

NO. 82128-3

SUPREME COURT OF THE STATE OF WASHINGTON

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CLERK OF SUPREME COURT
STATE OF WASHINGTON

ALLAN PARMELEE,

Petitioner
CLERK

v.

ROBERT O'NEEL, et al.,

Respondents.

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SUPREME COURT
STATE OF WASHINGTON
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BY RONALD R. CARPENTER

**RESPONDENTS' ANSWER TO PETITION FOR
DISCRETIONARY REVIEW**

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I. INTRODUCTION

Mr. Parmelee is seeking piecemeal litigation of his claims to allow an award of attorneys' fees before the merits of his claims have been determined. He is seeking attorneys' fees only for the Court of Appeals decision in Division II. The Court remanded the matter to be determined on the merits of Mr. Parmelee's claims but did vacate the disciplinary sanction he received for sending a libelous letter regarding Superintendent Carter. There are a number of issues yet to be determined by a trier of fact including: whether his constitutional rights were violated; whether he was retaliated against for filing other court actions; and whether he suffered any damages as a result of the Department employees' actions. The Department employees also may negate any of Mr. Parmelee's claims through a number of asserted defenses, including immunity and may limit or prevent any recovery of damages. CP 496-508.

A prevailing party may be entitled to attorneys fees, if, at the conclusion of his case, he can show that he substantially prevailed on the merits of his claim in such a way that the legal relationship between the parties has been materially altered. First, the party seeking the fees must show that he has substantially prevailed on the merits of his claim, resulting in an enforceable judgment with some sort of relief awarded to him. Second, the relief obtained must directly alter the relationship

between the plaintiff and defendant. There must be a direct benefit, such as an enforceable judgment, before the Plaintiff may be considered a prevailing party.

Even if a party prevails on his claims, he may still not be entitled to attorneys' fees if the damages award is nominal. Courts directly link an award of attorneys' fees to the amount obtained in judgment to determine how much to award. Declaratory relief or nominal damages may not be sufficient to allow the recovery of any attorneys' fees. In addition, under the Prison Litigation Reform Act, a party's amount of fees is based on the award of damages. Requesting attorneys' fees before these determinations have been made is premature.

Mr. Parmelee is not yet a prevailing party and he is not entitled to attorneys' fees. The Court of Appeals remanded the claims alleged in his Complaint to the superior court to be determined. *Parmelee v. O'Neel*, 145 Wn. App. 223, 249, 186 P.3d 1094 (Slip Op. 35652-0-II at 25, Div II, June 19, 2008). The Court found that Mr. Parmelee's claims had been pleaded well enough to survive a motion to dismiss for failure to state a claim, but did not find that there was any merit to his claims. Mr. Parmelee has yet to substantially prevail on any claims raised in his Complaint. Furthermore, he has yet to prevail on any claims that alter the legal relationship between himself and the Plaintiffs. He does not have an

enforceable judgment or a damages award. Despite the decision by the Court of Appeals in this case, the Department may still infract him for his use of vulgar language directed to prison staff, albeit through different means. Mr. Parmelee is not entitled to attorneys' fees because the Department employees have not had the ability to fully litigate any available defenses, including immunity defenses. He has yet to litigate his claims showing the Department employees were liable for any damages and courts must rely on damages awards in prisoner civil rights cases to determine the amount of an award of attorneys' fees.

Mr. Parmelee's request for attorneys' fees is premature, inconsistent with state and federal law and would result in inefficient, piecemeal litigation. Therefore, Mr. Parmelee has failed to demonstrate review by this Court is appropriate under RAP 13.4(b).

II. COUNTER STATEMENT OF THE ISSUES

The following are the issues that this Court would consider if review were accepted:

1. Mr. Parmelee appealed the superior court's decision to grant the Respondent's Motion to Dismiss pursuant to CR 12 (c) and Division II overruled the trial court on its findings for Mr. Parmelee's prison disciplinary hearing. The majority of Mr. Parmelee's claims were

remanded to Clallam County Superior Court to be determined on the merits. Is Mr. Parmelee a prevailing party entitled to attorney fees?

2. Attorneys fees may be limited or denied if the trial court or jury determines that the plaintiff is entitled to nominal damages or certain defenses are applicable. If this Court determines that Mr. Parmelee is a prevailing party, could he still be denied attorneys fees because there has not been a determination of liability, damages, or available defenses?

III. STATEMENT OF THE CASE

A. PROCEDURAL BACKGROUND

On December 27, 2005, Mr. Parmelee filed his complaint for libel, slander, due process violations, first amendment violations and malicious prosecution against a number of Department employees, including claims for money damages. CP 684-711.

Following submission of the Department employees' Answer to the Complaint, Mr. Parmelee filed a motion for judgment on the pleadings under CR 12(c). The Department employees then filed a cross motion for judgment on the pleadings. CP 105, 122. The superior court commissioner entered a memorandum opinion on October 3, 2006, granting the Department employees' motion and denying Mr. Parmelee's motion. CP 86. On November 27, 2006, Mr. Parmelee filed in the superior court a notice of appeal of that decision. CP 17.

Mr. Parmelee argued to the Court of Appeals for the first time that the criminal libel statute, RCW 9.58.101, relied on by the Department employees for Mr. Parmelee's prison disciplinary infraction, was unconstitutional. The Court of Appeals agreed and vacated the minimal prison disciplinary sanction that included no loss of good conduct time. However, the Court of Appeals concluded that Mr. Parmelee was still subject to prison discipline for his misconduct; he could not be infraacted under a statute that the court held as unconstitutional¹. The Court of Appeals also declined an award of attorney fees (also requested by Mr. Parmelee on appeal), remanding the remaining claims to superior court for further action, commenting he would be entitled to attorneys' fees if he successfully litigated his claims on remand. Mr. Parmelee petitioned for rehearing on his claim for attorneys fees. The Court of Appeals denied the petition and this petition followed.

B. FACTUAL BACKGROUND

Mr. Parmelee is a Washington State inmate in the custody of the Department of Corrections (DOC). Mr. Parmelee was sentenced to DOC

¹ Mr. Parmelee argues that the Court of Appeals also ordered an injunction against Department employees on his behalf. The opinion does not have any language indicating an injunction issued. Specifically, the ruling from the Court states: "We hold that Washington's criminal libel statute is facially unconstitutional and is likewise unconstitutional for overbreadth and vagueness. We vacate the infraction based on the unconstitutional statute. We reverse the trial court's dismissal under CR 12(b)(6) and remand for further proceedings at which Parmelee may raise his claims for damages against DOC for violating his First Amendment rights, violating substantive due process, and retaliating against him". *Parmelee*, 145 Wn. App. at 243 (Slip Op. at 25).

custody for two counts of first degree arson for the fire-bombing of two automobiles belonging to female attorneys opposing him and his co-worker in civil legal actions.²

On July 20, 2005, Mr. Parmelee attempted to mail a letter to the Secretary of DOC, alleging that Sandra Carter, the Superintendent of Clallam Bay Corrections Center (CBCC), is a “man-hating lesbian.” CP 691; 717-18. This letter was not permitted to be sent out of the institution and Mr. Parmelee was infracted for “[c]ommitting any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules to wit: RCW 9.58.010.”³ WAC 137-28-260

² Mr. Parmelee has also been convicted on one count of felony stalking and at least two counts of misdemeanor stalking-related offenses. *See State v. Parmelee*, 108 Wn. App. 702, 704-07, 32 P.3d 1029 (2001); *In re Personal Restraint of Parmelee*, 115 Wn. App. 273, 276, 63 P.3d 800 (2003), *review denied*, 151 Wn.2d 1017 (2004); *State v. Parmelee*, 121 Wn. App. 707, 709, 90 P.3d 1092 (2004).

³ RCW 9.58.010 provides:

Every malicious publication by writing, printing, picture, effigy, sign[,] radio broadcasting or which shall in any other manner transmit the human voice or or reproduce the same from records or other appliances or means, which shall tend: --

(1) To expose any living person to hatred, contempt, ridicule or obloquy, or to deprive him of the benefit of public confidence or social intercourse; or

(2) To expose any living person to hatred, contempt, ridicule, or obloquy; or

(3) To injure any person, corporation or association of persons in his or her business or occupation, shall be libel. Every person who publishes a libel shall be guilty of a gross misdemeanor.

(1)(517).⁴ Specifically, Mr. Parmelee was infraacted under this former prison disciplinary rule for committing libel or slander. CP 713. He received 10 days of segregation, but he received no loss of good conduct time. CP 95.

An inmate may be segregated from the prison population for administrative or disciplinary reasons. Segregation, whether for administrative or disciplinary reasons, includes individual confinement and limited telephone use and other privileges. *See Sandin v. Connor*, 515 U.S. 472, 476, n. 2, 485-86, 115 S. Ct. 2293 (1995) (an offender's movement is severely limited while in administrative segregation, requiring them to remain in their cells during the day with restricted visitation and phone calls); *see also Matter of Galvez*, 79 Wn. App. 655, 657, 904 P.2d 790 (1995).

At his hearing, Mr. Parmelee entered a written statement explaining his position on the infraction filed against him. CP 722-36. He also submitted a request for staff to respond to written questions, including questions regarding Ms. Carter's sexuality. *Id.* The questions were not permitted because "they are designed to question the integrity of staff and not addressing the guilt or innocents [sic] of the offender". *Id.* Mr. Parmelee claimed this was a violation of his substantive due process

⁴ New prison disciplinary rules were promulgated, effective May 1, 2006. *See* WAC 137-25-030 (setting forth serious infractions).

rights. He also claimed that the infraction chilled his free speech and violated the Department's mail policy prohibiting censorship of mail critical of prison officials. *Id.*

IV. REASONS WHY REVIEW SHOULD BE DENIED

Mr. Parmelee argues that the Court of Appeals decision conflicts with decisions of the Supreme Court and other Courts of Appeals. He also argues that his attorneys fees are an issues of "substantial public interest" that the Supreme Court should decide. RAP 13.4 (b) shows that review is warranted where there is a need for clarification of a final decision by this Court. As the Court of Appeals' decision presents no conflict with existing state or federal case law and reflects the undetermined nature of this specific claim by a prison inmate and his use of vulgarities directed to prison staff, the Petition does not meet the criteria for granting review. Therefore, the petition should be denied.

V. ARGUMENT

A. THAT PETITIONER IS NOT YET A PREVAILING PARTY ENTITLED TO ATTORNEYS FEES IS CONSISTENT WITH STATE AND FEDERAL LAW

A party is entitled to attorneys' fees when "actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Sintra v. Seattle*, 131 Wn.2d 640, 664, 935 P.2d

555 (1997) (citing *Farrar v. Hobby*, 506 U.S. 103, 111-12, 113 S. Ct. 566, 121 L.Ed.2d 494 (1992)). Here, the determination by the Court of Appeals that the superior court's dismissal order should be reversed based in part on its determination that the criminal libel statute was unconstitutional did not make Mr. Parmelee a prevailing party. His many claims have not been adjudicated, nor have awards of damages or even a judgment been entered.

1. Under Federal And State Law, An Award Of Fees To Mr. Parmelee Now Is Not Appropriate Because Only A Single Legal Issue Has Been Determined And Numerous Issues Related To Liability, Defenses, And Damages Remain

Attorneys' fees may be awarded for the first time on appeal; however, the party must show that they have met the test allowing for such an award. Before Mr. Parmelee may be considered a "prevailing party" there has to be some liability or relief on the merits of a case. *Farrar v. Hobby*, 506 U.S. 103, 111, 113 S. Ct. 566, 121 L.Ed.2d 494 (1992). An appeal decision remanding a case to superior court because the plaintiff's claims should not have been dismissed under CR 12 (c) is not sufficient, nor is a declaratory judgment. "A judicial pronouncement that the defendant has violated the Constitution, unaccompanied by an enforceable judgment on the merits, does not render the plaintiff a prevailing party". *Farrar*, 506 U.S. at 113. In *Farrar*, a prisoner brought a civil rights claim

seeking damages of \$17 million, but he was awarded only \$1 in nominal damages. The Supreme Court reversed the circuit court's determination that the prisoner was a prevailing party, concluding:

As we have held, a nominal damages award does render a plaintiff a prevailing party by allowing him to vindicate his "absolute" right to procedural due process through enforcement of a judgment against the defendant. In a civil rights suit for damages, however, the awarding of nominal damages also highlights the plaintiff's failure to prove actual, compensable injury. Whatever the constitutional basis for substantive liability, damages awarded in a § 1983 action "must always be designed 'to compensate injuries caused by the [constitutional] deprivation' ". When a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, the only reasonable fee is usually no fee at all.

Farrar, 506 U.S. at 115 (alteration in original) (citations and italics omitted).

The Supreme Court's holding in *Farrar* was largely based on its earlier holding that merely finding a prison infraction unconstitutional is not sufficient to find that someone was a prevailing party. *Hewitt v. Helms*, 482 U.S. 755, 761, 107 S. Ct. 2672, 96 L.Ed.2d 654 (1978). The prisoner-litigant in *Hewitt* alleged 42 U.S.C § 1983 claims against state prison officials for alleged due process violations, but he obtained no relief. *Id.* at 760, 107 S. Ct. at 2675-76 ("The most that he obtained was an interlocutory ruling that his complaint should not have been dismissed

for failure to state a constitutional claim.”). The *Farrar* court commented regarding its decision in *Hewitt*:

Observing that respect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail, we held that Helms was not a prevailing party. *We required the plaintiff to prove the settling of some dispute which affects the behavior of the defendant towards the plaintiff.*

Farrar, 506 U.S. at 110 (citations and inner quotation omitted, emphasis added) (citing *Hewitt*, 482 U.S. at 761).

In *Sintra*, this Court relied heavily on the United States Supreme Court’s decision in *Farrar*, holding that the plaintiff’s award of almost \$200,000.00 in attorney fees should be overturned based on the plaintiff’s receipt of a \$3 award in nominal damages for his civil rights claim. The court in *Sintra* concluded:

Recovery of private damages was the primary purpose of *Sintra*’s § 1983 action. Under *Farrar*, when awarding attorney’s fees under § 1988, the trial court should have given primary consideration to the amount of damages *Sintra* sought as compared to the \$3 nominal damages it was awarded. The trial court did not do so.

Sintra, 131 Wn.2d at 666.

Mr. Parmelee argues that he should be given attorney’s fees because RCW 9.58.010 was declared unconstitutional and the Court of Appeals prevented its use in a future infraction. *See* Petition for Review. The Court did not make any further determinations regarding the merits of

Mr. Parmelee's actual claims for injunctive relief, damages, or defenses in the ruling. The Court of Appeals did not reverse the superior court's denial of Mr. Parmelee's motion for judgment on the pleadings. Instead, the Court of Appeals found that a statute was unconstitutional, and specifically did not award any damages. All issues were remanded to the superior court to be determined on the merits, including if any defenses applied.

Even if the Court were to determine that Mr. Parmelee is a prevailing party, he should not be awarded attorneys fees because a trier of fact has not made a determination regarding damages or any available defenses. As discussed above, a prevailing party may not always be able to recover attorneys' fees if he is only awarded nominal damages. *Sintra*, 131 Wn.2d at 664. A plaintiff may only receive nominal damages if they cannot prove an element of his claim, prohibiting him from recovering attorneys' fees. *Ermine v. Spokane*, 143 Wn.2d 636, 644, 23 P.3d 492 (2001) (citing *Farrar*). Before a court can make any determination regarding attorneys' fees there has to be some sort of determination of liability and defenses and the court has to make specific findings regarding any award of attorneys' fees. *Id.* Technical decisions overturning a statute that is not central to the claims raised in the complaint do not lead to an attorneys' fees award. *Id.*

In *Ermine*, this Court considered an award of attorneys' fees for less than the full amount requested where nominal damages were awarded in a 42 U.S.C § 1983 claim. *Ermine*, 143 Wn.2d at 641. In making such a determination, this Court looked to the factors in *Farrar*, including: the difference between the requested amount of damages and the amount awarded; the significance of the legal issue presented; and whether the plaintiff's success on the merits accomplished a public goal. *Ermine*, 134 Wn.2d at 648. The difference between the damages requested and the damages awarded in *Ermine* (\$500,000 requested originally, \$35,000 in arbitration and \$6,112 awarded) was small, allowing attorneys' fees. *Ermine*, 134 Wn.2d at 645. Second, unlawful physical beatings were a significant legal issue warranting some award of attorneys' fees. *Ermine*, 134 Wn.2d at 647. Third, his case did not effect any change in government policies and a public goal was not attained. *Ermine*, 134 Wn.2d at 649. All of these factors were determined in light of a decision on the merits of plaintiff's 42 U.S.C. § 1983 claims. *Id.*

Here, the Court of Appeals did not make any determination regarding the merits of Mr. Parmelee's case. This Court cannot apply the three *Farrar* factors because there has not been any determination regarding the prison employees' liability, damages to be awarded or any available defenses for using RCW 9.58.010 to infract him, including, for

example, the defense of qualified immunity⁵. The Department employees asserted a number of affirmative defenses in their answer and the trier of fact has yet to make a determination regarding their applicability. CP 493-496. It is likely that those defenses would prohibit a damages recovery for Mr. Parmelee. Mr. Parmelee's request for attorneys' fees is premature because the Court of appeals did not make any determination regarding liability or damages:

Moreover, even if we wanted to address whether the statutes are unconstitutional as applied to Parmelee, the record is insufficient to properly decide this issue. Thus, we cannot address whether Washington's criminal libel statutory scheme is unconstitutional as applied to Parmelee in this case. Likewise, we cannot address whether Parmelee's freedom of speech or substantive due process rights were violated because the record is insufficient to make those determinations. Nor do we address whether procedural due process was violated because Parmelee abandoned that claim at oral argument.

Parmelee v. O'Neel, 145 Wn. App. 223, 243, 186 P.3d 1094 (Slip Op. 35652-0-II at 18, Div II, June 19, 2008). In similar fashion, the Court of Appeals made no final determination on Mr. Parmelee's claim of retaliation. Clearly, the superior court did not reverse the superior court's

⁵ Under the doctrine of qualified immunity prison officials are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Here, the Department employees reasonably believed that the prison disciplinary code's referencing of criminal statutes still in the Revised Code of Washington was not violative of clearly established law in the context of a prison disciplinary proceeding.

denial of Mr. Parmelee's motion for judgment on the pleadings, including on his claim of retaliation. *Parmelee*, 145 Wn. App. at 249 (Slip Op. at 25).

Even if Mr. Parmelee prevailed on one or more of his underlying claims, a verdict of damages may be nominal, arguably prohibiting Mr. Parmelee's ability to obtain attorney's fees on his claims. His request for attorneys' fees is premature and should be determined after a decision in the superior court on the merits of his claims.

2. Consistent With Existing Authority, The Court Of Appeal's Holding Regarding RCW 9.58.010 Did Not Materially Alter The Legal Relationship Between The Parties Entitling Mr. Parmelee To Attorneys' Fees

A court's decision in a case has to affect the behavior of the defendant towards the plaintiff before he can be considered a prevailing party entitled to attorneys' fees. *Farrar*, 506 U.S. at 110. Although the modification of prison policies can be sufficient to entitle a plaintiff to such an award, he has to show that any such modification directly affects him and that it directly benefits him at the time of the judgment. *Id* at 111. To determine if a plaintiff has directly benefitted, the courts look to an enforceable judgment such as a fee award or other similar relief. *Id* at 113.

Mr. Parmelee has not shown that the Court changed his relationship with the Department or the Department employees when his infraction was vacated. On the contrary, the Court of Appeals made it clear that prison officials could infract Mr. Parmelee for his misconduct, albeit without reference to the criminal libel statute. *Parmelee*, 145 Wn. App. at 245 (Slip Op. at 21) (“This is not to say that an inmate's use of insolent, abusive, or scurrilous language in grievances and/or toward prison staff is not punishable.”). The Court of Appeals relied on another Court of Appeals decision specifically involving Mr. Parmelee, upholding the ability of prison officials to infract prison inmates for their use of vulgar or threatening language directed toward prison staff. *In re Parmelee*, 115 Wn. App. 273, 284, 63 P.3d 800 (2003), *review denied*, 151 Wn.2d 1017 (2004).

Here, the Court of Appeal's decision did not alter the Department's or its employees' relationship to Mr. Parmelee regarding his misconduct or their ability to respond. Thus, Mr. Parmelee also fails to demonstrate under RAP 13.4(b) that the petition involves an issue of substantial public interest that should be determined by the Supreme Court. As the Court of Appeals noted, there are other infractions the Department can use to address Mr. Parmelee's behavior. The Department may still infract him

for violating WAC 137-28-220 (1)(202)⁶. The Court's decision did not change Mr. Parmelee's classification, or his receipt of good conduct time, nor did it provide him with an enforceable judgment. He has not shown that his legal relationship with the Department or the Department employees has changed in any way and he is not entitled to attorneys' fees.

B. EVEN IF MR. PARMELEE IS A PREVAILING PARTY ENTITLED TO ATTORNEY FEES, EXISTING LAW DISFAVORS PIECEMEAL LITIGATION AND DOES NOT ENTITLED MR. PARMELEE TO FEES IN THE ABSENCE OF A FINAL DETERMINATION ON DAMAGES

Washington courts have traditionally disfavored piecemeal litigation. *See Brown v. General Motors, Corp.*, 67 Wn.2d 278, 281-82, 407 P.2d 461 (1965) ("Piecemeal litigation is not to be encouraged.") (state and federal authority citations omitted).

Prisoner civil rights claims for damages and attorney fees like this matter are governed under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, which provides in relevant part:

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which

⁶ DOC has changed its administrative infractions since the infraction at issue was determined. Former WAC 137-28-220 (1)(202) states: "Any of the following types of behavior may constitute a general infraction: Abusive language, harassment or other offensive behavior directed to or in the presence of staff, visitors, inmates, or other persons or groups". Possible sanctions under this prison disciplinary infraction include a warning or reprimand, an order to cease the behavior, loss of privileges and cell confinement. WAC 137-28-240.

attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that-

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's right protected by a statute pursuant to which a fee may be awarded under section 1988 of this title;....

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

42 U.S.C. § 1997e(d) (footnotes omitted).

Appellate courts have consistently interpreted the statute to limit a defendant's liability in PLRA cases for attorney fees to 150% of the money judgment. *See, Robbins v. Chronister*, 435 F.3d 1238, 1240 (10th Cir. 2006) (awarding \$1.50 in attorneys fees under the PLRA multiplier based on the nominal damage award given by the jury on a claim accruing before the prisoner was incarcerated); *Royal v. Kautzky*, 375 F.3d 720, 725 (8th Cir.2004); *Walker v. Bain*, 257 F.3d 660, 667 (6th Cir.2001) (citing cases).

This matter clearly pertains to claims governed by the PLRA. Because Mr. Parmelee's claims for damages are not yet determined, neither are the amounts for any claim for attorney fees. Therefore, the

Court of Appeals properly declined awarding attorney fees on remand to the superior court.

VI. CONCLUSION

Mr. Parmelee has not shown that he is a party entitled to attorney's fees. He has not substantially prevailed on the merits of his claims; nor has he shown that the decision from the Court of Appeals altered his legal relationship with the Department employees. If the Court does determine that Mr. Parmelee is a prevailing party because his infraction was vacated, his request for attorney's fees is premature. A trier of fact must determine liability, damages, and defenses before attorneys' fees may be awarded.

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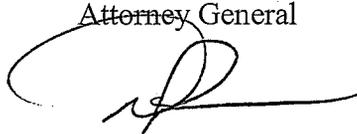
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For the foregoing reasons, Mr. Parmelee's petition for review should be denied.

RESPECTFULLY SUBMITTED this 3d day of November, 2008.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the **RESPONDENTS' ANSWER TO PETITION FOR DISCRETIONARY REVIEW** on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
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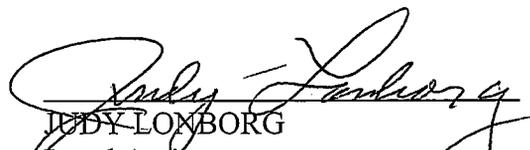
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EXECUTED this 31st day of November, 2008 at Olympia, WA.


JUDY LONBORG
Legal Assistant

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