

FILED

MAR 10 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 29335-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

AARON DOYLE,

Plaintiff/Respondent/Cross-Appellant,

v.

HALEY TAYLOR, PEGGY GRAY, and ROBERT GRAY,

Defendants,

and

BRIAN CHASE,

Appellant/Cross-Respondent.

BRIEF OF RESPONDENT/CROSS-APPELLANT AARON
DOYLE and CROSS-APPELLANT AARON DOYLE'S OPENING
BRIEF ON CROSS APPEAL

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I. INTRODUCTION

This appeal arose after the trial court found appellant Brian Chase in contempt of court for willfully and unlawfully failing to comply with the superior court's Order that he return documents and records stolen from Plaintiff/Cross-Appellant Aaron Doyle.

Chase's brief makes for some interesting reading; it is complete with superfluous quips that having nothing to do with whether Chase committed contempt of court or whether the trial court erred in its decision to find Chase in contempt. As previously stated by Mr. Cameron in a collateral case: this case does have an interesting back story, much of which is not relevant. Mr. Chase fails to inform this Court, however, is that most, if not all, of the litigation in Grant County, stemmed from the improper actions and contemptuous behavior of Chase and his clients. Chase's opinions and castigation of Doyle in his brief is irrelevant to the legal issues presented and merely highlights his attempt to distract this Court from Chase's contemptuous conduct as a lawyer and officer of this Court.

For this Court to fully understand Mr. Chase's contemptuous behavior and make a well informed decision on the underlying appeal, Respondent will briefly summarize the underlying case.

Chase was ordered by the trial court to return documents, both

paper and electronic, that were stolen from Plaintiff/Respondent and Cross-Appellant Aaron Doyle's ("Doyle") USB thumb drive by Chase's client, Haley Taylor. Taylor gave the USB thumb drive to Chase. Chase unlawfully accessed the USB drive and printed and transferred electronic copies of personal and private documents of Doyle's. Doyle moved the trial court for a protective order and for the return of the stolen documents.

The trial court heard oral argument on Doyle's motion on September 18, 2009. Chase was present in court. The Court found that Doyle's documents, both electronic and papers, were in the possession of Chase and his clients, Taylor and Robert and Peggy Gray, and were acquired by them unlawfully during the course of the underlying litigation.

Following the September 18, 2009 hearing on Doyle's motion for contempt, Chase, associated counsel Jack Burns, their clients (Peggy Gray, Robert Gray and Haley Taylor) were ordered by Grant County Superior Court Judge Evan Sperline to *immediately* return all of Doyle's documents, both paper and electronic, to Doyle's attorney, Garth Dano. Attorney Burns forwarded a letter to Dano on October 22, 2009, and included all the materials he had in his possession pursuant to the trial court's Order. Attorney Chase did not comply.

Chase was nothing less than obstreperous in his efforts to comply with the trial court's Order. In fact, Chase did not comply with the

Court's September 18, 2009 Order until November 27, 2009. By then, Chase had even destroyed an electronic copy he had made of Doyle's electronic records he had been ordered to return by the Court. Chase's prevaricating conduct was not only contemptuous, but also violated the Rules of Professional Conduct as it applies candor toward tribunal and fairness to opposing parties.

Doyle brought a motion for contempt against Chase. The trial court found Chase in contempt, but only for his willful disobedience after a written Order was signed by the Court on October 21, 2009 – which reduced the trial court's September 18, 2009 Order to writing. Judge Sperline found that parties cannot be compelled to comply with the court's oral Orders – describing oral Orders as “inchoate”.

After the trial court found Chase in contempt of its October 21, 2009 written Order, the trial court finally ordered Chase to pay Doyle's attorney fees in the amount of \$1,000.00 in its Order of July 2, 2010, based upon the trial court's memorandum decision of June 1, 2010.

The trial court opined that Doyle's motion for contempt against Chase was more likely the only factor that compelled his compliance.

Doyle cross-appeals the trial court's Order arguing he submitted evidence that his attorney fees were excess of \$3,000.00, the trial court lacked substantial evidence to find the attorney fees incurred by Doyle

were anything less than \$3,000.00, and that the trial court's oral Orders were binding and enforceable and not merely "inchoate". Doyle simply wants to make an earnest attempt to uphold the integrity of the court by way of his appeal. The integrity of the court and rule of law is the overriding concern by Doyle's position in this appeal.

II. CROSS-APPELLANT'S ASSIGNMENT OF ERROR

Doyle cross-appeals the trial court's Decision on Contempt of July 2, 2010, based upon the trial court's memorandum decision of June 1, 2010, in two regards. First, Doyle contends there was not substantial evidence to support a reduction in the award of attorney fees he incurred in prosecuting the contempt against Chase when the evidence proved Doyle had incurred in excess of \$3,000.00 in attorney fees. Second, Doyle contends that the trial court erred in ruling it could not enforce its oral Orders until they were reduced to writing and that the trial Court should have found Chase in contempt of its oral ruling of September 18, 2009, in addition to its October 21, 2009, written Order.

Assignments of Error

Assignment of Error No. 1. The trial court erred in ruling that its oral Order of September 18, 2009, was "inchoate" and unenforceable until the reduced to writing on October 21, 2009; and as such, the trial court erred in not finding Chase in contempt of its September 18, 2009, oral

Order;

Assignment of Error No. 2. The trial court erred in reducing Doyle's attorney fees to \$1,000.00 from Doyle's request of \$3,000.00, for prosecuting the contempt motion against Chase which resulted in Chase's partial compliance with the court's Orders.

Issues Pertaining to Assignment of Error

1. Doyle's attorney, Garth Dano, submitted evidence that Doyle incurred in excess of \$3,000.00 in attorney's fees in prosecuting the contempt against Chase. There is no evidence to refute that these fees were unreasonable or not incurred. Contrary, substantial evidence supports that Chase was in contempt and that Doyle did in fact incur in excess of \$3,000.00 in attorney fees to prosecute the contempt and compel Chase's compliance with the Court's Orders.

2. The trial court refused to find Chase in contempt for the period its oral Order had not been reduced to writing – September 18, 2009 to October 21, 2009. The trial court found that oral orders are “inchoate” and not enforceable. Doyle contends the oral orders of Washington courts are enforceable and the court has the inherent authority to issue orders to the parties and attorneys during the course of litigation to preserve the integrity of the Courts.

III. RESPONDENT'S/CROSS-APPELLANT'S STATEMENT OF THE CASE

A. The Defendants' Anti-Harassment Petitions

The underlying litigation began when Plaintiff and Cross-Appellant Aaron Doyle ended a romantic relationship with the jilted Haley Taylor. CP 433-441. Taylor and her parents, Robert and Peggy Gray, in a fit of retribution, each brought anti-harassment petitions against Doyle after retaining local Quincy, Washington attorney Brian Chase. CP 433-441.

At Chase's behest, Taylor and the Grays each attached several exhibits to their anti-harassment petitions that had absolutely no relevance to these underlying proceedings. CP 284-292. These exhibits contained personal and confidential records that had been stolen from Doyle and Doyle's USB thumb drive by Taylor. CP 284-292.

At Doyle's request, the Grant County district court entered Orders sealing the exhibits and transferred the Gray's anti-harassment petitions to the superior court for an evidentiary hearing after Doyle brought this underlying suit for defamation. Robert and Peggy Gray's anti-harassment petitions were dismissed for lack of merit after a full evidentiary hearing before the Hon. John Hotchkiss, sitting for the Grant County Superior Court.

Taylor then brought her own anti-harassment petition attempting to accomplish what her parents couldn't, accusing Doyle of harassment which stemmed from her colorful imagination, the most recent instance of alleged harassment originating several months prior to filing her petition. Chase again attached Doyle's personal and confidential documents as exhibits to Taylor's petition notwithstanding the exhibits had been sealed by the Grant County District Court and previously by the Sierra County Superior Court in California. CP 284-292; 433-441. Taylor dismissed her anti-harassment petition on the day of hearing. CP 433-441.

B. The Underlying Defamation Suit

When Taylor and the Grays relentlessly began a pattern of harassment against Doyle, Doyle brought this suit against the Gray's for defamation on February 5, 2009 in Grant County Superior Court. CP 218-224. Doyle later amended the complaint to allege damages for, inter alia, malicious prosecution, abuse of process, invasion of privacy and injunctive relief. Doyle added Taylor as a co-defendant on September 4, 2009, when he filed his amended complaint. CP 433-441.

C. Doyle Motion to Protective Order

Doyle brought a motion in each of the anti-harassment cases that originated in the Grant County District Court, which were later transferred to the Grant County Superior Court. In the underlying defamation suit,

Doyle sought a protective order and an order for the return of his records of the court that Chase, the Grays and Taylor return Doyle's stolen property and seal the confidential documents of Doyle's that were attached as an exhibit to their anti-harassment petitions. CP 284-292.

D. The September 18, 2009 Order to Return Property

Grant County Superior Court Judge Evan Sperline heard Doyle's motions for protective orders in this case and the related anti-harassment cases, which were consolidated for the purposes of the hearing, on September 18, 2009.

The trial court granted Doyle's motion in each respective case and ordered Chase, associated counsel Jack Burns, Taylor and the Grays to *immediately* return all paper and electronic copies of the records to Mr. Doyle in the underlying defamation case. CP 53-56; 169-174; VRP 29; 1.1-7 (09/18/09). The Court also found that the documents relating to Doyle were acquired by Chase, Taylor and the Gray's *unlawfully*. *Id.* at 1.22-25 (*Emphasis added*).

As it relates to the underlying defamation case, and Chase's contempt, Judge Sperline stated in part:

Plaintiff's Motion to Seal and for Protective Order is granted. By preponderance of the evidence, the documents relating to Mr. Doyle were acquired by from him unlawfully." *Id.*

The Court went on and explicitly ordered:

[T]he originals or any copies; paper or electronic, of those documents, in the hands of any party, the counsel for any party, or the former counsel for any party in these four cases should be *immediately* returned to counsel for Mr. Doyle.¹ (*Emphasis added.*) *Id.* at 1.25 – p.30; 1.5.

E. Defendants' Removal to Federal Court

On November 13, 2009, Jack Burns, substituting for Chase as Taylor and Gray's counsel after Doyle sought to disqualify Chase as the Gray's and Taylor's attorney, removed the underlying case to the United States District Court.²

F. The Order to Show Cause for Contempt

On December 4, 2009, Doyle obtained an Order from the trial court requiring Chase to appear and show cause why he should not be held in contempt for his failure to comply with the Court's September 18, 2009 Order that he immediately return Doyle's documents. CP 57-73; CP 87-120.

Attached as exhibits to the Order to Show Cause were correspondence between Garth Dano, Doyle's attorney, and Chase, whereby Dano requested Chase immediately comply with the Court's September 18, 2009 Order, and that he return the documents in his

¹ As noted earlier in this Brief, Jack Burns did immediately comply with the court's order and returned the documents within a week of entry of the trial court's order.

possession belonging to Doyle. *Id.* Dano wrote to Chase and Burns on September 30, 2009 and reminding them the Court ordered the return of the documents *immediately*. *Id.* Enclosed was a copy of a notice of hearing for the presentment of the Order from the September 18, 2009, hearing. On October 6, 2009, Chase wrote to Dano asking him to provide a copy of the Order so he could comply with it. *Id.* On October 8, 2009, Dano wrote a detailed letter to Chase again asking for his compliance with the trial court's Order and enclosed a copy of the proposed Order. *Id.* Chase ignored Dano's request and failed to make any effort to comply with the court's Orders. *Id.*

A hearing was held on October 16, 2009, before Judge Sperline, for entry of the written Order from September 18, 2009. Burns signed the proposed Order approving it as to form. CP 53-56. Chase had still not responded to Dano's letter of October 8, 2009, and still had not complied with the trial court's Order. CP 87-120.

Attorney Dano then mailed to Chase and Burns a Notice of Entry of Order with the Court's written Order of October 21, 2009. Attorney Jack Burns complied with the court's Order the same day it was entered by Judge Sperline, October 21, 2009, and mailed any copies and original of Doyle's documents to attorney Dano.

Judge Sperline signed and filed the written Order from the trial

court's memorandum decision of June 1, 2010, on July 2, 2010, finding Chase in contempt and awarded Doyle \$1,000.00 in attorney fees. CP 191.

G. The Hearing on Doyle's Motion for Contempt

Doyle accepts the timeline established by Chase regarding the scheduling and continuances of the court hearings. However, Doyle argues that the continuances are irrelevant to the court's finding of contempt and Chase's willful disobedience with the Court's September 18, 2009 and October 21, 2009, Orders.

H. Chase's Conflicting Declaration And Testimony Regarding His Willful Disobedience

Chase did not argue that he failed to comply with the trial court's Orders; he does, however, offer many explanations and excuses as to why he did not comply with the trial court's Orders.

Chase offered many explanations in his December 3, 2009, declaration, which Chase filed under oath in the underlying case. CP 77-78. Chase's declaration is nothing more than an attempt to perpetrate a fraud on the trial court. Chase contends he did not receive the trial court's written Order of October 21, 2009, which formalized the court's oral Order of September 18, 2009, until November 3, 2009. Chase claims he was therefore not was not required to comply with the court's oral

ruling.³ *Id.*

Doyle's counsel filed a motion for contempt against Chase on November 20, 2009, for his willful disobedience of the trial court's Order of September 18, 2009 and its written Order of October 21, 2009. In response to the Order to Show Cause, Chase filed a declaration with the trial court on December 3, 2009, testifying that the items subject to the Order to return property, [Doyle's records, both paper and electronic], were so cumbersome that he chose not to mail them; he was going to physically hand them to Dano on December 2, 2009, at a mediation scheduled in the underlying defamation suit. Chase claims he did not complete the arduous process until November 20, 2009. *Id.* at 77.

After Chase received the Order to Show Cause for Contempt, on November 3, 2009, Chase apparently decided he would instead mail Doyle's documents to Dano on that day rather than deliver them to Dano at mediation scheduled for this case on December 2, 2009. *Id.* at 78.

I. Computer Fraud and Abuse Suit Against Chase

After learning Chase and his clients had obtained Doyle's stolen property, and then accessed Doyle's USB drive without authorization, Doyle brought suit in the United States District Court against Chase and

³ Even assuming Chase was only required to comply with the Court's written order and not its oral order, Chase still failed to immediately comply with the Court's order for 16 days.

Taylor for, *inter alia*, violation of the Computer Fraud and Abuse Act.⁴

Chase emphatically proclaimed in his December 2, 2009, declaration to the trial court, that since November 3, 2009, “. . . *my staff and I* have been gathering the documents, copies and records covered by the Order for Return of Property. It took *us* a great deal of time to sift through the *voluminous* paperwork contained in the clients’ *numerous files* in order to gather up *all the covered items . . .*” (*Emphasis added.*) CP 44-45.

During the course of discovery in the federal suit, Doyle took the depositions of Chase’s two secretarial staff who Chase claimed assisted him the arduous task of sifting through the voluminous files so he could comply with the court’s Orders. Chase’s secretary, Nancy Nunamaker, who is also his mother-in-law, contradicts Chase’s December 1, 2009 declaration during her deposition. Nunamaker testified that she was never asked by Chase to assist him in locating Doyle’s documents so Chase could comply with the court’s September 18, 2009, and October 21, 2009, Orders. CP 121-162; 163-168.

Laura Chase, Chase’s sister and other legal secretary, also testified she worked for Chase in his office. Laura Chase testified she had never been asked by Chase, nor assisted Chase, in retrieving any Doyle

⁴ Doyle v. Chase, et al., United States District Court, Eastern District of Washington, Case No. 09-158-RHW.

documents. *Id.*

Chase's own staff (also his own family) directly contradicted and impeached Chase's testimony, *supra*; both of his legal secretaries testified they never assisted Chase in sifting through any paperwork or gathering documents to facilitate compliance with the trial court's Orders that Chase immediately return Doyle's property. In fact, both of his staff testified that the Gray's and Taylor's files were kept in a small box in Chase's office – not this voluminous mountain of paperwork that Chase testified to in his declaration. *Id.* Chase's excuse for his non-compliance with the court's Orders is nothing less than a prevarication. Chase testified at his deposition, that after the trial court ordered him to return all of Doyle's stolen documents, both paper and electronic, he only returned one of several electronic copies of the thumb drives he had made containing electronic copies of Doyle's documents. Chase testified in his deposition in the federal case that he destroyed the original copy he made of Doyle's thumb drive after the trial court ordered him to return it; he intentionally withheld this fact from the court. *Id.* Chase also testified that he destroyed the copy of the thumb drive that was ordered to be returned to Doyle by taking it home and smashing it with a hammer. Chase then threw what was left of the smashed thumb drive in the trash. *Id.*

Chase's reproduction of electronic copies, and then his destruction

of the electronic device containing the electronic copies, rather than their return, was also contemptuous and a willful violation of the trial court's Orders.

J. The Court's Refusal To Hear The Contempt Based On The Removal To Federal Court

At the hearing on December 18, 2009, the Grant County Superior Court refused to hear Doyle's motion for contempt against Chase. The trial court indicated it was unaware the case had been removed to federal court when it issued the Order to Show Cause to Chase, and therefore, based on the removal, declined to rule on the Order to Show Cause. The trial court found it did not have jurisdiction to hear Doyle's motion for contempt since the case had been removed to federal court.

Doyle contends the trial court did have the authority to hold Chase in contempt for violating the trial court's Orders. However, rather than quarrel with the state court about its inherent right to enforce its Order, Doyle chose to expeditiously obtain an Order of Remand from the Federal Court.

On April 16, 2010, Doyle obtained an Order from United States District Court Judge Robert Whaley remanding the issue of Chase's contempt back to the state court – with an Order that the state court hear Doyle's motion for contempt against Chase. CP 518-519. Most

importantly, the dismissal of the federal court action was *without* prejudice and reserved the right to compel Chase's compliance with the court's Order by way of contempt proceedings. *Id.* The trial court therefore retained its jurisdiction over Chase and to hear any contempt motions relative to his willful noncompliance with the trial court's Orders notwithstanding its inherent authority to do so.

K. The Second Order to Show Cause for Contempt

After the Federal Court remanded the case back the state court for a hearing on Doyle's contempt motion, on May 6, 2010, Doyle obtained a new Order to Show Cause directing Chase to appear and show cause why he should not be held in contempt for his willful failure to comply with the Court's September 18, 2009, oral Order and the court's October 21, 2010, written Order. CP 87-120. The Court, upon Doyle's *ex-parte* application for the Order to Show Cause *sua sponte* excised a portion of the Order to Show Cause directing Chase to show cause why he should not be held in contempt for his willful failure to comply with the court's September 18, 2009, oral Order, and left only the portion of the show cause ordering directing chase to show cause why he should not be held in contempt for his failure to comply with the Court's written Order entered October 21, 2009. *Id.*

The court heard oral argument on Doyle's motion for contempt on

May 14, 2010 and issued its written Orders on May 29, 2010, finding Chase in contempt. The pertinent portion of the trial court's memorandum decision is as follows:

Contempt of court includes intentional disobedience of a lawful order. It also includes refusal, without lawful authority, to produce a document or other object. RCW 7.21.010.

Mr. Chase intentionally violated the court's order of October 21, 2009 in two respects. First, his delay from learning of the order on November 9 to delivering the materials by mail on November 25 did not comply with the court's order that return of the documents be immediate. This conclusion is bolstered by Mr. Chase's original intention, in the face of the requirement of immediate delivery, to deliver them in person on December 2. The volume of documents involved in no way justified such a delay.

Second, Mr. Chase intentionally violated the court's order to deliver all originals and copies, paper and electronic, of the documents by making and retaining Chase thumb drive 2.

The plaintiff argues that Mr. Chase's contempt began with his failure to comply with the oral decision of September 18. The court disagrees. Oral decisions are inchoate, merely an expression of the thought processes of the judicial officer. They are neither enforceable nor do they subject anyone to contempt powers. This is especially true when the court's oral decision includes a directive to counsel to prepare a written order to be entered.

The plaintiff cites the *Dike* case for the proposition that oral orders can be enforced by the court's contempt powers. As noted in plaintiff's brief, *Dike* relates to the court's authority to summarily punish contemptuous failures to follow oral orders in the presence of the court. By way of

simple example, a trial judge could punish as contempt an attorney's display of a photograph to the jury after an oral order that counsel not do so.

Only remedial, not punitive, sanctions are available to address Mr. Chase's contempt. In determining the propriety of any sanction, the court has in mind (1) that recovery of sensitive personal documents was a compelling and central issue for the plaintiff; (2) that before the time noted for initial hearing of the contempt motion, Mr. Chase had complied with the court's order; and (3) no losses other than attorney fees were incurred by the plaintiff by virtue of Mr. Chase's noncompliance.

Under these circumstances, neither imprisonment nor an RCW 7.21.030(2)(b) forfeiture is appropriate since no disobedience occurred "after notice and hearing."

Since compliance was compelled, in substantial part, by the plaintiff's contempt motion, it is appropriate to compensate the plaintiff for his attorney fees in bringing the original motion.

The plaintiff is awarded \$1,000 attorney fees by way of a judgment against Mr. Chase in favor of Aaron Doyle.

Chase now appeals the trial court's finding of contempt and award of \$1,000.00 in attorney fees to Doyle for prosecuting the motion for contempt against him. Doyle cross-appeals the trial court's contempt Order on the basis it lacked substantial evidence that Doyle's fees were anything less than \$3,000.00 and therefore abused its discretion by awarding Doyle only \$1,000.00; and, that the trial court's oral Order of September 18, 2009, was not enforceable.

IV. STANDARD OF REVIEW

Cross-appellant and respondent adopts Chase's application of law as it applies to this Court's *de novo* standard of review of errors of law as to findings of Contempt. The standard of review on an award of sanctions or attorney's fees in for abuse of discretion.

V. ARGUMENT

A. The Court has the Inherent Power to Punish for Contempt

The power of a court, created by the constitution, to punish for contempt for disobedience of its mandates, is inherent. The power comes into being upon the very creation of such a court and remain with it as long as the court exists. Without such power, the court could ill exercise any other power, for it would then be nothing more than a mere advisory body.

The power to punish for contempt of court being essential to the efficient action of the court and the proper administration of justice, it is lodged permanently with that department of government[t].

See Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 423-424. *See also* RCW 2.28.010, et seq. and RCW 7.21, et seq.

B. This Court Need Only Conclude The Trial Court Had Jurisdiction Over Chase Committed His Acts Of Contempt

Chase would like for this Court to believe the trial court did not have subject matter or personal jurisdiction over him when the trial court ordered him to return Doyle's stolen property. Chase's legal position is not supported by law.

The cases cited by Chase for the proposition that once a case is dismissed, the trial court loses jurisdiction to enforce its orders, are distinguishable because: (a) none of them were cases where they were remanded a case back to the state court from the Federal Court with an Order that the state trial court hear a pending motion for contempt; and (b) none of them involved an express dismissal *without* prejudice with an agreement between the parties that the state trial court retained jurisdiction over the issue of contempt involving an attorney for the parties; and (c) Chase did not object to the Federal Court's Order of Remand.

1. A Finding Of Contempt Stands Even If The Law Was Applied Inappropriately Or Erroneously, Or The Court Order Is Later Deemed Invalid

In Washington, a judgment of contempt will stand even if the order violated was erroneous or later ruled invalid. *State v. Noah*, 103 Wit App. 29, 46, 9 P .3d 858 (2000); *Detention of Broer v . State*, 93 Wn. App . 852, 858, 957 P .2d 281 (1998).

In this case, Chase argues that the trial court's Order finding him in contempt should be reversed because the underlying Orders are void because the court lacked subject matter and personal jurisdiction over him; he claims he was only the attorney for Taylor and the Grays and not subject to the trial court's Orders because he was not a party. As an alternative theory, he argues the court lacked subject matter jurisdiction

over the matter after the case was dismissed in federal court, notwithstanding the fact the case was remanded expeditiously back to the state trial court for consideration of Chase's contempt, and that the parties, Doyle, Taylor and the Gray's, specifically dismissed the state court action without prejudice reserving the right for the state court to hear the issue of contempt against Chase.

Chase also argues that even if the trial court had retained jurisdiction, it did not have jurisdiction to order him to return stolen property of Doyle's that was given him to his client during the course of the litigation. We address Chase's penultimate argument first.

2. The Trial Court Retained Jurisdiction Over The Contempt Action. The Federal Court Dismissed The Case Without Prejudice, And The Court, At The Request Of The Parties, And The Parties Specifically Agreed The Matter Be Returned To The State Trial Court In Order To Pursue The Contempt Against Chase

While Chase is correct that the case was voluntarily dismissed by the parties, he does not rely on any precedent that when the parties voluntarily dismiss a case with an agreement that it be remanded back to the trial court for consideration of the contempt proceedings, the court loses its jurisdiction. In one breath, Chase wants the court to overturn the finding of contempt because he is not a party, and in the other breath, he wants the court to overturn the finding of contempt arguing the court

doesn't have jurisdiction because he is a party and the case was dismissed. In other words, Chase claims that the trial court loses jurisdiction over the parties to enforce its orders when the case is voluntarily dismissed. However, Chase was not a party and does not have standing to make that argument.

Despite the fact the state court retained both personal and subject matter jurisdiction over Chase, the Defendants' attorney, to enforce its orders in the underlying defamation suit upon the Defendants' removal of the case to federal court, any doubt as to the state court jurisdiction to hear and rule on Doyle's motion for contempt were unquestionably resolved and became moot when the federal court remanded the case back to the state court for consideration of the contempt proceedings against Chase and the state court dismissal was entered without prejudice. This specifically reserved the right of Doyle to proceed with the contempt action against Chase.

All the authority relied upon by Chase is distinguishable. For instance, *State ex rel. Kerl v. Hofer*, 4 Wash. App. 559, 482 P.2d 806 (1971), the case was dismissed by order of the court "*with prejudice*". *Id.* at 562. (*Emphasis added.*). In fact, the settlement in *Hofer* was "based upon settlement of all matters in controversy between the parties" and "plaintiff's pending civil contempt proceedings against respondents." *Id.*

at 566. Doyle dismissed his claims *without* prejudice and subject to the court retaining its jurisdiction to hear Doyle's motion for contempt. Doyle's settlement was not for all claims – he specifically reserved the right to proceed with his contempt against Chase. Chase also attempts to rely on *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 451-452, 31 S.Ct. 492, 55 L.Ed. 797 (1911). This case is also distinguishable because there was no reservation of right, Order of Remand, or stipulation between the parties, as in the underlying case, to proceed with contempt proceedings when Gompers was settled and dismissed *with* prejudice. The *Gompers* Court likely would have reached a different conclusion had the case been dismissed without prejudice with an issue reserved to the court for further proceedings. Further, none of the cases cited by Chase involve a federal order of remand with an instruction that the state court hear a pending contempt motion upon its dismissal without prejudice.

Lastly, none of these cases or citations relied upon by Chase involved an express dismissal *without* prejudice and a remand to state court or contempt against a party's lawyer. This is a case of first impression. Doyle contends the trial court retained both subject matter and personal jurisdiction to enforce its orders against Chase while Chase was properly before the trial court, and to award Doyle's his attorney fees and costs in bringing the contempt motion.

3. The Court Has The Inherent Authority To Control The Discovery Process And The Parties, Including Their Attorneys, And With That Inherent Authority, Has The Right To Order Parties To Return Documents

If parties to a suit, subject to a court order, could simply turn over stolen property to their attorneys, and avoid any responsibility in the underlying litigation, it would tax the judicial system and create chaos; lawsuits would abound against attorneys during the pretrial stages of litigation so the court would have jurisdiction to compel their compliance with court orders. Certainly, that was not the intent of the legislature or the rule of law.

Both the Washington courts and the federal courts have consistently held they retain the power to regulate the discovery process and the parties and attorneys before them during the litigation.

More importantly, the trial court has the inherent power. . . [t]o enforce order in the proceedings before it. . . [and][t]o provide for the orderly conduct of proceedings before it[.]” RCW 2.28.010(2)-(3). “The trial court is not powerless to fashion and impose appropriate sanctions under its inherent authority to control litigation.” *In re Firestorm 1991*, 129 Wash.2d 130, 139 P.2d 411 (1996) (citing *State v. S.H.*, 102 Wash. App. 468, 8 P.3d 1058 (2000). (applying the principles embodied in CR 11, CR 26(g), and CR 37 to CR 26(b) violations).

Notwithstanding Chase's contemptuous conduct, the trial court could not ignore Chase's willful and wanton disregard of the Rules of Professional Conduct. (RPC 3.3(a)(1) and RPC 3.3(a)(2), Candor Toward Tribunal; RPC 3.4(a), Fairness to Opposing Counsel as it applies to Chase's obstruction to Doyle's access to evidence or the destruction of evidence; RPC 3.4(c) as it applies to knowingly disobeying and obligation under the rules of a tribunal; RPC 8.4(a) as it applies to Chase's contemptuous behavior; RPC 8.4(c) as to Chase's dishonesty in his deposition and to the trial court throughout his declarations.)

The Superior Court has the "authority and duty to see to the ethical conduct of attorneys in proceedings before it." *Hahn v. Boeing Co.*, 95 Wash.2d 28, 34, 621 P.2d 1263 (1980). The trial court had both subject matter and personal jurisdiction over Chase to Order Chase to turn Doyle's stolen property that he came to be in possession of during the course of the underlying litigation under its inherent authority.

Sanctions may be appropriate if an act affects "the integrity of the court and, [if] left unchecked, would encourage future abuses." *Gonzales v. Surgidev*, 120 N.M. 151, 899 P.2d 594, 600 (1995); *see also Chambers*, 501 U.S. at 46, 111 S.Ct. 2123 (explaining that sanctions are appropriate if the "very temple of justice has been defiled" by the sanctioned party's conduct); *Goldin*, 166 F.3d at 723 (same).

Once the appellate court decides the court had proper jurisdiction over Chase, the remaining arguments are moot. There is no question that the trial court had both subject matter and personal jurisdiction over Chase.

4. Chase's Appeal is Barred By the Collateral Bar Rule

Generally, a court order cannot be collaterally attacked in a contempt proceedings arising from a violation of the order. Under the collateral bar rule, a judgment of contempt will normally stand even if the order violated was erroneous or was later ruled invalid. *State v. Coe*, 101 Wn.2d 364, 369-70, 679 P.2d 353 (1984); *Noah*, 103 Wn. App. at 46. However, the collateral bar rule has no application where the underlying order is void for lack of jurisdiction. *Coe*, 101 Wn.2d at 370 (citing *Mead School District No. 354 v. Mead Education Association*, 85 Wn. 2d 278, 534 P.2d 561 (1975)). In the instant case, the trial unquestionably had personal jurisdiction over Chase when it issued its orders of September 18 and October 21.

Even if the trial court erred in its application of the contempt statute codified under RCW Chapter 7.21, et seq. as it was applied to the facts of this case (which he did not), the trial court certainly had both "subject matter" and "personal jurisdiction" over Chase when it made its ruling and ordered Chase, as the Defendants attorney of record, to return

Doyle's stolen property that were delivered to him by his client. *Noah*, 103 Wn. App. 29 ("a court does not lose jurisdiction by interpreting the law erroneously").

Because the trial court had jurisdiction to enter a ruling on the evidence presented to it, the underlying orders are not void, and the contempt orders cannot be collaterally attacked in this proceeding. *Noah*, 103 Wn. App. at 47.

Chase has offered no evidence that he was not personally present in court when the trial court issued its Order on September 18, 2009. In fact, not only was Chase present when the Order was issued, but he was the attorney of record for all of the Defendants on September 18, 2009.

This Court found that the appellant in *Noah* confused "the distinction between an order that is void because a court lacks jurisdiction and one that is merely erroneous" A court does not lose jurisdiction by interpreting the law erroneously ." *Id.* At 46-47. *See also Mead School District No . 354 v. Mead Education Association*, 85 Wn .2d 278, 534 P .2d 561 (1975):

The jurisdiction test measures whether a court, in issuing an order or holding in contempt those who defy it, was performing the sort of function for which judicial power was vested in it. If, but only if, it was not, its process is not entitled to the respect due to a lawful judicial body. Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may (its

order) be disobeyed and treated as though it were a letter to a newspaper.

Id. at 282, quoting in part *United States v. United Mine Workers*, 330 U.S. 258, 309-310, 67 S.Ct. 677 (1947) (*Emphasis added*).

If the trial court did incorrectly interpret the law, the trial court was not “obviously traveling outside [its] orbit” when it entered an Order that Chase and his clients return Doyle’s stolen property. *Mead*, 85 Wn. 2d at 282 (only when a court is “obviously traveling outside its orbit” may its orders be disobeyed).

Contempt orders are within the discretion of the judge and will not be disturbed on appeal absent a showing of abuse in the trial court’s exercise of discretion. *State v. Noah*, 103 Wash. App. 29, 45, 9 P.3d 858 (2000); *Detention of Broer v. State*, 93 Wash. App. 852, 863, 957 P.2d 281 (1998). The court has both statutory and inherent power to find parties in contempt. *See* RCW Chapter 7.21; *Allen v. American Land Research*, 95 Wn.2d 841, 631 P.2d 930 (1981) (a court has the inherent power to issue a contempt order for the purpose of trying to force compliance with his judgment). An appellate court may reverse a contempt order only if the lower court abused its discretion by exercising its contempt power on untenable grounds or for untenable reasons. *In re Marriage of James*, 79 Wn. App. 436, 903 P.2d 470 (1995).

The trial court had sufficient grounds to enter the Orders of contempt in this matter. *In re MB*, 101 Wn. App. 425, 3 P.3d 780 (2000) (a finding of contempt will be upheld as long as a proper basis is found).

C. The Trial Court's September 18, 2009 And October 21, 2009 Orders Were Anything But Ambiguous

On September 18, 2009, the trial court was presented with evidence that Chase and his clients had unlawfully come into possession of Doyle's stolen property and personal documents. The trial court was presented with overwhelming evidence that Mr. Chase had failed to immediately comply with its Orders and Chase had destroyed electronic copies of Doyle's stolen records.

The trial court's October 21, 2010 order required the immediate return of Doyle's property. The Order read as follows:

The Court having considered Plaintiff's Motion to Seal and for Protective Order and Return of Records, the Defendants' Reply Brief, and oral argument of counsel, IT IS HEREBY ORDERED, ADJUDGED and DECREED:

1. The Plaintiff's Motion to Seal and for Protective Order and Return of Records is granted. By preponderance of the evidence, the documents relating to Mr. Doyle were acquired from him unlawfully.

2. The originals or any copies, paper or electronic, in the possession of any party to this action, or the counsel of any party to this action, or former counsel to any party in this action including, but not limited to, Jack Burns and Brian Chase, of any document as herein defined, shall be *immediately* returned to counsel for Plaintiff, Aaron Doyle.

No other use shall be made of the documents without leave of court. The documents shall not be disseminated to any other person other than counsel for Plaintiff.

3. For the purposes of this order, “documents” is defined as any document relating to Plaintiff, Aaron Doyle, obtained from a thumb drive that was ever in the custody of Ms. Taylor, or obtained by her from the files of Plaintiff, or by any other person from said files without the knowledge and consent of Plaintiff. The term “documents” shall also include, but not be limited to, any document(s) from or relating to Plaintiff’s former employment with the Sierra County, California, Sheriff’s Office that were sealed by the Sierra County Superior Court.

4. The documents subject to this protective order shall not be filed in this case, or any subsequent case, without leave of court. (*Emphasis added.*)

The word “immediate” is far from ambiguous. Chase goes so far as to claim the word immediate is vague. If any doubt exists as to what immediate means, consultation with a Webster’s dictionary resolves the doubt: 1. without lapse of time; without delay; instantly; at once;. 2. with no object or space intervening. 3. Closely; 4. without intervening medium or agent; concerning or affecting directly.

Surely, the definition was never meant to construe “whenever Chase got around to it.” The courts have routinely relied on extrinsic aids, such as dictionaries, to find the ordinary meaning of words. *Brenner v. Leake*, 46 Wash. App. 852, 854-855. Chase’s partial compliance with the court’s Orders were anything but instantaneous, fast and speedy or for that

matter, immediate as required by the court's Order.

D. The Trial Court's Oral Orders Were Enforceable

It is well settled law that oral orders are just as enforceable as written orders.

In order for the mandate of a court to be in effect, it need not be a formal written order of the court, and persons who, knowing of oral decisions, violate their provisions, may be held liable for contempt, although the decision has not yet been formulated into an order or writ. *See* 17 AM.JUR.2d, Contempt § 113.

“One may be charged with contempt for violating a court's order, of which he has actual knowledge, notwithstanding that at the time of the violation the order had not yet been formally drawn up.” There are any number of cases that support the foregoing law to the effect that the service of a written order is not an essential predicate to hold a person in contempt for violating the order provided he has reliable knowledge as to the contents of the order. *See E.g., State v. Dunn*, 36 N.M. 258, 13 P.2d 557 (1932); *Belden v. Stott*, 150 Ohio St. 393, 83 N.E.2d 58 (1948); *Rollins v. Commonwealth*, 211 Va. 438, 177 S.E.2d 639 (1970); *State ex rel. Curtiss v. Erickson*, 66 Wash. 639, 120 P. 104 (1912).

E. There Was No Evidence To Support The Trial Court's Finding That Doyle Only Incurred \$1,000.00 In Attorney Fees

RCW 7.21.030(3) provides that a party is entitled to "reasonable attorney fees" upon a finding of contempt. The trial court lacked substantial evidence to find that Doyle's reasonable attorney fees were anything less than \$3,000.00 in his prosecution of the contempt against Chase. In fact, Doyle's attorney, Garth Dano, filed a declaration supporting that Doyle had incurred over \$3,000 in attorney fees for Chase's failure to comply with the Order.

VI. CONCLUSION

This Court should affirm the trial court's finding that Brian Chase was in contempt of its Orders and remand the case to the trial court with instructions that oral orders are enforceable, and directing the court to award Doyle his actual and reasonable attorney fees and costs incurred in the prosecution of the contempt against Chase.

Respectfully submitted this 7 day of March, 2011.



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Attorney for Respondent/Cross-Appellant,
Aaron Doyle

APPENDIX

Revised Code of Washington

CHAPTER 2.28 RCW

2.28.010

Powers of courts in conduct of judicial proceedings.

Every court of justice has power -- (1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

[1955 c 38 § 12; 1909 c 124 § 2; RRS § 85.]

2.28.020

Contempt — Punishment.

For the effectual exercise of the powers specified in RCW 2.28.010, the court may punish for contempt in the cases and the manner provided by law.

[1891 c 54 § 2; RRS § 53.]

2.28.030

Judicial officer defined — When disqualified.

A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

(1) In an action, suit or proceeding to which he is a party, or in which he is directly interested.

(2) When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

(3) When he is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

(4) When he has been attorney in the action, suit or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court.

In the cases specified in subdivisions (3) and (4), the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law.

[1971 c 81 § 11; 1895 c 39 § 1; 1891 c 54 § 3; RRS § 54.]

2.28.060

Judicial officers — Powers.

Every judicial officer has power -- (1) To preserve and enforce order in his immediate presence and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law. (2) To compel obedience to his lawful orders as provided by law. (3) To compel the attendance of persons to testify in a proceeding pending before him, in the cases and manner provided by law. (4) To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and the performance of his duties.

[1955 c 38 § 13; 1891 c 54 § 6; RRS § 57.]

2.28.070

Contempt — Judicial officer may punish.

For the effectual exercise of the powers specified in RCW 2.28.060, a judicial officer may punish for contempt in the cases and manner provided by law.

[1891 c 54 § 7; RRS § 58.]

2.28.080

Powers of judges of supreme and superior courts.

The judges of the supreme and superior courts have power in any part of the state to take and certify –

(1) The proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged.

(2) The acknowledgment of satisfaction of a judgment in any court.

(3) An affidavit or deposition to be used in any court of justice or other tribunal of this state.

(4) To exercise any other power and perform any other duty conferred or imposed upon them by statute.

[1891 c 54 § 8; RRS § 59.]

CHAPTER 7.21 RCW

7.21.010

Definitions.

The definitions in this section apply throughout this chapter:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

(d) Refusal, without lawful authority, to produce a record, document, or other object.

(2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.

[1989 c 373 § 1.]

7.21.020

Sanctions — Who may impose.

A judge or commissioner of the supreme court, the court of appeals, or the superior court, a judge of a court of limited jurisdiction, and a commissioner of a court of limited jurisdiction may impose a sanction for contempt of court under this chapter.

[1998 c 3 § 1; 1989 c 373 § 2.]

7.21.030

Remedial sanctions — Payment for losses.

(1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(e) In cases under chapters 13.32A, 13.34, and 28A.225 RCW, commitment to juvenile detention for a period of time not to exceed seven days. This sanction may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter. This remedy is specifically determined to be a remedial sanction.

(3) The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

(4) If the court finds that a person under the age of eighteen years has willfully disobeyed the terms of an order issued under chapter 10.14 RCW, the court may find the person in contempt of court and may, as a sole sanction for such contempt, commit the person to juvenile detention for a period of time not to exceed seven days.

[2001 c 260 § 6; 1998 c 296 § 36; 1989 c 373 § 3.]

7.21.040

Punitive sanctions — Fines.

(1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of

not more than five thousand dollars or imprisonment for not more than one year, or both.

[2009 c 37 § 1; 1989 c 373 § 4.]

7.21.050

Sanctions — Summary imposition — Procedure.

(1) The judge presiding in an action or proceeding may summarily impose either a remedial or punitive sanction authorized by this chapter upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt. The judge shall impose the sanctions immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the authority and dignity of the court. The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. The order of contempt shall recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record.

(2) A court, after a finding of contempt of court in a proceeding under subsection (1) of this section may impose for each separate contempt of court a punitive sanction of a fine of not more than five hundred dollars or imprisonment for not more than thirty days, or both, or a remedial sanction set forth in RCW 7.21.030(2). A forfeiture imposed as a remedial sanction under this subsection may not exceed more than five hundred dollars for each day the contempt continues.

[2009 c 37 § 2; 1989 c 373 § 5.]

7.21.060

Administrative actions or proceedings — Petition to court for imposition of sanctions.

A state administrative agency conducting an action or proceeding or a party to the action or proceeding may petition the superior court in the county in which the action or proceeding is being conducted for a remedial sanction specified in RCW 7.21.030 for conduct specified in RCW 7.21.010 in the action or proceeding.

[1989 c 373 § 6.]

7.21.070

Appellate review.

A party in a proceeding or action under this chapter may seek appellate review under applicable court rules. Appellate review does not stay the proceedings in any other action, suit, or proceeding, or any judgment, decree, or order in the action, suit, or proceeding to which the contempt relates.

[1989 c 373 § 7.]

7.21.900

Severability — 1989 c 373.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Rules of Professional Conduct

Rule 3.3

Candor toward the tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding.

(c) If the lawyer has offered material evidence and comes to know of its falsity, the lawyer shall promptly disclose this fact to the tribunal unless such disclosure is prohibited by Rule 1.6.

(d) If the lawyer has offered material evidence and comes to know of its falsity, and disclosure of this fact is prohibited by Rule 1.6, the lawyer shall promptly make reasonable efforts to convince the client to consent to disclosure. If the client refuses to consent to disclosure, the lawyer may seek to withdraw from the representation in accordance with Rule 1.16.

(e) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(f) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.4

Fairness to opposing counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a

witness, or state personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

(f) [Reserved.]

Rule 8.4
Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) violate his or her oath as an attorney;

(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(m) violate the Code of Judicial Conduct; or

(n) engage in conduct demonstrating unfitness to practice law.
