Bradburn-Johnson, stated the CR2A, issues were between "**Steven, and Schroader,**" not "**FREO and Steven,**" and the small claims action, Schroader took against Steven, was the inappropriate jurisdiction.

When Judge Arend, rendered her oral ruling on the underlying Motion for Summary Judgment, she herself stated, "*I do believe that even if it had not been adjudicated previously.*"⁶⁰ Such a statement from a judicial officer reflects more than just disagreement of the application of the facts or the law, but a predisposition to a result without any analysis. At no time in her "brief" analysis did Judge Arend, actually set forth her analysis of the elements of collateral estoppel, and why applying the doctrine would *not* work an injustice to Steven.⁶¹

It is fact that Judge Arend's ruling did work an injustice. The undisputed facts on the Motion for Summary Judgment were that Schroader, gave Steven not just bad advice—he gave her wrong advice. Steven, reminded Schroader, that she wanted to pursue her claim that FREO Washington, LLC, was acting in retaliation against her. Schroader, advised Steven, the purpose of the CR2A agreement was to avoid the King County Sheriff, from evicting her from her residence within a few days. He told Steven, she could still pursue her claim against FREO Washington, LLC for retaliation. Based upon Schroader's advice and assurances, Steven, signed the CR2A Settlement Agreement.

60 The phrase "had not been" is defined as "In the absence of (something or someone) without." See Merriam-Webster.com.

61 See RP page 10

Once Schroader, told Steven that she could still pursue her claim against FREQO Washington, LLC, for retaliation, he set the facts in motion, and regardless of what happened in the future, everything was tied to that act. For Judge Arend, to ignore that fact in *this case* but instead adjudicate this legal malpractice action through the lenses of the FREQO, matter and Schroader, (*small claims action*), matter was changeable error and must be corrected.

2. *The Court Erred by Considering the Collateral Estoppel Argument on the Merits*

Judge Arend, ignored all of Steven's, evidence presented *related to Steven's, malpractice*. Steven, submits that this ruling was completely contrary of the intent to both Civi Rule 56, and Washington law, and Judge Arend, impermissibly granted affirmative relief to Schroader, without properly briefed hearing on the issues and facts. See for example *Winterroth v. Meats, Inc.* (1973) 10 Wash.App. 7, 516 P.2d 522--holding when a party moving for summary judgment presents affidavits which make out a prima facie case, the opposing party may not rely on mere allegations contained in his pleadings but must make an evidentiary showing of a factual issue which is material to the contentions before the court. Steven, also had further discovery proceedings that would show Schroader, had specific intent to damage Steven.

C. **GENIUNE, MATERIAL ISSUES OF FACT EXIST AS TO WHETHER SCHROADER'S ACTIONS WERE THE PROXIMATE CAUSE OF PLAINTIFF'S DAMAGES**

There are two elements to proximate cause: 1) cause in fact and 2) legal causation. *Daugert v. Pappas*, 104 Wn.2d 254, 257 (1985). Cause in fact is the

causation. *Daugert v. Pappas*, 104 Wn.2d 254, 257 (1985). Cause in fact is the threshold “but for” question that asks whether one event (e.g., kicking a ball down a hill) caused a subsequent event or events (e.g., breaking through a glass car window). Legal causation rests on policy considerations of how far the consequences of the negligent act should extend and whether liability should attach, as a matter of law (say if an earthquake seconds later leveled the whole house). *City of Seattle v. Blume*, 134 Wn.2d 243, 251-52 (1997).

The general rule in Washington that in a legal malpractice action, whether a plaintiff would have prevailed in an underlying matter, is question for the jury, *Brust v. Newton*, 70 Wash.App. 286, 293, 852 P.2d 1092 (1993):

The Washington Supreme Court has held that in most instances the question of cause in fact is for the jury...In such a case it is appropriate to allow the trier of fact to decide proximate cause. In effect the second trier of fact will be asked to decide what a reasonable jury or fact finder would have done but for the attorney's negligence. Thus, it is obvious that in most legal malpractice actions the jury should decide the issue of most legal malpractice actions the jury should decide the issue of cause in fact. (Citations omitted) *Daugert*, 104 Wash.2d at 257-58, 704 P.2d 600. Emphasis added). *Id* ...Although no Washington court has previously addressed the issue in precisely this context, it follows that if it is not for the trier of fact to decide “whether the client would have fared better but for [the attorney’s] mishandling” of his case, *Daugert*, 104 Wash.2d at 257, 704 P.2d 600, it is also for the trier of fact to decide the extent to which that is true. *Id.* at 294

See also *Neilson v. Eisenhower & Carlson*, 100 Wash.App.584, 999 P.2d 999 P.2d 42 (2000); *Daugert v. Pappas*, 104 Wash.2d 254, 704 P.2d 600 (1985); *Martini v. Post*, 313 P.3d 473 (2013):

The plaintiff, however, ***need not prove cause fact to an absolute certainty***, *Gardner v. Seymour*, 27 Wash.2d 802, 808, 180 P.2d 564 (1947). It is sufficient if the plaintiff presents evidence that “allow[s] a

reasonable person to conclude that the harm more probably than not happened in such a way that the moving party should be held liable.” Little, 132 Wash.App. at 781, 133 P.3d 944 (citing Gardner, 27 Wash.2d at 808-09, 180 P.2d 564). The evidence presented may be circumstantial as long as it affords room for “reasonable minds to conclude that there is a greater probability that the conduct relied upon was the [cause in fact] of the injury than there is that it was not.” Hernandez v. W. Farmers Ass’n, 76 Wash.2d 422, 426, 456 P.2d 1020 (1969). (Emphasis added).

Id. at 478. See *VersusLaw v. Stoel Rives*, 127 Wash.App. 309, 111 P.3d 866 (2005): “Proximate cause may be determined as a matter of law **only when reasonable minds could not reach but one conclusion.**” (Emphasis added).

1. *Schroader’s Conduct Was the Proximate Cause Of Steven’s Damage Related To The Loss Of The Right To Exert Retaliation And Foreseeable Costs and Expenses*

The courts stated in the *Brust* and *Versus-Law*, *supra*, the “second trier off fact will be asked to decide what a reasonable jury or fact finder would have done but for the attorney’s negligence” unless “reasonable minds could reach but one conclusion.” Here there is one simple question: What was the cause “in fact” of the CR2A Agreement? And, therefore, can a reasonable mind *only* conclude that the conduct of Steven—after she signed the CR2A—were the sole cause in fact of their damages.

It is a “given” that Schroader provided Steven, negligent advice. The evidence is abundantly clear that the one, and only act, that set everything in motion was the negligent advice given by Schroader, to Steven. There is no dispute that **prior** to seeking out legal advice of Schroader, Steven, believed she was being retaliated against.

At the August 16, 2016, Show Cause, hearing Schroader, advised

Steven, the following below:

“the purpose of the CR2A, was to avoid the, King County Sheriff, from evicting her from her residence within a few days. He told Steven that she could still pursue her claim against FREO Washington LLC, for retaliation.”

In Schroader’s, letter to Steven dated August 23, 2016, he stated to her the following below:

“Regarding the matter of waiver of claims, what you refer to as #6, what I told you was the claims for any future torts on the landlord’s part cannot be waived, likewise if there were a civil right violation. We specifically discussed the issue of retaliatory eviction, which was the central topic in our defense, and I told you that I do not believe you would prevail on that issue.”⁶²

Schroader, stated in his December 9, 2016, letter to Felice Congalton, of the Washington State Bar Association, the following below:

“I told Ms. Steven, that, at best, we would survive the show cause hearing, only to lose later when all the opposing party’s evidence could properly be brought forth.”⁶³

There is no dispute that Steven consulted with Schroader for legal advice as to *how to enforce her rights on retaliation*. Schroader, confirmed that Steven, *“had some concerns or issues with regard to retaliation, how she would enforce her rights to pursue her claim against FREO Washington, LLC, for retaliation.”*

Schroader’s, admitted he did not file Steven’s, sworn statement in his response to **Interrogatory No. 5:**

INTERROGATORY NO 5:

Please state why you did not file with the clerk of the court a

62 CP 782 - 1330 (Exhibit 82 to the Steven Declaration, Page 3, No. 11).
63 CP 1680 - 2020 (Exhibit 91 to the Steven Declaration).

written sworn statement in Plaintiff Steven's, Unlawful Detainer Action.⁶⁴

RESPONSE TO INTERROGATORY NO. 5:

Without waiving objections, Responding Party responds as follow: Propounding Party agreed to settle the Unlawful Detainer Action FREO Washington, LLC filed against her before any sworn statement was necessary.⁶⁵

Here Schroader, answered this interrogatory blantly dishonest and misrepresenting fact, because the sworn statement deadline to be filed was August 11, 2016. Schroader's, Invoice,⁶⁶ dated September 12, 2016, show that on August 11, 2016, he drafted the Answer & Affirmative Defenses, and Declaration of Service on that day. If he states that Steven, agreed to settle Unlawful Detainer Action, with FREO Washington, LLC, why does his Invoice not reflect a description for settlement.

Schroader, faxed FREO Washington, LLC, the Answer & Affirmative Defenses, on August 12, 2016.

INTERROGATORY NO 1:

Please state the date you emailed Dean Von Kallenbach, the Answer to the Unlawful Detainer Complaint (*FREO Washington, LLC v. Paula Steven, No. 16-2-18347-6 KNT.*)⁶⁶

RESPONSE TO INTERROGATORY NO. 1:

Without waiving objections, Responding Party responds as follows: The Answer was faxed to opposing counsel on August 12, 2016.⁶⁷

It is unambiguous that signing the CR2A, itself, that act set in motion by

64	CP	324 - 781 (Exhibit B to the Steven Declaration).
65	CP	324 - 781 (Exhibit B to the Steven Declaration).
66	CP	324 - 781 (Exhibit B to the Steven Declaration).
67	CP	324 - 781 (Exhibit B to the Steven Declaration).

Schroader, telling Steven “*that is was okay*” to do so. That act is the proverbial kicking the ball down the hill; the fact that the ball may have taken course of twists and turns is not material. All damage in its wake is directly attributable to the one act, to wit: The giving of improper, incorrect and erroneous legal advice by Schroader.⁶⁸ There was no reversing that act, just as there was not reversing the signing of the CR2A Agreement.

Once that act occurred (*i.e. the signing of the CR2A*)—the retaliation was lost. All subsequent acts and decisions, do not change the fact that the proximate cause-in fact of Steven’s, loss was the undisputed “*incorrect advice*” given by Schroader.

For these reasons, reasonable minds could not only reach one conclusion as to the proximate cause of Steven’s, damages, and certainly cannot decide that such damage was only by Steven, herself.

2. Schroader was the “*Legal Cause*” of Steven’s Damage

Legal causation presents mixed considerations of logic, common sense, justice, policy and precedent. *Bullard v. Bailey*, 91 Wn.App. 759, 755 (1998). As such, legal causation in legal malpractice cases can be determined as a matter

68 Schroader motion spent time briefing arguing that Steven could not tie Schroader’s conduct to any harm. That Schroader, advised Steven, after looking at the evidence provided by FREO, the defense retaliation would not survive a show cause hearing. First, to be clear Schroader, advised Steven at the show cause hearing that the purpose of the CR2A agreement was to avoid the, King County Sheriff, from evicting her from her residence within a few day. In paragraph “6” of the CR2A Agreement provided that the settlement resolved all disputes and claims. Steven, prior to signing CR2A Agreement, reminded Schroader, that she wanted to pursue her claims that FREO Washington, LLC, as action in retaliation against her. Schroader, told Steven, she could still pursue her claims against FREO Washington, LLC, for retaliation. However, this is a reasonableness argument that goes to damages---not causation.

of law when reasonable minds could come to only one conclusion based upon the evidence and inferences therefrom. *Bullard*, 91 Wn.App at 755-56. Legal causation rests on policy considerations as to how far the consequences of defendant's acts should extend. It involves a determination of whether liability should attach as a matter of law given the existence of cause in fact. If the factual elements of the tort are proved, determination of legal liability will be dependant on "*mixed considerations of logic, common sense, justice policy and precedent.*" *Hartley v. State*, 103 Wn.2d 768, 779, 698 P.2d 77, 83 (1985). In essence, "legal causation asks how far the consequences of defendant's acts should extend and involves a determination of whether liability should attach as matter of law given the *existence* of cause in fact. *Id.*

As argued above, Steven is seeking damages in the form of loss of what Steven, would have been awarded in the retaliation lawsuit, eviction costs, rent increase cost, anticipatory breach, punitive, and tremble damages, and other foreseeable costs because Schroader's, advice and handling of the issue. The cause-in-fact and legal cause of this act was Schroader's, "incorrect advice" that Steven, could still pursue her claim against FREO Washington, LLC, for retaliation and his advice to sign the CR2A Agreement.

D. WASHINGTON CONSUMER PROTECTION ACT

A claim under the Washington Consumer Protection Act, ("CPA") requires (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that impacts the public interests; (4) injury to business or property; and (5)

causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). Steven met all of of these elements.

“Whether an action constitutes an unfair or deceptive practice is a question of law.” *Columbia Physical Therapy, Inc., PS v. Benton Franklin Orthopedic Associates, PLLC*, 168 Wn.2d 421, 442, 228 P.3d 1260, 1270 (2010). An act or practice is unfair or deceptive if it has the capacity to deceive a substantial portion of the public. *State v. Pacific Health Center, Inc.*, 135 Wn. App. 149, 170, 143 P.3d 618, 628 (2006). “Implicit in the definition of “deceptive” under the CPA is the understanding that the practice misleads or misrepresents something of material importance.” *Holiday Resort Comm. Ass’n v. Echo Lake Assoc., LLC*, 134 Wn. App. 210, 226, 135 P.3d 499 (2006).

Schroader, fails to identify any defect in his Retainer-Agreement and Availability Contract, and CR2A Agreement.⁶⁹ Schroader’s, Retainer Agreement, states that Steven, will pay his paralegal Amber Woods, \$100 per hour for her services performed. Schroader, billed Steven, for Ms. Wood, on August 9, 2016.⁷⁰

Per the Department of Labor and Industries, February 27, 2018, Audit. The time period covered by his audit, is “**July 1, 2015 -- September 2017.**”⁷¹ Schroader, hired Amber Wood, as a paralegal, but did not put her on the payroll, nor report her hours.⁷² Schroader, was hiring casual labor workers as process servers and paid them on a piecework basis. Schroader did not report the hours

69 CP 782 - 1330 (Exhibit 70 to the Steven Declaration).
70 CP 782 - 1330 (Exhibit 86, page 3, to the Steven Declaration).
71 CP 782 - 1330 (Exhibit 126, page 1, to the Steven Declaration).
72 CP 782 - 1330 (Exhibit 126, page 30, to the Steven Declaration).

for these workers.

Schroader, in fact employed nine (9) workers during the above time period and did not keep required records for the workers, per *RCW 51.48.030*, *WAC 296-17-35201*. Schroader, also employed workers during the above time period when he knowingly did not have the required workers' compensation account with Labor and Industries,⁷³ *RCW 51.48.010*, and he was not paying workers compensation premiums for the workers, but he was taking money from Steven, for his worker Amber Wood.⁷⁴

Schroader, received two (2) penalties; (1) a record keeping penalty in the amount of \$2,250.00, this penalty was reduced from \$2,250.00 to \$225.00; (2) an unregistered employer penalty, *RCW 51.48.010*, in the amount of \$500.00, this penalty was reduced from \$500.00 to \$100.00.⁷⁵ Schroader, also received Notice and Order of Assessment, from the Department of Labor and Industries, due to what Steven, alleges as unfair or deceptive practices.⁷⁶

E. EXPERT EVIDENCE

There is no requirement in Washington that a Plaintiff Retain an Expert prior to Motion for Summary Judgment. Plaintiff was retaining expert witnesses and anticipating additional expert witnesses to testify to specific issues surrounding Schroader's, handling of the underlying matter. Steven also

73 CP 782 - 1330 (Exhibit 126, page 2, to the Steven Declaration).
74 CP 782 - 1330 (Exhibit 70 to the Steven Declaration).
75 CP 782 - 1330 (Exhibit 126, page 30, to the Steven Declaration).
76 CP 782 - 1330 (Exhibit 126, page 3, to the Steven Declaration).

anticipated obtaining depositions testimony from Schroader.

The case was filed July 15, 2019, and the trial was not until January 11, 2021. Discovery did not cut-off until October 26, 2020. Steven, had only conducted some preliminary discovery, and that discovery was deficient. There is currently discovery outstanding to Schroader. Schroader, has not responded correctly to discovery. Steven, had no alternative, but to file a Motion to Compel Discovery and For Fees Pursuant to CR 27, against Schroader. As such, Judge Arend, should have ruled on this motion.

As matter of law, the court can adjudicate Schroader's, ethical breaches without Expert Testimony. Expert testimony is not required to establish a breach of fiduciary duty. *Eriks v. Denver*, 118 Wn.2d 451 (1997). In *Eriks*, the attorney Denver, was accused of being in violation of his ethics by engaging in a representation that was a clear conflict of interest. On appeal, Denver argued that the trial court erred in finding a breach of fiduciary duty when obtained two experts who opined his actions did not give rise to a conflict of interest. The Washington Supreme Court, held that the question of whether an attorney's conduct violates the relevant Rules of Professional Conduct, is a question of law. The Court went on to hold:

"When a trial court is presented with a question of law, the court may properly disregard expert affidavits that contain conclusions of law. *Charlton v. Day Island Marina, Inc.*, 46 Wn.App. 784, 788, 732 P.2d 1008 (1987). See *State v. O'Connell*, 83 Wn.2d 797, 816, 523 P.2d 872, 77 A.L.R.2d 874 (1974) (the issue of whether an attorney must disclose his fee-sharing arrangements is a question of law and that expert opinion on the matter is therefore improper".

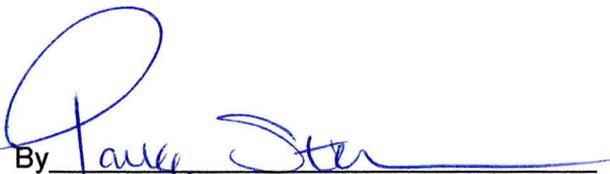
Eriks, at 457-8. *Eriks*, at 457-8. See *In the Matter of Disciplinary Proceeding*

against *Burtch*, 179 P. 3d 1077 (2008), relying upon *Eriks*, and confirming that the judge did not require an expert opinion to conclude, as matter of law, that the RPCs have been violated. See *Brown v. State Farm Fire & Casualty Co.*, 66 Wn.App. 273, 831 P.2d 1122 (1992) -- under a statute allowing reasonable attorney fees, the court may determine a reasonable fee without the aid of expert testimony. See *Cotton v. Kronenberg*, 111 Wash.App. 258, 264, 44 P.3d 878 (2002).

V. CONCLUSION

For all the foregoing reasons, Appellant respectfully submit that this Court reverse the order of summary judgment and remand this matter to the Pierce County Superior Court, or King County Superior Court.

Dated: July 20, 2020

By 
Paula Steven, Pro Se

DECLARATION OF SERVICE

I, John Green, hereby declare and state as follows:

I am a citizen of the United States and a resident of Federal Way, Washington; I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused to be served:

* **PLAINTIFF'S OPENING BRIEF**

in the within matter by arranging for a copy to be delivered on the interested parties in the said action, in the manner described below, addressed as follows:

Counsel for the Defendants'

Gregor A. Hensrude, Attorney
Erin Thenell, Attorney
Klinedinst PC
701 Fifth Avenue - Suite #1220
Seattle, Washington 98104
ghensrude@klinedinstlaw.com
pray@klinedinstlaw.com

X

VIA U.S. MAIL

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed July 24, 2020 at Federal Way, Washington.



John Green