

NO: 369854

**FILED**

COURT OF APPEALS

of the

STATE OF WASHINGTON DIVISION III

MAY 07 2020

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

ROY D. CHEESMAN, RUTH F. CONDE (CHEESMAN)

APPELLANTS

- v. -

,

KITTITAS COUNTY SUPERIOR COURT SPEACIAL ASSISTANT ATTY.  
GEN. CHRISTOPHER THOMAS HERION, RESPONDENTS/APPELLEE

**BRIEF OF APPELLANT**

ROY D CHEESMAN,  
RUTH ANN F. C. (CHEESMAN)/appellants  
1708 N. Indiana dr. Ellensburg, WA. 98926

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## Assignment of Error

Kittitas County Superior Court (Special) Assistant Attorney General Christopher Thomas Herion in Ellensburg Washington State violated the Plaintiffs constitutional civil rights and intentionally violated the United States Bills of Rights, federal rules and with negligence breach the duties to the dependency case trial of the RCW's of the State of Washington,

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20. RCW 9.94A.411 Evidentiary sufficiency.

21. RCW 4.92.150 Compromise and settlement of claims by attorney general.

22. RCW 7.24.060 Refusal of Declaration where judgement would not terminate controversy.

22. Superior Court Rule 26

23. Superior Court Rule 56

24. RCW 7.06.070 Right to trial by jury.

25. RCW 4.56.250 Claims for noneconomic damages

26. RCW 4.44.090 Questions of fact for jury.

27. RCW 4.44.080 Questions of law to be decided by court.

## STATEMENT OF THE CASE

The Plaintiff's/appellant's filed a civil complaint against to the Kittitas County Superior Court Appointed Special Assistant Attorney General Christopher Thomas Herion, (Case No. 19-2-00023-19, Sub#4)

The State of Washington ("SPECIAL) Assistant Attorney General Christopher Thomas Herion failed the duty of a ("SPECIAL") Assistant Attorney General of Washington State and breach, neglected the true duties of the "SPECIAL" Assistant Attorney General as an Appointed Delegated Employees of the State of Washington.

The Medical examination of the plaintiff's/appellant's children was crucial material facts of evidence that the Washington State Attorney General (Special) Assistant Christopher Thomas Herion concealed to dependency prosecuted the Appellants.

The reports of the CPS and the police are heavily relied by the (Special) general, without investigating the accurately of the written reports of all mandated reporters.

Preservation of family are refused by the (Special) general when the plaintiff's/appellant's offer a plea bargain for the preservation of family of the plaintiff's/appellants to take family-oriented classes and mental evaluations.

The (Special) Assist. Atty. Gen. Christopher Thomas Herion made an investigation by reading on a facts findings hearings for all convincing tangible evidence and concealed the medical evidence to prosecute in dependency case the plaintiff's/appellant's to take away the natural rights of the parents and would not put to court clerk records of the medical examination of the victims or supplement a second medical opinion for the court clerk records as a material of facts evidence for the dependency case findings hearings testimonies, Nineteen of the Assignment of Error are neglected and violated by the (Special) Assistant Attorney General Christopher Thomas Herion, breaching job responsibilities and duties to the RCW's, federal rules, constitutional bill of rights and to the state of Washington. Fraudulent concealment of evidence is legal malpractice in itself and the Attorney general lawyer are would not like to corrected this complaint by admitting the violation and negligent beaching duties to prosecuted the plaintiffs/appellant's in a dependency case facts findings while the medical examination of the victims are with at reach of the (Special) Assist. Atty. Gen Christopher Thomas Herion.

During the dependency case facts findings hearings, (plaintiff's/appellant's has tangible material facts evidence) The Kittitas County Superior Court Clerk has a tangible dependency written documents records filed by the (Special) Assistant Attorney General Christopher Thomas Herion writing, asking, telling the criminal prosecutors to file a "no contact order" against the plaintiff's/appellant's to favor the criminal prosecutions and to favor the child protective services and to the favor the Attorney General of the Washington State (Special) Assistant attorney General for the breaking of the family and five years' imprisonment of the plaintiff's/appellant's.

The Plaintiff's/appellant's filed tort and a civil case complaint against the Washington State Attorney General, and against the (Special) Christopher Thomas Herion but was dismissed and denied by the Kittitas County Superior Court Judge, (Case No. 19-2-00023-19, Sub#55) the same visiting judge in the criminal proceedings with a conflict of interest to the both cases and are against the plaintiff's/appellant's to proceed to the discovery procedures to obtain more evidence to represent and proceeded to the jury for a jury trial and are against to the constitutional right of the plaintiff's/appellant's for the jury trial against to the wrong doing of the Attorney General of Washington State and its lawyers.

## ARGUMENT

The information of the (special) Assistant Attorney General of the tangible Medical Examination Reports of the victims are material of facts to the dependency case's that was withhold to prolong the dependency case's 8 months and was criminally concealed by the Attorney General to put the plaintiff's/appellant's child in a foster home and break the family without considering Family Values or preservation of family.

Twenty seven assignments of error are violated and neglected by the (Special) Assistant Attorney General Christopher Thomas Herion in the Dependency case facts findings hearings to break the family of the plaintiff's/appellant's and the (Special) Assistant Attorney General Prosecuting Attorney Christopher Thomas Herion conspired with the criminal prosecuting attorney to criminal prosecute the plaintiff's/appellant's and files a "No Contact Order" against the plaintiff's/appellant's.

The Job descriptions of the (Special) Assistant Attorney General Christopher Thomas Herion (Assignment of error, RCW 9.94A.411) are arguments and are breach the duties of the job descriptions vested to protected the civil basic human rights of the plaintiff's/appellant's.

The Attorney general of Washington state Jacob Brooks using the letter words "vague" to continued to denied to produce any answer, documents or evidence and to retaliated to the complaints files a summary judgment to conspired along with the case while giving by the state of Washington to by the RCW4.92.150 Compromise and settlement of claims by attorney general.

One of the Visiting Judge in Kittitas County Superior Court granting parts and denied parts (Case No. 19-2-00023-19, sub#23), and the other judge order granting summary judgment and dismissing complaint with prejudice (Case No. 19-2-00023-19, sub#55) are argument to the appeals because it contradicted the other judge in the court room then dismissed the other judge granting the plaintiff's/appellant's to proceed to the jury.

Washington State Superior Court Rule 26, and the Washington State Superior Court rule 56 are denied by the Kittitas County Superior Court Visiting Judge and the Constitutional Bills of Rights of the Plaintiff's/appellant's through the Right for a Jury trial.

Plaintiff's/appellant's would like to plead to the Washington state court of appeals Division III to reprimanded the plaintiff's/appellant's civil complaint back to the Kittitas County Superior Court for the right for a jury trial for the breach of duties, negligence of duties and the civil rights violations and RCW's violations of the defendant/appellee and fine for the financial damages and sanctions of an appeals.

## **CONCLUSION**

The Medical Examination concealments (RCW 33.36.060) are negligently breaching the duties of the attorney general's and the continues concealing evidence of the Medical Examination not to be included to the Dependency facts finding reports of the Attorney generals for dependency case's to prolong the dependency cases' are damaging the plaintiff's/appellant's noneconomic and economically.

Washington State (special) Assistant Attorney General Christopher Thomas Herion breach his job descriptions and job responsibility when the attorney general filed documents to contact and shared information to the criminal prosecuting attorney to conspired to prosecuted the plaintiff's/appellant's

The Attorney General Appointed lawyer Jacob Brooks knew the wrong doing of the (special) assistant Attorney general Herion by proper investigating the defendant/appellee but continues to denied the wrong doing of the Washington State attorney general lack of trainings and are would not like to settle the case accordingly to the RCW 4.92.150

Case No. 19-2-00023-19, sub#23 of the civil case complaint against the defendant/appellee are to proceed to the civil complaint but while in the during the superior court rules of discovery rule 56, the other judge on (Case No. 19-2-00023-19,sub#55) unjustly dismissed the complaint and denied the plaintiff's/appellant's to proceed to the process of superior court rules 26, 56 for discovery procedures.

RCW 4.44.090 Questions of fact for jury are not up hold by the Kittitas County Superior Court Judge when the judge personally with conflict of interest keep on accusing and double jeopardy the plaintiff's/appellant's on the civil complaint for

making a summary judgment and not the complaint to be tried by the jury against to the breach of duty and negligence of the State of Washington Attorney General's.

Plaintiff's/appellant's plead to the State of Washington Court of Appeals Division III to reprimanded the Kittitas County Superior Court Judge Summary Judgment for the rights for a jury trial of the constitutional right for the jury of the plaintiff's/appellant's for the violation of the bills of rights and the violations of the RCWs and for the economic and noneconomic damages claim of the plaintiff's/appellant.

Dated May 4, 2020



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Roy D. Cheesman/Plaintiff/appellant  
1708 N. Indiana Dr. Ellensburg, WA. 98926



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Ruth Ann Fernandez Conde (Cheesman) /Plaintiff/appellant  
1708 N. Indiana Dr. Ellensburg, WA. 98926

**CONSTITUTIONAL AMENDMENT RIGHTS, FEDERAL RULES AND WASHINGTON STATE REVERSE CODES OF WASHINGTON, (RCW'S)**

**First Amendment,** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Fourth Amendment,** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Sixth Amendment,** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defense.

**Eighth Amendment**, excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Ninth Amendment**, other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments.

**Fourteenth Amendment**, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**18 U.S. Code § 241. Conspiracy against rights**, If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; They shall be fined under this title.

**18 U.S. Code § 242. Deprivation of rights under color of law** Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the

deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title.

**42 U.S. Code § 1983. Civil action for deprivation of rights,** Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity,

**RCW 9.62.010 Malicious prosecution.**

Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor.

**RCW 9A.72.150 Tampering with physical evidence.**

(1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or

**RCW 33.36.060 Suppressing, secreting, or destroying evidence or records.**

Any person who, for the purpose of concealing any material fact, suppresses any evidence or abstract, removes, mutilates, destroys, or secretes any book, paper or record of an association, or of the director, or of anyone connected with the association or the office of the director, is guilty of a class C felony as provided in chapter 9A.20 RCW.

**RCW 9A.36.120 Assault of a child in the first degree.**

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the first degree, as defined in RCW 9A.36.011, against the child; or

(b) Intentionally assaults the child and either:

(i) Recklessly inflicts great bodily harm; or

(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

**RCW 9A.76.175 Making a false or misleading statement to a public servant.**

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

**RCW 42.20.040 False report.** Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under

circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

**RCW 18.235.130 Unprofessional conduct—Acts or conditions that constitute.**

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based.

**RCW 9A.08.020 Liability for conduct of another—Complicity.**

(1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime,

**RCW 9.94A.411 Evidentiary sufficiency. (1) Decision not to prosecute.**

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

**RCW 4.92.150 Compromise and settlement of claims by attorney general.**

After commencement of an action in a court of competent jurisdiction upon a claim against the state, or any of its officers, employees, or volunteers arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq., or against a foster parent that the attorney general is defending pursuant to RCW 4.92.070, or upon petition by the state, the attorney general, with the prior approval of the office of risk management and with the approval of the court, following such testimony as the court may require, may compromise and settle the same and stipulate for judgment against the state, the affected officer, employee, volunteer, or foster parent.

**RCW 7.24.060 Refusal of declaration where judgment would not terminate controversy.**

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

**Superior Court Civil Rules, CR 26. GENERAL PROVISIONS GOVERNING DISCOVERY.**

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery.

The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery;

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any,

### **Superior Court Civil Rules, CR 56. SUMMARY JUDGMENT**

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

**RCW 7.06.070** Right to trial by jury. No provision of this chapter may be construed to abridge the right to trial by jury.

**RCW 4.56.250** Claims for noneconomic damages—Limitation. (1) As used in this section, the following terms have the meanings indicated unless the context clearly requires otherwise. (a) "Economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities. (b) "Noneconomic damages" means subjective, nonmonetary losses,

**RCW 4.44.080** Questions of law to be decided by court. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

**RCW 4.44.090** Questions of fact for jury. All questions of fact other than those mentioned in RCW 4.44.080, shall be decided by the jury, and all evidence thereon addressed to them.

MAY 07 2020

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of the foregoing PLAINTIFF/APPELLANT BRIEF  
to JACOB BROOKS, Attorney for DEFENDANT/APPELLEE  
at 1116 W. BILDSME ST. WA., postage prepaid, on  
[date] 5-5-2020

[Signature]  
(Signature)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct:

5/5/2020 WA 98920  
(Date and Place)

[Signature]  
(Signature)